

OTAY WATER DISTRICT

BOARD OF DIRECTORS MEETING  
DISTRICT BOARDROOM

2554 SWEETWATER SPRINGS BOULEVARD  
SPRING VALLEY, CALIFORNIA

**WEDNESDAY**

**February 3, 2010**

**3:30 P.M.**

**AGENDA**

1. ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. APPROVAL OF AGENDA
4. PRESENTATION BY THE ENGINEERING AND GENERAL CONTRACTORS ASSOCIATION THE PUBLIC AGENCY PARTNERSHIP AWARD TO THE OTAY WATER DISTRICT
5. PRESENTATION OF THE AMIGO AWARD FOR OUTSTANDING PUBLIC SECTOR/INFRASTRUCTURE PROJECT FROM THE MEXICAN AMERICAN BUSINESS AND PROFESSIONAL ASSOCIATION
7. PUBLIC PARTICIPATION – OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO SPEAK TO THE BOARD ON ANY SUBJECT MATTER WITHIN THE BOARD'S JURISDICTION BUT NOT AN ITEM ON TODAY'S AGENDA

**CONSENT CALENDAR**

8. ITEMS TO BE ACTED UPON WITHOUT DISCUSSION, UNLESS A REQUEST IS MADE BY A MEMBER OF THE BOARD OR THE PUBLIC TO DISCUSS A PARTICULAR ITEM:
  - a. ADOPT ORDINANCE NO. 519 ENACTING THE PROPOSED AMENDMENTS TO, AND RECODIFICATION, OF CERTAIN PROVISIONS OF THE CODE OF ORDINANCE
  - b. ADOPT ORDINANCE NO. 523 REMOVING FEES AND CHARGES FROM SECTIONS 9, 10, 23, 25, 28, 31, 33, 34, 53, 60 AND FROM POLICY 5 OF THE DISTRICT'S CODE OF ORDINANCES AND INCORPORATING THEM IN A NEWLY CREATED APPENDIX A; DELETING POLICY 17 AND INCORPORATING IT INTO SECTION 31; AND AMENDING SECTION 53, FEES, RATES, CHARGES AND CONDITIONS FOR SEWER SERVICES

- c) ADOPT RESOLUTION NO. 4151 TO REPEAL AND REPLACE BOARD OF DIRECTORS POLICY NO. 5, FURNISHING COPIES OF DOCUMENTS AND PREPARATION OF OTHER INFORMATION; AND ADOPT POLICY NO. 05-A, RECORDS POLICIES AND PROCEDURES, RECORDS RETENTION AND DESTRUCTION; AND POLICY NO. 05-B RECORDS POLICIES AND PROCEDURES -- ACCESSIBILITY
- d) ADOPT RESOLUTION NO. 4152 REVISING BOARD OF DIRECTORS POLICY NO. 48, ADA/FEHA DISABILITY POLICY
- e) APPROVE THE ISSUANCE OF A PURCHASE ORDER TO VILLA FORD OF TUSTIN, CALIFORNIA IN THE AMOUNT OF \$62,349.60, FOR THE PURCHASE OF THREE (3) F-150 PICKUP TRUCKS
- f) APPROVE WAIVING ALL DEFERRED AVAILABILITY CHARGES AND INTEREST PER THE AGREEMENT, "PREVENTING WATER AND/OR SEWER USE AND PROVIDING FOR DEFERRAL OF CERTAIN WATER AND/OR SEWER AVAILABILITY STANDBY CHARGES" WITH THE ENVIRONMENTAL TRUST, INC. CONCERNING FOUR OF THE PARCELS COVERED WITHIN SAID AGREEMENT (APNs 580-040-01, 580-040-41, 580-040-44 AND 580-040-46) AND DENYING THE REQUEST FOR WAIVER FOR THE REMAINING PARCELS
- g) APPROVE CONTINUING THE CURRENT LEVEL OF BANKING SERVICES WITH UNION BANK AND DIRECT STAFF TO INITIATE A REQUEST FOR PROPOSALS IN APPROXIMATELY TWO (2) YEARS
- h) APPROVE THE PROPOSED BYLAWS AND ARTICLES OF ASSOCIATION OF THE COUNCIL OF WATER UTILITIES
- i) APPROVE A REIMBURSEMENT MEMORANDUM OF UNDERSTANDING WITH HELIX WATER DISTRICT FOR COSTS ASSOCIATED WITH THE RELOCATION OF CERTAIN HELIX WATER DISTRICT FACILITIES IN CONNECTION WITH THE UPGRADE OF CWA'S FLOW CONTROL FACILITY NO. 14 AND THE DISTRICT'S JAMACHA ROAD PIPELINE PROJECT FOR AN AMOUNT NOT-TO-EXCEED \$144,700
- j) AWARD A CONSTRUCTION CONTRACT TO WEST COAST INDUSTRIAL COATING INC. IN AN AMOUNT NOT-TO-EXCEED \$690,000 FOR THE 1296-1 AND 1296-2 RESERVOIR INTERIOR/EXTERIOR COATING AND UPGRADES PROJECT
- k) CONSENT TO THE WITHDRAWAL OF THE BID SUBMITTED BY EMPIRE PIPELINE AND AWARD A CONSTRUCTION CONTRACT TO A.B. HASHMI INC. IN THE AMOUNT OF \$91,320 FOR THE JAMACHA ROAD SEWER REPLACEMENT PROJECT
- l) APPROVE A REIMBURSEMENT AGREEMENT WITH THE CITY OF CHULA VISTA FOR CONSTRUCTION COSTS ASSOCIATED WITH THE

OTAY LAKES ROAD 12-INCH RECYCLED WATER PIPELINE AND POTABLE UTILITY RELOCATION PROJECT IN AN AMOUNT-NOT-TO EXCEED \$1,100,000

ACTION ITEMS

9. FINANCE AND ADMINISTRATION

- a) ADOPT RESOLUTION NO. 4153 AUTHORIZING THE EXECUTION OF A JOINT EXERCISE OF POWERS AGREEMENT RELATING TO THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY (CMFA) FOR THE OTAY WATER DISTRICT TO BECOME A MEMBER OF THE CMFA (BEACHEM)

10. ENGINEERING AND WATER OPERATIONS

- a) CERTIFY THE 2009 PROGRAM ENVIRONMENTAL IMPACT REPORT FOR THE 2009 WATER RESOURCES MASTER PLAN UPDATE AND APPROVE THE 2009 WATER RESOURCES MASTER PLAN UPDATE AS A FINAL PLAN AND DOCUMENT [COBURN-BOYD]

11. GENERAL MANAGER

- a) RECEIVE THE FINDINGS OF THE 2009 RESIDENTIAL CUSTOMER OPINION AND AWARENESS SURVEY REPORT CONDUCTED BY REA AND PARKER RESEARCH INC. (BUELNA)

12. BOARD

- a) DISCUSSION OF 2009 BOARD MEETING CALENDAR

REPORTS

13. GENERAL MANAGER'S REPORT

- a) SAN DIEGO COUNTY WATER AUTHORITY UPDATE

14. DIRECTORS' REPORTS/REQUESTS

15. PRESIDENT'S REPORT

RECESS TO CLOSED SESSION

16. CLOSED SESSION

- a) CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION [GOVERNMENT CODE §54956.9(a)]
  - (I) INFRASTRUCTURE ENGINEERING CORP. v. OTAY WATER DISTRICT, COUNTY OF SAN DIEGO, SUPERIOR COURT, CASE NO. 37-2008-00093876-CU-BC-CTL

(II) MULTIPLE CASES RELATED TO THE FENTON BUSINESS CENTER AND FILED WITH THE SUPERIOR COURT OF THE COUNTY OF SAN DIEGO CONSOLIDATED UNDER CASE NO. 37-2007-00077024-CU-BC-SC

b) CONFERENCE WITH LEGAL COUNSEL – POTENTIAL LITIGATION [GOVERNMENT CODE §54956.9(b)]

2 CASES

RETURN TO OPEN SESSION

17. REPORT ON ANY ACTIONS TAKEN IN CLOSED SESSION. THE BOARD MAY ALSO TAKE ACTION ON ANY ITEMS POSTED IN CLOSED SESSION

18. ADJOURNMENT

All items appearing on this agenda, whether or not expressly listed for action, may be deliberated and may be subject to action by the Board.

The Agenda, and any attachments containing written information, are available at the District's website at [www.otaywater.gov](http://www.otaywater.gov). Written changes to any items to be considered at the open meeting, or to any attachments, will be posted on the District's website. Copies of the Agenda and all attachments are also available through the District Secretary by contacting her at (619) 670-2280.

If you have any disability which would require accommodation in order to enable you to participate in this meeting, please call the District Secretary at (619) 670-2280 at least 24 hours prior to the meeting.

Certification of Posting

I certify that on January 29, 2010, I posted a copy of the foregoing agenda near the regular meeting place of the Board of Directors of Otay Water District, said time being at least 72 hours in advance of the regular meeting of the Board of Directors (Government Code Section §54954.2).

Executed at Spring Valley, California on January 29, 2010.

  
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Susan Cruz, District Secretary



## AGENDA ITEM 8a

TYPE MEETING:	Regular Board	MEETING DATE:	February 3, 2010
SUBMITTED BY:	Yuri Calderon, General Counsel Aerobel Banuelos, Esq.	W.O./G.F. NO:	DIV. NO.
APPROVED BY:	Mark Watton, General Manager German Alvarez, Assistant General Manager		
SUBJECT:	Re-codification of certain Code of Ordinance Provisions Regarding Prohibited or Unauthorized Activities, Protection of District Facilities and Enforcement of District Ordinances		

### **RECOMMENDATIONS:**

That the Board adopt Ordinance 519 enacting the proposed amendments to, and re-codification of, certain provisions of the Code of Ordinance.

### **PURPOSE:**

To present to the Board certain Code of Ordinance provisions to be clarified, updated, expanded and re-codified in a new division of the Code of Ordinance to make the District's policies regarding remedies for violations, damages to District property and other prohibited activities more easily accessible. To propose revisions to, or the repeal of, certain existing provisions of the Code of Ordinance to avoid duplication and possible confusion.

### **ANALYSIS:**

The District's Code of Ordinance currently contains scattered provisions specifying administrative fines and penalties, procedures for disconnection or reconnection of services, prohibiting the use of District facilities without the consent of the District, prohibiting tampering and other unauthorized or illegal practices and otherwise establishing certain rights of the District.

Under the existing provisions of the Code of Ordinance, enforcement is carried out in a number of ways. In cases such as a report of water waste or unauthorized activity, the first step is to communicate with the customer by telephone, letter, door tag, or by making personal contact. Many times this contact is all that is required to resolve the situation. If not, enforcement progresses to a written notice and possibly the imposition of a fine or disconnection of service. In short, there are several methods in the District's ordinances and procedures that can be used to enforce Code provisions and water restrictions. However, since the provisions are scattered throughout the Code and the procedures for enforcement are sometimes difficult to locate, enforcement is inconsistent. An important part of the District's water shortage plan is to specify the appropriate authority and a combination of methods to enforce mandatory measures such as water restrictions and to be able to consistently address Code violations.

The District staff and the General Counsel have identified and restated the provisions of the Code of Ordinance pertaining to violations, prohibited activities, unauthorized use, termination

of service, re-connection of service, administrative fines, penalties and damages. The District staff and the General Counsel believe that it would be in the best interest of the District to consolidate all such provisions in a new article of the Code of Ordinance entitled “Article IV – Prohibited Activities; Remedies and Enforcement”.

Some of the proposed updates and modifications to existing code provisions can be summarized as follows:

<b>Code Section</b>	<b>Existing provisions (Summary)</b>	<b>Summary of reason(s) for modifications</b>	<b>Division IV Provisions (Summary)</b>
22	Provides that any persons tampering or interfering with any component of the District’s system, or who caused or permitted such tampering or interfering, would be liable for any resulting injury or damage and could be fined up to \$5,000	Although the provision generally applies to the “District’s system” it is not clear if the provision is also applicable to District’s sewer or recycled water facilities or other District property. There is no procedure to impose or collect the fine.	<ul style="list-style-type: none"> <li>- Section 70 defines tampering as applicable to any District property</li> <li>- Section 71 specifically prohibits this activity</li> <li>- Section 72 provides a procedure for investigating a violation and terminating service under certain conditions. Section 72.05 provides a procedure for imposition and enforcement of administrative fines</li> </ul>
24	Prohibits leaks, waste of water and resale of water	Existing language does not provide the District with any specific remedies if someone engages in such practices	<ul style="list-style-type: none"> <li>- Section 71 specifically prohibits this activity</li> <li>- Section 72 provides a procedure for investigating a violation and terminating service under certain conditions. Section 72.05 provides a procedure for imposition and enforcement of administrative fines</li> </ul>
26	Provides for the use of recycled water and establishes provisions for reasonable use and some provisions for enforcement	Existing language does not provide procedures for termination of service in connection with a violation. There is no procedure to establish or collect the fine.	Section 72 provides for notice and makes provision for termination and reinstatement of service in connection with a violation. Section 72.05 provides a procedure for imposition and enforcement of administrative fines
33	Provides for use, installation and removal of meters and other service related conditions and requirements	Existing language does not establish procedures for the removal of meters in connection with violations other than payment violations and does not establish	Sections 71 and 72 prohibit meter tampering and other violations relating to the use of meters, such as unauthorized connections. These sections also establish procedures for removal of

		consistent procedures for reinstatement of service or re-installation of meters	meters in connection with violations and reinstallation of meters if conditions for reinstallation are met
35	Provides that customers are responsible for damage they cause to District property and that service may be terminated if bills for damages are not paid within five (5) days of presentation	There are no procedures for notice or enforcement of the violation and the time limit could be unreasonably short under some circumstances	Section 71 and 72 prohibit damage to District facilities, real property and personal property and provide specific actions the District may take in connection with each different type of damage. These Sections also provide procedures for investigating a violation and for the imposition and enforcement of administrative fines, if needed
51	Provides that the District retains control over the operation of the sewer system and prohibits unauthorized connections. Establishes a fine equal to the annexation fee for unauthorized connections	Existing language does not establish procedures for notice of the violation, removal of unauthorized connections and disposal of parts used in the unauthorized connection. There is also no administrative procedure for the imposition and collection of fines	Section 71 and 72 prohibit unauthorized connections to District facilities and provide specific actions the District may take. These Sections also provide procedures for investigating a violation and for the imposition and enforcement of administrative fines, if needed

Other updates to the Code of Ordinance to be implemented in Sections 70, 71, 72 and 73 include definitions (including definition of damages, district services, district facilities, district property, and other useful definitions), a list of certain specifically prohibited practices that have been encountered by the District on occasion, consolidated provisions for notifying responsible parties of the existence of a violation, procedures for the District to investigate the violation, procedures for the District to recover costs and damages in connection with a violation and procedures for the District to avail itself of other remedies, such as termination, reduction or suspension of service, removal or locking of meters, administrative fines or, if applicable, civil or criminal prosecution.

The staff has also included a provision pursuant to which the District will be able to require owners of parcels receiving service through a tenant account to take responsibility for the service if service to the parcel is terminated three (3) times within any twenty-four (24) month period or if the tenant fails to comply with payment arrangements four (4) times, whether or not the failure results in termination of service.

In response to comments regarding the accessibility of the Code of Ordinance, the District also decided to update the Table of Contents to refer to the four major sections of the Code of

Ordinance as “Articles” instead of “Divisions.” If this semantic proposed revision is approved, the references in several sections of the Code of Ordinance and one or two existing policies will be updated concurrently with any other approved changes to the Code.

The Staff and the General Counsel recommend that the Board adopt revisions to, or repeal, Sections 22.01, 22.03, 24.01, 24.02, 24.03, 26.02, 26.07, 33.01, 33.05, 33.07, 33.08, 35.01, 35.02, 51.01, 51.04 and 51.05, and conforming revisions to the Table of Contents of the Code of Ordinance, all as set forth on the attachments to Ordinance 519.

**FISCAL IMPACT:** \_\_\_\_\_

None at this time.

**LEGAL IMPACT:** \_\_\_\_\_

None at this time.

**COMMITTEE ACTION:** \_\_\_\_\_

See Attachment A.



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**General Counsel**

*Attachment A. Summary of Committee’s Recommendation*

*Attachment B. Ordinance 519, with the following attachments:*

- Attachment 1 – Division IV, Sections 70, 71, 72 and 73 of Code of Ordinance, new
- Attachment 2 – Section 22 of Code of Ordinance, marked
- Attachment 3 – Section 24 of Code of Ordinance, marked
- Attachment 4 – Section 26 of Code of Ordinance, marked
- Attachment 5 – Section 33 of Code of Ordinance, marked
- Attachment 6 – Section 35 of Code of Ordinance, marked
- Attachment 7 – Section 51 of Code of Ordinance, marked
- Attachment 8 – Table of Contents, marked



## ATTACHMENT A

### Summary of Committee's Recommendation

<b>SUBJECT/PROJECT:</b>	Re-Codification of certain Code of Ordinance Provisions Regarding Prohibited or Unauthorized Activities, Protection of District Facilities and Enforcement of District Ordinances
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#### COMMITTEE ACTION:

The Finance/Administration and Communications Committee reviewed this item at a meeting held on January 19, 2010 and the following comments were made:

- Staff is proposing amendments to, and re-codification of certain provisions of the District's Code of Ordinances.
- The proposed changes were precipitated by the identification of an illegal connection. The provisions concerning illegal connections, such as penalties, prohibited use of District facilities, prohibiting tampering and other unauthorized or illegal practices, were scattered throughout different areas of the Code and were difficult to locate.
- Amendments to the Code will consolidate the above provisions (administrative fines and penalties, procedures for disconnection or reconnection of services, prohibiting the use of District facilities with the District's consent, prohibiting tampering and other unauthorized or illegal practices) into a new article of the Code of Ordinances entitled, "Article IV - Prohibited Activities; Remedies and Enforcement." The change will assist in the consistency of the administration of penalties and will provide more efficiency in locating applicable fines within the Code.

- The Code's "Table of Contents" was also revised to refer to the four major sections of the Code as "Articles" instead of "Divisions." Such references in the Code will be updated concurrently with any other approved changes to the Code.

Following the discussion, the Committee supported staffs' recommendation and presentation to the full Board on the consent calendar.



**ATTACHMENT B  
To Staff Report**

**Ordinance 519 and Attachments thereto**

See attached documents.

**ORDINANCE NO. 519**

**AN ORDINANCE OF THE BOARD OF DIRECTORS  
OF THE OTAY WATER DISTRICT ADOPTING  
AND ADDING A NEW DIVISION TO THE CODE OF  
ORDINANCE SPECIFYING PROHIBITED  
ACTIVITIES IN RELATION TO THE DISTRICT'S  
PROPERTY AND FACILITIES AND ITS WATER,  
RECLAIMED WATER AND SEWER SYSTEMS,  
ADOPTING PENALTIES, AND AUTHORIZING  
RELATED ACTIONS**

WHEREAS, the Otay Water District (District) has determined that it is in the best interest of the District and its customers to re-codify the provisions of its Code of Ordinance (Code) specifying the remedies available to the District in connection with violations of the Code or conditions of service or other prohibited, illegal or unauthorized activities affecting the District's facilities, real property interests, or services, including procedures for assessing actual damages, fines and penalties and for civil or criminal remedies; and

WHEREAS, these provision are declaratory of existing laws, policies or District's ordinances and administrative procedures and the District wishes to amend and expand such provisions and to re-codify them into a new section of the Code to be known as "Article IV – Prohibited Activities, Remedies and Enforcement," a copy of which is set forth on **Attachment 1** hereto and incorporated herein by reference; and

WHEREAS, Section 53069.6 of the Government Code of the State of California (the "Government Code") authorizes and requires local agencies, including the District, to take all practical and reasonable steps to recover costs, expenses and civil damages for the negligent, willful, or unlawful damaging or taking of property of the District, including the institution of appropriate legal action; and

WHEREAS, the persisting water shortage conditions within the State of California have resulted in reductions in the available amount of potable water within the San Diego area; and

WHEREAS, the District's principal supplier of water, the San Diego County Water Authority (CWA), has informed the District that it anticipates requiring the agency members to implement higher levels of conservation measures in accordance with the provisions of any conservation ordinances adopted by said agencies and has requested that each agency provide evidence of its ability to implement and enforce the conservation measures; and

WHEREAS, Section 53069.4 of the Government Code specifies procedures to be used in connection with imposing and levying certain administrative fines and such provisions have been incorporated into the fines and penalties provisions of the proposed Enforcement Provisions to the extent practicable and necessary; and

WHEREAS, in response to the water shortage conditions the District has previously adopted Section 39 of the Code to provide measures and procedures to preserve available water supplies by requiring conservation and adopting water pricing structures that reflect the importance of such conservation efforts and Article IV contains language that would assist the District in enforcing the provisions of Section 39; and

WHEREAS, to avoid inconsistency or confusion, it is in the District's best interest to repeal existing Code Sections 24.02, 24.03, 33.08, 35.01, and 35.02 concerning prohibited water connections and uses and existing Code Sections 51.04 and 51.05 concerning prohibited sewer connections and uses; and

WHEREAS, it is also in the District's best interest to amend, revise and re-adopt existing Code Sections 22, 24, 26, 33, 35 and 51, and the Table of Contents of the Code of Ordinance, all as provided herein; and

WHEREAS, the provisions of Article IV are declaratory of existing law and policy and are not a waiver or limitation of any right or remedy available to the District at law or equity.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED by the Board of Directors of the Otay Water District as follows:

Section 1. Declaration of Policy. The Board of Directors has established and from time to time will continue to revise or adopt comprehensive provisions to provide water, recycled water and sewer services to its customers, including permitting requirements, procedures for connecting to and disconnecting from the District facilities, procedures for applying for service and payment of bills, conservation measures and all procedures deemed necessary and desirable in connection with the operation of the District. The Board of Directors declares that this Ordinance is only intended to amend, update, revise and re-codify provisions of this Code providing for prohibited or unauthorized activities, notice and procedure, and remedies and enforcement to protect the District's systems, facilities and property and the public health and safety.

Section 2. CEQA Exemption. This Board finds that this Ordinance is ministerial in nature and therefore exempt from the California Environmental Quality Act pursuant to Section 21080(a)(1) and the California Environmental Quality Act Guidelines Section 15268. The General Manager is hereby authorized and directed to file, or cause to be filed, a notice of exemption as soon as possible after the adoption of this Ordinance.

Section 3. Adopt Article IV. This Board hereby adopts, **Attachment 1** hereto which is codified and incorporated as Article IV of the Code of Ordinance, commencing with Section 70.

Section 4. Amend and Replace Certain Existing Code Provisions. Code Section 22 is hereby amended as show on **Attachment 2** hereto. Code Section 24 is hereby amended as shown on **Attachment 3** hereto. Code Section 26 is hereby amended as show on **Attachment 4** hereto. Code Section 33 is hereby amended as show on **Attachment 5** hereto. Code Section 35 is hereby repealed as shown on **Attachment 6** hereto. Code Section 51 is hereby amended as shown on **Attachment 7** hereto. The Table of Content

of the Code of Ordinance is hereby amended as shown on **Attachment 8** hereto to reflect the revisions to the Code authorized under this Ordinance. This Board finds that such amendments are necessary to avoid inconsistency and duplication.

Section 5. Repeal and Replace Certain Existing Code Provisions. Sub-Sections 24.02, 24.03, 33.08, 35.01, 35.02 and 51.04 of Article II of the Code are hereby repealed. Code Section 35 of Article II of the Code is hereby REPEALED and RESERVED in its entirety. The existing language of each repealed section shall be deleted from the Code of Ordinance and replaced with the word “(RESERVED)”. This Board finds that these actions are necessary to avoid inconsistency and duplication.

Section 6. Authorization. The General Manager and each designated representative is hereby authorized and directed to implement the purpose of this Ordinance to the fullest extent, including the preparation of written procedures to the extent deemed necessary and desirable to enforce, clarify or explain the provisions of this Ordinance. The District Secretary is hereby ordered to take any actions within her purview to carry out the provisions of this ordinance, including, to the extent practicable and necessary, revising the Table of Contents of the Code of Ordinance, replacing or substituting all Code Sections herein adopted, amended, replaced or repealed and recalling and replacing any and all hard-copies of the Code previously provided to District staff, other public agencies or any other persons.

Section 7. Effective Date. This Ordinance and the amendments to the Code of Ordinance herein provided shall become effective upon adoption hereof.

PASSED, APPROVED AND ADOPTED by the Board of Directors of the Otay Water District at a regular meeting held this \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_ 2010.

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President of the Board of Directors

ATTEST:

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Secretary to the Board of Directors

**ATTACHMENT 1 TO ORDINANCE 519**

ARTICLE IV PROHIBITED ACTIVITIES; REMEDIES AND ENFORCEMENT

Statement of purpose; Findings. Under existing law, state and local agencies engage in water resource planning, protection and conservation. This Article condenses and clarifies the enforcement mechanisms for violations of this Code of Ordinance and the activities that are prohibited in connection with the District's services, property, facilities and systems.

The Board of Directors finds that the enforcement of this Code and the protection of the District's property and facilities is an important public service and is vital to the protection of the public's health, safety and quality of life. The procedures herein are in addition to any other procedures or legal remedies available to the District.

No limitation on Authority. The Board of Directors has determined that there is a need to use a combination of administrative and other remedies to gain compliance. This Article is not intended, nor shall it be interpreted, to limit or amend any discretionary power or right of the District under any other provision of this Code, federal, state or local law, policy or practice.

CHAPTER 1 GENERAL PROVISIONS

SECTION 70. DEFINITIONS

70.01 REFERENCE TO ARTICLE

This Article of the Code of Ordinances shall be known as the "Prohibited Activities, Remedies and Enforcement Article" and is sometimes referred to as the "prohibited activities" or "enforcement" provisions.

70.02 DEFINITIONS

As used in this Article, the following words have the meaning set forth below:

"Assessor's office" means the office of the San Diego County Assessor/Recorder/County Clerk or any successor office established by the County of San Diego to maintain records of parcel ownership.

"Benefiting" means to receive or use a service on a parcel owned, used, leased, developed or occupied by or for the person to whom the benefit is imputed.

"Damages" or "actual damages" means any cost or expense (including staff time, inspection, testing, permitting, attorneys fees and other consultant fees and costs) incurred by the District in connection with a violation, including without limitation costs or expenses relating to: investigating the violation; redesigning, removing, repairing or replacing any facilities or systems; removing, destroying and disposing of any equipment or material used for the violation; cleaning-up any resulting pollution or contamination; completing and filing appropriate reports and notices; payment of penalties, fees, damages, fines or other amounts charged by any governmental or regulatory agency, and any related costs including litigation or settlement of any action against the District.

“District facilities” or “District systems” or “system” means and refers to any and all pipelines, reservoirs and appurtenant facilities comprising the District’s potable water system, sewer system, recycled water system, laboratories, offices, pumps, equipment and engines.

“District property” means rights-of-way, easements, real property owned in fee simple, occupied or leased by the District, licenses, fixed and mobile equipment owned, occupied or operated by the District, and all District facilities.

“District service” or “service” means the furnishing of water, sewer, fire protection, recycled water or any other service the District provides to its customers.

“Divert” means to change, alter, or affect the course or path of any District service.

“Parcel” means any real property located within the District.

“Re-connection” means the commencement of service to a customer or other person after such service has been reduced, suspended or terminated.

“Reduction of service” means installing a device that limits the flow of water or availability of service to a parcel, person or location to a minimum amount required by law or determined by the District.

“Recycled water system” means the recycled water system operated by the District under applicable law, including applicable provisions of this Code, the California Water Code, commencing with Section 13520, the California Code of Regulations, Title 17, Division 1 and Title 22, and Water Agency Standards.

“Responsible party” means a person receiving or benefiting from service or any person who violates any provision of this Code or engages in a prohibited activity. Responsible party also means the owner or manager of a parcel, business or property benefiting from any service.

“Suspension of service” means installing a lock temporarily on the meter.

“Tamper” or “tampering” means to activate, injure, damage, block, interfere with, rearrange, contaminate, pollute, or in any form altering any District service, property or system without express consent of the District.

“Tenant” means a person or business lawfully occupying, controlling or using a parcel owned by another person.

“Termination of service” means removing the meter or disconnecting service facilities.

“Unauthorized connections” means connecting or reconnecting to, diverting, using or benefiting from, any District service without the prior written consent of the District or without compliance with the conditions of any such consent.

“Vandalizing” means to deface, discolor, graffiti, paint, trash, invade, damage, disable, shut off or destroy any portion of any District service, facilities or property.

“Violation” means any failure to comply with any provision of this Code; or engaging in any prohibited activity with respect to District services, facilities, property, or rights-of-way. Each day during which a violation commences or continues shall constitute a separate violation.

“Willful violation” means repeating or continuing a violation after notice; or any first time violation relating to a voluntary, knowing and purposeful act or omission.

## SECTION 71. VIOLATIONS; PROHIBITED ACTIVITIES

In addition to the prohibited practices described in any other sections of this Code or by law, all persons and entities are specifically prohibited from doing, or aiding or abetting any person in, any of the following:

- A. Installing or benefiting from any unauthorized connection to any District system;
- B. Refusing or failing to pay for services, in full, when bills are due;
- C. Entering, improving, purchasing, trading, selling, borrowing, using or otherwise benefiting from any District property or service without authorization from the District or without following authorized procedure;
- D. Vandalizing, tampering with, or threatening any portion of the District systems, services, facilities or property, including but not limited to taking any action to prevent any meter or other equipment device from accurately performing its function;
- E. Failing or refusing to install, maintain in good repair and working condition, or test any portion of any facilities required by the District in connection with a service, including any safety or prevention device or any measuring device;
- F. Knowingly permitting leaks or other wastes of water or recycled water or leaks or spills of sewage or other discharge;
- G. Preventing District staff from accessing any facilities connected to a service, including but not limited to meters located on private property, or in any manner threatening or interfering with any District staff performing his or her duties;
- H. Using or allowing the use of service for more than one parcel through one meter (except for master meters approved by the General Manager under Section 24.01) or supplying, reselling, using or permitting the use of any service by any other parcel, except as permitted under Section 27.04 of this Code or in writing by the District;
- I. Using or permitting the use of any District service for property outside the boundaries of an improvement district or not subject to District taxes, without prior written consent of the District;
- J. Using or attempting to use or connect to any fire hydrant within the District without proper authorization as required by Section 24.04 of this Code; or
- K. Violating or refusing to comply with any condition of service under this Code or with any law or regulation applicable to the use of any such service; including violating any conditions of any permit required for service or to regulate waste, such as a waste discharge permit under Sections 26 or 52 of the Code, or failing or refusing to obtain, maintain or comply with any required permit.

CHAPTER 2 DISTRICT REMEDIES

SECTION 72. PENALTIES AND DAMAGES

72.01 GENERAL

A. User and Owner Responsibility. Each person receiving service or that owns a property that receives service, agrees to pay the District any applicable fees and charges. Such persons are also responsible for all costs and damages in connection with any violation of this Code relating to their service.

B. District Not Liable. The District shall bear no liability for any cost, damage, claim or expense (incurred by District or any responsible party or third party) arising from or related to any violation, including but not limited to costs, damages, claims or expenses arising from any corrective action of the District, including but not limited to the removal, confiscation, disposition or use of any device, equipment, improvement or material encroaching on any District property or used in connection with any other violation.

C. District Obligation to Collect Damages. Pursuant to Government Code Section 53069.6, the District shall take all practical and reasonable steps, including appropriate legal action, if necessary, to recover civil damages for the negligent, willful, or unlawful damaging or taking of property of the District.

D. Assessment of Damages. Actual damages resulting from any violation, including late payment or failure or refusal to pay for service and any interest thereon, may be assessed and collected as part of a customer's monthly bill to the extent allowed by law. The District will separately invoice any actual damages not assessed on a monthly bill, including any damages assessed against any responsible person who is not a customer.

E. Unpaid or Partially Paid Bills. Bills issued by the District are due, in full, as provided in such bills. Failure to timely pay bills in full may lead to a reduction, suspension or termination of service, as provided in the paragraph below, in Section 34 of this Code or pursuant to other provisions of this Code or applicable law. In addition, if bills remain unpaid, in full or in part, the District may lien the delinquent real property and may assess damages and penalties established by District or otherwise authorized by law.

F. Notice of Violation. Notice and a reasonable period of time to correct a violation will be given prior to the termination, reduction or suspension of service or the imposition of any administrative fine. However, the District may, without notice, correct any condition or violation that endangers the health or safety or impairs any District service, facility or property or is otherwise determined by the District to require immediate action.

1. Investigative Procedures. If a possible violation is identified, observed or reported, the District will contact the allegedly responsible party to investigate. If the violation is in fact occurring, the District staff will issue a notice of violation or otherwise inform the responsible party that corrective actions must be taken within a period of time deemed reasonable by the District, taking into consideration the nature of the violation and the potential damage that can arise if the violation continues.

2. Content of Notice of Violation. The notice will describe the violation, indicate the actions that must be taken, and indicate the date by which those actions must be taken. Unless immediate action is required, the notice will provide a reasonable time for the violation to be corrected. The notice will also specify the amount of any delinquency, actual damages or other amounts due the District, if any, and the telephone number of a representative of the District who can provide additional information.

3. No Notice Required; District Action. If the District determines that immediate or prompt correction of the violation is necessary to prevent waste or to maintain the integrity of the water supply, systems or facilities of District or for the immediate protection of the health, safety or welfare of persons or property, or for any other compelling reason, the District will take any action deemed necessary (including suspension, reduction or termination of service; locking or removal of meters; or repairs of any improvements) and a notice will be left at the affected parcel specifying any further corrective actions required. Any costs incurred by District will be the responsibility of the responsible party.

4. Notice; Failure to Comply. The responsible party will be given an opportunity to correct the violation and to provide verbal, written and pictorial exculpatory evidence. If such evidence does not exonerate the responsible parties and if the violation(s) are not corrected to the satisfaction of the District within the time provided, the District may assess cost and penalties, administrative fines and may take any other action or pursue any other remedy available. Furthermore, if the violation concerns any service requirement or facility, or to prevent waste or protect the integrity of the system or the health and safety of the public, the District may suspend, reduce or terminate service to the extent permitted by law.

G. Service Termination, Suspension or Reduction; Removing or Locking Meters. Service may be reduced, suspended or terminated for failure to pay for service or in connection with a violation of this Code or applicable law. Termination, suspension or reduction of service will be as follows:

1. Notice Prior to Termination, Suspension or Reduction of Service. Except as provided in Paragraph F, above, or in other provisions of this Code or applicable law, not less than ten (10) days notice will be given prior to the date service is reduced, suspended or terminated; provided that, where service is terminated due to failure to comply with the terms of an amortization agreement, under Section 34 of this Code, only forty-eight (48) hours prior notice is required. The notice will be delivered to the affected parcel and, if the owner of record does not reside in the affected parcel, a copy of the notice will be forwarded to the owner's address on record with the assessor's office via any available means, such as personal delivery, certified mail return receipt requested, email, fax or fed-ex.

2. Termination for failure to pay for service. The district may discontinue any or all service due to failure to pay the whole or any part of a bill issued by the District. In connection with termination of water service, the provisions of Section 60373 of the Government Code, or any other appropriate provision of law, or as set forth in Section 34 of this Code of Ordinance, will be followed. In connection with sewer, Section 71672 of the California Water Code or other applicable requirements will be followed.

H. Reconnection or Reinstatement of Service, Unlocking or Reinstalling Meters. If service is reduced, suspended or terminated for any reason, each of the following conditions

applicable to the situation must be satisfied or arrangements satisfactory to the General Manager or a designee must be made *before* service is reinstated:

1. Outstanding amounts for service bills, including any service charges for benefits derived from the violation, must be paid;
2. All required deposits (including any security deposits), actual damages, fines, costs, charges and penalties must be paid;
3. Any amounts due for the removal, locking, servicing, repair or replacement of meters or other facilities required for service, must be paid at the rates in effect at the time of reinstatement, as set forth on **Appendix A** to this Code or other schedule of fees then in effect;
4. All violations and related damages or conditions must have been corrected and or repaired and evidence satisfactory to the District to that effect and demonstrating that it is safe to reinstate service, must have been provided to and approved by the District; and
5. If the service was originally in the name of a tenant, the District may require the owner of the parcel to request the service account under his or her name and responsibility.

I. Owner Responsibility for Account. Owners may be required to deliver to the District a form of acknowledgement or authorization for service to a tenant. In addition, if a tenant engages in any violation or if the District has reduced, suspended or terminated any service to a tenant three (3) times within any twenty-four (24) month period or the tenant has fails or refuses to comply with the terms of payment arrangements with the District four (4) times, the District reserves the right to demand that the property owner take responsibility for services to the tenant-occupied parcel. The General Manager or a designee shall develop procedures to implement these requirements.

J. Right of Access to Customer's Premises; Interference. If any person refuses to consent to an investigation of a possible violation, or prevents or refuses to allow access to District staff or authorized representatives to any premises or facility during an investigation or in connection with any termination, reduction or suspension of service, the District may seek an injunction or a warrant, as provided in Section 71601 of the Water Code.

K. Other Remedies. In addition to the actions contemplated in this Section, the District may seek other remedies authorized or required by any applicable law, including imposing an administrative fine, pursuant to Section 72.05, or pursuing other available civil or criminal remedies.

## 72.02 CERTAIN SPECIFIC OPERATIONAL VIOLATIONS

A. Unauthorized Connections. The District shall bear no cost or liability for any unauthorized connection. In addition to other remedies, the District may demand that the unauthorized connection be immediately disconnected. In the alternative, or if the customer refuses to take immediate action, the District may immediately disconnect, remove, destroy or dispose of any parts installed or used for the unauthorized connection, all at the expense of the customer and any other responsible party. To the extent allowed by law, the District may also,

immediately or as otherwise deemed advisable by District, terminate service to any parcel and any person that allows, uses or benefits from such unauthorized connection.

B. Water waste. No customer shall knowingly permit leaks or other wastes of water, including but not limited to allowing runoff on any portion of his or her property, engaging in non-permitted uses of water, or failing to take corrective action after notice of any leaks or water waste is given. If the District determines that water waste is occurring, the District may:

1. Without prior notice, repair or replace any District controlled facilities, at the cost of the person identified as the responsible party, if any.

2. If the water waste is due to a condition within the customer's property or facilities, the District may (i) require the customer to repair or replace the affected facilities, immediately or within a reasonable time, depending on the situation; or (ii) if necessary to prevent further waste, adjust, lock or remove the meter. If any repair or replacement required is not timely completed, the District may perform the repair or replacement at the cost of the customer or may terminate service without further notice.

C. Meter Tampering. In addition to other remedies, tampering may be prosecuted as a crime under Section 499 of the California Penal Code, as set forth in Section 73.01 of this Code.

D. Fire Service Violation. Such service is subject to compliance with all provisions of this Code and the law concerning water service and failure to comply with such provisions may result in the reduction, suspension, termination or disconnection of water service for fire protection, without any liability to District. Furthermore, illegal connections or other violations relating to fire service may result in steep fines and may be prosecuted as crimes.

E. Backflow prevention, screens and other safety devices. If service requirements include the installation, testing and maintenance of backflow prevention devices (Section 23.04 of this Code), screens or other safety operational items, in addition to, or in lieu of, other remedies provided herein, the District may apply any of the remedies under Section VI and VII of the District's Ordinance No. 386, as amended or renumbered. Furthermore, violations relating to backflow testing may be prosecuted as set forth in Section 73.01 of this Code.

F. Violation Concerning Recycled Water Service. In addition to any fine, revocation, suspension or penalty imposed under Section 26 in connection with any violation of said Section, including permit suspension or revocation under Section 26.07.C, the District may (i) suspend or terminate water and or sewer service to the property, the owner and/or the operator; (ii) require payment by the owner for any damage to the District facilities, reimbursement to District of costs and expenses, or fines imposed on the District in connection with such violation; or (iii) prosecute the responsible party under any applicable provision of this Code, the Water Code or the Penal Code.

G. Violation Concerning Sewer Service. In addition to any other remedy, fine or penalty, failure to comply with any requirements of sewer service, including requirements for the preservation of public health, safety and welfare and including but not limited to the requirements established under Article II, Chapter 2, Sections 50 to 56.04 of this Code, as hereafter amended or as supplemented by other District Rules and Regulations for Sewer Service, the California Health and Safety Code, the California Code of Regulations, Titles 17

and 22, and Water Agency Standards. Furthermore, may be prosecuted as set forth in Section 73.01 of this Code.

72.03 VIOLATIONS OF CONSERVATION OR OTHER WATER USE RESTRICTION PROVISIONS

The District has established and published conservation measures set forth in Section 39 of the Code. Commencing with declared Level 2 conditions, the District may assess water shortage rates and charges previously adopted. In addition, after notice of the declared water shortage level is given as required by law, any person who uses, causes to be used, or permits the use of water in violation of such requirements (other than a person who qualifies for an applicable exemption, if any) may be assessed damages, penalties and fines.

A. Additional provisions concerning use restriction violations. In addition to payment of actual damages, the following may apply to a violation of any water conservation or water use restriction measure:

1. A change on the account holder shall not cause the account to revert to pre-violation status unless the new account holder provides evidence that it is not related to the violator and had no responsibility for the prior account.

2. The District may reduce, suspend or terminate service to any parcel immediately and without further notice if the violation involves or results in water waste.

3. Willful violations of mandatory conservation measures described in Section 39 of this Code may be enforced by terminating service to the property at which the violation occurs, as provided by Section 356 of the California Water Code.

B. Prosecution for violations of conservation measures. Pursuant to Section 377 and 71644 of the California Water Code, each violation of the District's Conservation Ordinance, set forth in Section 39 of this Code, may be prosecuted as a misdemeanor, punishable by imprisonment in the County jail for no more than thirty (30) days or by a fine, as set forth in Section 72.05, below.

72.04 VIOLATIONS INVOLVING DISTRICT REAL PROPERTY

A. Removal, Disposition and Costs. The District has absolute discretion to determine the corrective action required in connection with any violation involving District property, including requiring the owner of any unauthorized encroachment or improvement to remove it or taking action to remove it immediately and without notice. Any improvements or uses placed within or on any District property or right of way are subject to the following:

1. Costs and Damages. All costs and damages shall be the responsibility of the customer and any other responsible party. Furthermore, the District shall not be liable for costs to repair or replace any unauthorized encroachment or improvement, or any property, improvement or thing used in connection with, supported by or attached thereto.

2. Burden of proof. The burden shall be on the user to prove to the District's satisfaction, the authority, scope and extent of any right to access, improve or use the District's property. Only written evidence in the form of an agreement, deed, statute, recorded or official map or plat, governmental regulation or other right may be used to establish such claim of right.

B. Notice. In connection with any improvement or use that does not constitute a health hazard and does not interfere with the District's use of its property, the District will give written notice of up to sixty (60) days, at the discretion of the General Manager, to cease, terminate, eliminate or remove the offending improvement, structure or use. Any written notice will be given to the responsible party or posted at the property where the trespass or encroachment occurs. If the responsible party is not the owner of any real property affected by the violation, the District will also give notice to the owner of record at the address on record with the assessor's office via personal delivery, certified mail return receipt requested or via fed-ex.

C. No notice. In connection with any improvement that constitutes a health hazard or interferes with the District's use of any District property, the District will take any immediate action deemed necessary by the General Manager.

D. Fines. In addition to all other remedies provided under this Article or under applicable law, the District may impose a fine as provided in Section 72.05.

E. Separate violation. A separate violation will accrue for each day after the deadline to cease, terminate, eliminate or remove the trespass or encroachment, as set forth on the notice.

#### 72.05 ADMINISTRATIVE FINES

Any administrative fines established herein shall be in the nature of civil penalties and shall be additional and cumulative to any other administrative fines, damages or any other charges established by the District and are also separate from and cumulative to any other civil or criminal penalty, fine or remedy. In connection with each violation, the District may assess a fine up to the amount specified in the schedule of fines for the type of fine being imposed.

Each day during which a violation is in effect constitutes a separate violation and violations are cumulative while the account is in the name of the original violator or any person that participated in or benefited from the violation.

A. Assessment of Fines for Violations of Conservation or Water Use Restriction Provisions. Any responsible party who fails to comply with any conservation or use restriction measure is subject to the assessment of an administrative Type I fine, **added to account**.

B. Assessment of Fines for Technical Violations of Other Code Provisions. Any person who engages in a violation of any provision of this Code is subject to the assessment of a separate administrative Type I fine.

C. Assessment of Fines for Other Violations. If a higher limit is not otherwise specified in this Code or allowed by law, any act or omission with respect to any District service, system, facility or property, is subject to the following administrative fines:

1. A Type I or Type II fine, at the option of the District, for a violation involving theft, fraud or misappropriation of District water, services or property;
2. A Type II or Type III fine, at the option of the District, for a violation concerning sewer service;

3. Up to Type II or Type IV fine, at the option of the District, for a violation concerning recycled water service; and

4. Up to the amount specified on any sign or a Type I or Type II fine, at the option of the District, in connection with any trespass on District property in violation of a sign prohibiting trespassing.

Nothing in this code or the limits specified per violation shall prevent the imposition of separate fines for each separate violation committed during a single act. For example, in connection with a violation concerning sewer service that involves a trespass on any portion of the District's real property, separate fines may be assessed for the trespass, the damage to District personal property, the damage to District real property; the damage to the sewer system and the activity resulting on all the damages.

D. Types of Fines. The amount for each type of fine specified below may increase automatically to reflect any higher amount authorized by law or regulation. The District has determined to establish four types of fines based on the nature of the violation, as follows:

1. Type I Fine. Any violation that does not have the potential to endanger the health or safety of the public. The fine will not exceed the amount specified in the California Government Code, Section 36900(B) or Appendix A for a first, second, third or each additional violation of that same ordinance or requirement within a twelve-month period.

2. Type II Fine. Any violation that has the potential to endanger the health or safety, including illegal connections or water theft. The fine will not exceed the amount specified on Appendix A per each day the violation is identified or continues.

3. Type III Fine. Pursuant to Section 5411 of the Health and Safety Code, any person who without a discharge permit, or in violation thereof, causes or permits a discharge of sewage or other waste in a manner resulting in contamination, pollution or nuisance, and fails to immediately notify the local health officer of the discharge, is subject to a fine up to the amount specified on Appendix A per each day the violation is identified or continues.

4. Type IV Fine. Pursuant to Section 116820 of the Health and Safety Code, a person who violates a backflow requirement, or knowingly files a false statement or report required by a local health officer, is subject to a fine up to the amount specified on Appendix A per each day the violation is identified or continues.

E. Collection of Fines. Any fines assessed by the District are payable directly to the District, are due upon issuance, or as otherwise indicated on the notice or bill, and are delinquent 30 calendar days from the due date.

F. Notice of Administrative Fine; Content. Notice of an administrative fine will contain the following information: (i) a brief description of the violation(s); (ii) the date and location of the violation(s); (iii) a brief description of corrective action(s) required, as appropriate; (iv) a statement explaining that each day the violation continues constitutes a new violation; (v) the amount of civil penalty assessed; (vi) a statement of the procedure for payment and the consequences of failure to pay; (vii) contact information for the District employee that

should be contacted to discuss the notice and provide evidence of compliance; and (viii) a brief statement describing the responsible party's right to request further evaluation.

G. Option to Request Board Consideration. Persons receiving a Notice of Administrative Fine may request Board consideration. The request for Board consideration must be in writing, must be received by the District Secretary within ten (10) calendar days from the date of the notice and must include contact information, an explanation of the basis for the request and any supporting documentation said persons wish to provide to the Board for review and consideration. The District will provide notice of the date, time and place for Board consideration by electronic means, facsimile or first class mail sent to the return addressee indicated on the written request.

*Any fines assessed pursuant to the Notice of Administrative Fines must be timely paid notwithstanding the filing of a request for Board review.*

At the time of Board consideration, the petitioner may present witnesses, documents or other evidence to show good cause why the fine should not be imposed. In accordance with the provisions of Government Code Section 53069.4, the Board's determination shall be final and conclusive, and shall be deemed confirmed, if not appealed within 20 calendar days to the Superior Court of the County of San Diego.

## SECTION 73. ADDITIONAL DISTRICT REMEDIES

Each day during which a violation commences or continues shall constitute a separate violation which may be so prosecuted. In addition to, or on lieu of any damages, fines or other remedies provided in any other section of this Code, at the District's sole and absolute discretion, the District may enforce any other remedies available to it in law or equity.

### 73.01 OTHER REMEDIES OF DISTRICT

A. Collection of Unpaid Bills on Tax Roll. Pursuant to the provisions of the Health and Safety Code, commencing with Section 5470, the District may cause delinquent charges for services to be collected on the tax roll in the same manner as its general taxes.

B. Costs of Suit. Any person who violates any provision of this Code of Ordinance shall be liable for costs of any civil suit required to enforce the District's rights, including but not limited to reasonable attorney's fees in accordance with Civil Code Section 1882.2. The provisions of Civil Code Section 1882 *et seq.* are incorporated herein by reference. This Article shall be interpreted so as to be consistent with Civil Code Sections 1882 *et seq.*

C. Reward. In accordance with Government Code Section 53069.5, the District may offer and pay a reward, in an amount determined by the District, for information leading to the determination of the identity of, and the apprehension of, any person whose willful misconduct results in injury or death to any person or who willfully damages or destroys any property of the District or any property of any other local agency or state or federal agency located within the boundaries of the District. The person who has willfully damaged or destroyed such property shall be liable for the amount of any reward paid pursuant to this section.

D. Parental liability for Acts of Minors. If a violation is due to the acts of a minor child, the minor and his or her parents or guardians, as applicable, shall be jointly and severally liable to the maximum extent allowed by law, including parental liability pursuant to Section 1714.1 of the California Code of Civil Procedure, as hereafter amended or renumbered.

E. Backflow testing; Prosecution. A person is guilty of a misdemeanor in connection with the violation of any provision of the California Code of Regulations concerning backflow testing, including non-compliance with any order to test, knowingly filing a false statement or report concerning any information required by the District or failure to use a person qualified to conduct the testing. Such misdemeanor is punishable by a fine of up to \$500 or by imprisonment not exceeding 30 days. Each day of a violation is a separate offense.

F. Sewer Service Violation; Prosecution. Pursuant to Section 71689.27 of the Water Code of the State of California, upon conviction of a violation of any ordinance or provision of this Code concerning the sewer system the person shall be punished by being imprisoned in the county jail.

G. Theft of Utility Services, Water or Waterworks; Prosecution. Pursuant to Sections 498, 624 and 625 of the Penal Code of the State of California, theft of District facilities or theft of water or other utility services, including theft through unauthorized connections, may be prosecuted as a crime.

H. Prosecution of Code Violations. The District may, at its option, prosecute or cause to be prosecuted any violation of this Code of Ordinance or any other Ordinance of the District as a misdemeanor, pursuant to Section 71600 of the California Water Code.

I. Receipt or Purchase of Stolen Property; Prosecution. Pursuant to Section 496a of the Penal Code of the State of California, purchase or receipt of stolen property belonging to the water system, may be prosecuted as a crime.

J. Junk Dealers and Recyclers; Remedies. To the extent provided by law, including the provisions of AB844, approved by the Governor and chaptered in September of 2008, the District will pursue remedies available through or against any junk dealer or recycler that purchases any District property without prior written authorization from District.

#### 73.02 NOTICE TO DISTRICT CONCERNING VIOLATIONS

Any person noticing or discovering an unauthorized connection to the District's sewer, water or recycled water system from a parcel owned or occupied by such person must notify the District immediately. If the unauthorized connection affects a parcel owned by the person, he or she must remove the unauthorized connection immediately and must notify the District. If the person rents or leases the affected parcel, the person shall provide the District the name and contact information of the owner of the parcel.

#### 73.03 SEVERABILITY

If any portion of any chapter, section, subsection, paragraph, sentence, clause, or phrase of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, independent and severable provision and such holding shall not affect the validity of the remaining portions hereof.

**ATTACHMENT 2 TO ORDINANCE 519**

SECTION 22 DISTRICT WATER SYSTEMS

22.01 CONTROL AND OPERATION OF SYSTEMS

All District water systems and appurtenances thereto shall be under the management and control of the General Manager. The District system shall include all piping components and appurtenances, up to and including the water meter. No person, other than an employee or agent of the District, shall have any right to operate any part of a District water distribution system. ~~Any or any other District facility. As provided in Division IV, any person who tampers or interferes with any part or component of said system~~ the Districts systems or facilities, or causes or permits any such act of tampering or interfering with the system, shall be liablreresponsible for any injury or damage caused thereby or resulting therefrom. ~~In addition, the General Manager is authorized to impose a charge of \$5,000 per-occurrence on any person or company who operates any part of the District water system without proper authorization.~~

22.02 INSTALLATION OR REMOVAL OF METERS

Installation or removal of water meters and connection to and disconnection from a District water system shall be made only by district employees.

22.03 TURN-ON OR TURN-OFF OF WATER SERVICE

Except as otherwise specifically authorized by the General Manager, only District employees shall be permitted to turn water on or off at any connection or valve of a District water system or to operate any device that will regulate the flow of water within the system. ~~Everything beyond the meter, including the ball valve, belongs to the customer and the customer has the responsibility to operate and maintain the system from there~~ The customer owns and is solely responsible for the installation, inspection, replacement, maintenance and repair of any pipes or other facilities installed from the meter, including the ball valve, to and around the property.

22.04 INSPECTION OF CUSTOMER PREMISES

Authorized District personnel shall have unrestricted access at reasonable hours to all premises to which the District is furnishing water in order to inspect the supply system, meters, or measuring devices, and to determine whether the customer is complying with the rules, regulations and ordinances of the District concerning the taking, using or wasting water.

**ATTACHMENT 3 TO ORDINANCE 519**

~~SECTION 24 PROHIBITED PRACTICES~~ SECTION 24 CERTAIN SERVICE LIMITATIONS

24.01 NON-SERVICE AREAS

A. Except as provided in Section 25 of this Code, no customer may use or permit the use of water:

1. for any property other than that described in the application for service;
2. for any property outside of the boundaries of an improvement district; or
3. for property outside the boundaries of the District.

B. Water service shall not be supplied to more than one parcel of land through one meter, except for master meters when approved by the General Manager. A "parcel" shall be deemed to mean land or property identified as a parcel by the County Tax Assessor.

24.02 ~~LEAKS OR WASTE OF WATER (RESERVED)~~

~~No customer shall knowingly permit leaks or other wastes of water.~~

24.03 ~~RESALE OF WATER (RESERVED)~~

~~No customer may resell any portion of the water furnished by the District except as may be permitted under Section 27.06 of this Code.~~

24.04 FIRE HYDRANTS OR AND CERTAIN OTHER DISTRICT FACILITIES

A. No person may withdraw water from any fire hydrant, blow-off valve, or other connection to the facilities of this District, unless an agreement has been entered into with the District for such withdrawal. Such agreement shall provide that all withdrawals shall be made through a meter.

B. The provisions of paragraph A shall not apply to withdrawals of water made from fire hydrants or other facilities for fire department purposes or to withdrawals made by other governmental agencies with prior District approval.

**ATTACHMENT 4 TO ORDINANCE 519**

SECTION 26 WATER RECYCLING PLAN AND IMPLEMENTING PROCEDURES

26.01 FINDINGS

The state policies regarding use of recycled water are in the best interest of the Otay Water District. The majority of jurisdictions in San Diego County have adopted measures to promote water reclamation. This ordinance is necessary to protect the common water supply of the region which is vital to public health and safety, and to prevent endangerment of public and private property.

San Diego County is highly dependent on limited imported water for domestic, agricultural and industrial uses. The reliability of the supply of imported water is uncertain. By developing and utilizing recycled water, the need for additional imported water can be reduced. In light of these circumstances, certain uses of potable water may be considered unreasonable or to constitute a nuisance where recycled water is available.

26.02 USE OF RECYCLED WATER

- A. District Policy: It is the policy of the District that recycled water shall be used within the jurisdiction wherever its use is financially and technically feasible, and consistent with legal requirements, preservation of public health, safety and welfare, and the environment.

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A customer's recycled water service must at all time be in compliance with any requirements of service, including but not limited to the requirements established under this Section 26, the District's Rules and Regulations for Recycled Water Use, the California Water Code, commencing with Section 13520, the California Health and Safety Code, Section 116555, the California Code of Regulations, Titles 17 and 22, and Water Agency Standards.

- B. Required Use for Greenbelt Purposes: Pursuant to Section 13550 of the California Water Code, no customer of the District shall make, cause, use or permit the use of potable water supplied by the District for greenbelt uses, including, but not limited to, cemeteries, golf courses, parks and highway landscaped areas, when, following notice and a hearing, the District finds that recycled water is available for such greenbelt uses and that the following conditions are met:

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1. the recycled water is of adequate quality;
2. the recycled water may be furnished to such areas at a reasonable cost, comparable to or less than the cost of supplying potable domestic water;
3. the State Department of Health Services has determined that such use would not be detrimental to public health; and
4. the use of recycled water will not adversely affect downstream water rights, will not degrade water quality.

The findings may include terms and conditions under which recycled water shall be used. In addition, the District may assist the customer in obtaining any permits or approvals required for the use of recycled water.

#### 26.03 DEFINITIONS

The following terms are defined for purposes of this ordinance:

- A. Agricultural Purposes: Agricultural purposes include the growing of field and nursery crops, row crops, trees, and vines and the feeding of fowl and livestock.
- B. Artificial Lake: A human-made lake, pond, lagoon, or other body of water that is used wholly or partly for landscape, scenic or noncontact recreational purposes.
- C. Commercial Office Building: Any building for office or commercial uses with water requirements which include, but are not limited to, landscape irrigation, toilets, urinals and decorative fountains.
- D. Recycled Water Distribution System: A piping system intended for the delivery of recycled water separate from and in addition to the potable water distribution system.
- E. Greenbelt Areas: A greenbelt area includes, but is not limited to golf courses, cemeteries, parks and landscaping.
- F. Industrial Process Water: Water used by any industrial facility with process water requirements which include, but are not limited to, rins-

ing, washing, cooling and circulation, or construction, including any facility regulated for industrial waste or other objectionable discharge under District Code of Ordinances Sections 52.04, 52.05 and 52.06.

- G. Off-Site Facilities: Water facilities from the source of supply to the point of connection with the on-site facilities, normally up to and including the water meter.
- H. On-Site Facilities: Water facilities under the control of the owner normally downstream from the water meter.
- I. Potable Water: Water which conforms to the federal, state and local standards for human consumption.
- J. Recycled Water: Recycled water means water which, as a result of treatment, is suitable for a direct beneficial use or controlled use that would not otherwise occur. (See Water Code Section 13050(n).)
- K. Recycled Water Use Permit: A recycled water permit means a permit issued by the District approving and conditioning recycled water service for a particular site.
- L. Site Supervisor: A person responsible for the safe and efficient installation, operation and maintenance of a recycled water use site, including but not limited to compliance with all applicable permits, enforcement of the recycled water producer's rules and regulations and the prevention of potential hazards, such as cross-connections. The Site Supervisor must be certified by the San Diego County Water Authority as a Recycled Water Site Supervisor and must have evidence of valid certification at all times while acting as Site Supervisor.
- M. Temporary Recycled Water Use Permit: Temporary recycled water use permit means a permit issued by the District, at its discretion, to allow temporary use of recycled water pending issuance of a recycled water use permit or pending renewal of such permit following suspension or termination due to a violation of the provisions of this Section.
- N. Waste Discharge: Waste Discharge means water deposited, released or discharged into a sewer

system from any commercial, industrial or residential source which contains levels of any substance or substances which may cause substantial harm to any water treatment or reclamation facility or which may prevent any use of reclaimed water authorized by law.

26.04 WATER RECLAMATION MASTER PLAN

- A. General: The General Manager shall prepare and adopt a Water Recycling Master Plan to define, encourage, and develop the use of recycled water within the District's boundaries. The Master Plan shall be updated not less often than every five years.
- B. Contents of the Water Recycling Master Plan: The Master Plan shall include, but not be limited to, the following:
1. Plants and Facilities. Evaluation of the location and size of present and future recycling treatment plants, distribution pipelines, pump stations, reservoirs, and other related facilities, including cost estimates and potential financing methods.
  2. Recycled Water Service Areas. A designation, based on the criteria set forth in Section 26.02 and the information derived from Section 26.04B.1. and this Section 26.04B.2. of the areas within the District that can or may in the future use recycled water in lieu of potable water. Recycled water uses may include, but are not limited to, the irrigation of greenbelt and agricultural areas, filling of artificial lakes, and appropriate industrial and commercial uses.
  3. Designate Tributary Areas. For each water reclamation facility identified in the Master Plan, designate proposed tributary areas. Within such areas, discharges to the sewage system shall be subject to permitting, monitoring and control measures to protect public health, safety and public and private property. Designation of tributary areas shall be adopted by ordinances, and may be included in the Master Plan. Prior to designation of tributary areas, appropriate notice shall be given to property owners and residents of the area.

4. Quality of Water to be Recycled. For each water reclamation treatment facility, evaluate water quality with respect to the effect on anticipated uses of recycled water to be served by each treatment facility. Evaluate sources of waste discharge and sewer inflow that may, directly or cumulatively, substantially contribute to adverse water quality conditions in recycled water.
5. Tributary Protection Measures. Develop recommended control measures and management practices for each designated tributary area to maintain or improve the quality of recycled water. Such control measures may include capital improvements to the sewer collection system and waste discharge restrictions for industrial, commercial and residential discharges.
6. Mandatory Recycled Water Use. For each recycled water service area, evaluate whether greenbelt irrigation, agricultural irrigation, commercial office buildings, filling of artificial lakes, or industrial processes shall be limited to the use of recycled water. As appropriate, mandate construction of recycled water distribution systems or other facilities in new and existing developments for current or future recycled water use as a condition of any development approval or continued water service if future reclamation facilities are proposed in the Master Plan that could adequately serve the development, in accordance with the procedures described in Section 26.05. Identify resources and adopt measures to assist water users in the financing of necessary conversions.
7. Rules and Regulations for Recycled Water Use. Establish general rules and regulations governing the use and distribution of recycled water.
8. Public Awareness Program. Establish a comprehensive water reclamation public awareness program.
9. Coordination Among Agencies. An examination of the potential for initiating a coordinated effort between the District and other regional agencies to share in the production and utilization of recycled water.

26.05 PROCEDURES

A. Existing Potable Water Service.

1. Preliminary Determination. Based upon the Master Plan, upon the designation of each recycled water service area or the commencement of the design of new recycled water facilities, the General Manager shall make preliminary determinations as to which existing potable water customers shall be converted to the use of recycled water. Each water customer shall be notified of the basis for a determination that conversion to recycled water service will be required, as well as the proposed conditions and schedule for conversion.
2. Notice. The notice of the preliminary determination, including the proposed conditions and time schedule for compliance, and a recycled water permit application shall be sent to the water customer by certified mail.
3. Objections; Appeals. The water customer may file a notice of objection with the District within thirty (30) days after any notice of determination to comply is delivered or mailed to the customer, and may request reconsideration of the determination or modification of the proposed conditions or schedule for conversion. The objection must be in writing and specify the reasons for the objection. The preliminary determination shall be final if the customer does not file a timely objection. Staff (Engineering Department) shall review the objection and shall confirm, modify or abandon the preliminary determination. Upon issuance of a final determination by Staff, customer may appeal the determination upon written application to the Board of Directors after the final determination made by the Staff. (Engineering Department).

B. Development and Water Service Approvals.

1. Conditions. Upon application by a developer, owner or water customer (herein referred to as "applicant") for a tentative map, subdivision map, land use permit or other development project as defined by Government Code Section 65928 or for new or altered water

service, the District Staff shall review the Master Plan and make a preliminary determination whether the current or proposed use of the subject property is required to be served with recycled water or to include facilities designed to accommodate the use of recycled water in the future. Based upon such determination, use of recycled water and provision of recycled water distribution systems or other facilities for the use of recycled water, and application for a permit for such use may be required as a condition of approval of any such application, in addition to any other conditions of approval for service.

2. Alterations and Remodeling. On a case-by-case basis, upon application for a permit for the alteration or remodeling of multifamily, commercial or industrial structures (including, for example, hotels), the District Staff shall review the Master Plan and make a preliminary determination whether the subject property shall be required to be served with recycled water or to include facilities designed to accommodate the use of recycled water in the future. Based upon such determination, use of recycled water and provision of recycled water distribution systems or other facilities for the use of recycled water, and application for a permit for such use, may be required as a condition of approval of the application.
3. Notice of Determination. A notice of the basis for the preliminary determination, proposed conditions of approval and schedule for compliance shall be provided to the applicant prior to approval of the development application or application for water service.
4. Requested Service. On a case-by-case basis, upon application for a permit to use recycled water on a property not covered by Sections 26.05.A.1, 26.05.B.1, or 26.05.B.2 above, the General Manager shall review the Master Plan and make a determination whether the subject property shall be served with recycled water. Based upon such ~~determination~~determination, the application for the permit shall be accepted and processed subject to Section 26.05.C.

- C. Recycled Water Permit Process. Upon a final determination by the General Manager that a property shall be served with recycled water, or adoption of a condition of development approval or water service requiring use or accommodation of the use of recycled water, the water customer owner or applicant shall obtain a recycled water permit.
1. Permit Conditions. The permit shall specify the design and operational requirements for the applicant's water distribution facilities and schedule for compliance, based on the rules and regulations adopted pursuant to Section 26.04.B and shall require compliance with both the California Department of Health Services Wastewater Recycling Criteria (see California Code of Administrative Regulations, Title 22), and requirements of the Regional Water Quality Control Board.
  2. Plan Approval. Plans for the recycled and non-recycled water distribution systems for the parcel shall be reviewed by the District Engineer and a field inspection conducted before the plans are approved.
  3. Meter Permit Issuance. Upon completion of construction and approval by the District and the County Department of Environmental Health the meter permit shall be issued. Recycled water shall not be supplied to a property until inspection by the District determines that the applicant is in compliance with the permit conditions.
  4. Recycled Water Use Permit Issuance. If the site has a certified Recycled Water Site Supervisor, a Recycled Water Use Permit will be issued by the District. If the site does not have a certified Site Supervisor identified, a Temporary Recycled Water Use Permit will be issued, for up to 120 days, to allow the site to receive recycled water while a proposed Site Supervisor is being certified.
- D. Temporary Use of Potable Water. At the discretion of the General Manager, potable water may be made available on a temporary basis, until recycled water is available. Before the applicant receives temporary potable water, a water reclamation permit, as described in Section 26.05.C, must be obtained for new on-site distribution facilities.

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Prior to commencement of recycled water service, an inspection of the on-site facilities will be conducted to verify that the facilities have been maintained and are in compliance with the recycled water permit and current requirements for service. Upon verification of compliance, the applicant shall be notified of the corrective actions necessary and shall have at least thirty (30) days to take such actions prior to initiation of enforcement proceedings.

- E. Recycled Water Rate. The rate charged for recycled water shall be established by Ordinance of the Board of Directors.

26.06 REGULATION OF WASTE DISCHARGE TO SEWERAGE SYSTEMS

- A. Intent. The District recognizes that to maintain adequate wastewater quality for water reclamation treatment processes, and to protect public and private property, restrictions may be required on certain industrial, commercial and residential waste discharges to a sewerage system that is located within a designated tributary area of an existing or planned reclamation facility.
- B. Adopted Tributary Protection Measures. Waste discharges to the sewerage system from any industrial, commercial or residential source may be restricted or prohibited upon a finding, following a noticed public hearing, that the type or class of discharge involved is capable of causing or may cause substantial damage or harm to any sewage treatment or reclamation facility or to any significant user or users or potential user or users of recycled water within an area which has been planned for recycled water service. Prohibitions for certain discharges and guidelines for acceptability of wastes are set forth in District Code of Ordinances Sections 52.04, PROHIBITIONS AGAINST DISCHARGE OF OBJECTIONABLE WASTES, which prohibits discharge of certain items into the District sewer system, including, but not limited to, brine discharge from on-site self-regenerating water softener units; 52.05, GUIDELINES TO DETERMINE ACCEPTABILITY OF WASTES; and 52.06, DISCHARGE OF INDUSTRIAL WASTE.

- 26.07 SANCTIONS. In addition to the remedies established under Division IV of this Code, the following sanctions and remedies apply to violations of the provisions of this Section.

- A. Public Nuisance. Discharge of wastes or the use of recycled water in any manner in violation of this ordinance or of any permit issued hereunder is hereby declared a public nuisance and shall be corrected or abated as directed by the General Manager. Any person creating such a public nuisance is guilty of a misdemeanor.
- B. Injunction. Whenever a discharge of wastes or use of recycled water is in violation of this ordinance or otherwise causes or threatens to cause a public nuisance, the District may seek injunctive relief as may be appropriate to enjoin such discharge or use.
- C. Permit Suspension or Revocation. In addition to any other provision of this Code or state statute or rule authorizing termination of water service, the General Manager may suspend or revoke a permit issued hereunder if a violation of any provision of this ordinance or the Rules and Regulations for Recycled Water Use is found to exist or if a discharge of wastes or use of recycled water causes or ~~threatens~~threatens to cause a nuisance. If a permit is revoked, the General Manager may, at its discretion, issue the recycled water user a temporary recycled water permit for up to 120 days to allow service to continue while corrective measures are completed.
- D. Penalty. Any owner and/or operator who violates this ordinance shall, for each day of violation, or portion thereof, be subject to ~~an~~ administrative fine not exceeding \$1,000, or other higher amount authorized by applicable law.
- ~~E. Other Remedies. In addition to any fine, revocation, suspension or penalty imposed under this as described in Section 26 in connection with any violation of this Section, the District may take any or all the following actions: (i) suspend or terminate water and or sewer service to the property, the owner and/or the operator; (ii) require payment by the owner for any damage to the District facilities, reimbursement to District of costs and expenses, or fines imposed on the District in connection with such violation; or (iii) prosecute the responsible party under any applicable provision of this Code, the Water Code or the Penal Code. 72.05.~~

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26.08 VALIDITY

If any provision of this Section 26 or the application thereof to any person or circumstance is held invalid, the remainder of Section 26 and the application of such provisions to other persons or circumstances shall not be affected thereby.

**ATTACHMENT 5 TO ORDINANCE 519**

SECTION 33 GENERAL REGULATIONS FOR USE OF WATER METERS33.01 FURNISHED AND INSTALLED ONLY BY DISTRICT

Water meters used for service from a District water distribution system shall be furnished and installed by the District. Meters will be furnished only for use for a specific parcel of land. Master meters and meters for irrigation purposes may be furnished for more than one specific parcel of land upon the approval by the District. Refer to ~~Section 28~~ the District's schedule of this Code for fees and charges, set forth in Appendix A hereto.

33.02 OWNERSHIP OF METERS

The District shall retain title to all meters installed within the District. Payment by a customer of installation fees, capacity fees, meter charges, connection charges or any other fees or charges shall not transfer ownership of a meter from the District to the customer.

33.03 RELOCATION OF METERS

With prior District approval, water meters may be moved at the request of the owner from one location to another location on the same parcel or within the same tract owned by the customer upon payment of an amount determined by the District.

33.04 METER TURN-OFF REQUESTED BY CUSTOMER

At the request of the customer, a water meter may be turned off and locked without charge; provided, however, the system charge shall continue to apply.

33.05 REMOVAL OF METERS

A. Abandonment of Service. The District may remove any water meter where the customer has abandoned water service through that meter.

B. Permanent Removal of Meters for Agricultural or Irrigation Service. When service is no longer required, meters for agricultural and irrigation service may be removed upon the request of a lessee who paid the fees and charges (or upon request of the owner if the lease has expired), or upon the request of the owner if the fees were paid by the owner.

C. Request for Removal of a Water Meter After Installation. If, after installation of a water meter, a request is made by a customer for the removal of that water meter from service, the customer shall be credited with the number of Equivalent Dwelling Units ("EDU") for that meter size. If thereafter a re-

quest is made for the installation of the same size water meter at the same location, no capacity fee shall be due. If the customer's request is for a larger meter, all capacity fees and charges per 28.01 and 28.02 shall be due and payable for all EDUs, less the EDU credit for the meter previously removed. No refund shall be due or payable for any portion of a capacity fee previously paid. The customer shall pay any expenses incurred by the District for removing and replacing the meters.

D. Removal of Meters for Delinquent Payment of Water System Charges. If an owner/customer remains delinquent in the payment of water charges or system charges after written notice of delinquency from the District, the ~~District~~District may remove the owner/customer's water meter. ~~If after removal of the meter, water service is subsequently requested for the same address or location, service will be resumed only upon payment of the following. Refer to Section 72 of this Code for additional information regarding the procedure for removal of the meters and to the District's schedule of fees and charges, set forth in Appendix A hereto, for information concerning costs.~~

- ~~1. all charges that were delinquent at the time of removal of the meter and~~
- ~~2. the District's then current charges for meter installation of the size to be installed for the resumption of service.~~

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If the request for such service is made more than six months after removal of the meter, the request shall be ~~processed~~processed as a new service for service and all applicable fees and charges for a new service (except for capacity fees) shall be due and payable.

33.06 READING OF METERS

Meters shall be read once each calendar month.

Meters are read each time a meter is "turned-on" or "turned-off" and when water service is established as a new account.

33.07 ADJUSTMENT FOR METER INACCURACIES

A. Customer Request for Meter Test. A customer may request that the meter for the customer's service be tested for accuracy upon making a deposit with the District in accordance with the ~~following~~District's schedule:

<u>Meter Size</u>	<u>Deposit</u>
<del>5/8" x 3/4", 3/4" of fees and 1"</del>	<del>\$25.00</del> charges,
<u>as set forth at Appendix A hereto.</u>	
1 1/2" and 2"	\$50.00
3" and larger	\$125.00

B. Results of Meter Test. If upon testing, the meter does not register more than five percent (5%) in excess of the rated calibration for such meter size, the deposit shall be retained by the District. If the meter so tested registers more than five percent (5%) in excess of the rated calibration for such meter size, the meter will be replaced by the District and the deposit shall be returned to the customer. No adjustment in billing shall be made for excess registration during any period prior to 120 days before the request for the test.

C. Failure of Meter to Register During Service. Should any meter in service fail to register during a billing period, a bill will be issued by the District for the estimated amount of water used during the period of the meter failure, based on prior use under that account.

33.08 DAMAGING OR TAMPERING WITH METERS

~~A. Tampering Punishable as Misdemeanor. California Penal Code Section 499 provides as follows: "Every person who, with intent to injure or defraud, connects or causes to be connected, any pipe, tube or other instrument, with any main, service pipe, or conduit or flume, for the purpose of taking water from such main, service pipe, conduit or flume, without the knowledge of the owner thereof, and with intent to evade payment therefor, and every person who, with intent to injure or defraud, injures or alters any water meter, water meter seal, service valve, or other service connection, is guilty of misdemeanor."~~

~~B. Locking or Removing Damaged or Tampered Meters. Whenever the General Manager has determined that a water meter has been damaged or tampered with, in such a manner that the meter does not properly register the consumption of water, the meter shall be locked or removed. The meter shall not be opened or re-installed for service until all of the following charges have been paid:~~

- ~~1. Outstanding water bills for the property being served by that meter;~~
- ~~2. A charge for servicing or repairing the meter in accordance with the following schedule:~~
  - ~~a) For 3/4" and 1" meters, the charge shall be as follows:~~

<del>Broken Lock/Locking Device</del>	<del>\$56.00</del>
<del>Cap Lock (Welded)</del>	<del>158.00</del>
<del>To Pull and Reset Meter</del>	<del>170.00</del>
<del>Broken Curbstop or Tabs</del>	<del>192.00</del>
<del>If Customer Uses Jumper</del>	<del>149.00</del>

~~b) For 1 1/2" and 2" meters, the charges listed in a) above shall be the same with the following exception:~~

~~Broken Tabs \$265.00~~

~~c) For 3", 4" and 6" meters, the charges listed in a) above shall apply with the following exceptions:~~

~~To Pull and Reset Meter~~

~~3" \$351.00~~

~~4" 454.00~~

~~6" 454.00~~

~~8" 600.00~~

~~10" 600.00~~

~~3. A meter installation fee in accordance with Section 28, and~~

~~4. A charge for estimated quantity of water consumed but not paid for since the last regular correct reading, which shall be determined on the basis of prior use under the customer's account for the damaged or tampered meter.~~

(RESERVED)

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**ATTACHMENT 6 TO ORDINANCE 519**

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SECTION 35 ~~DAMAGE TO DISTRICT PROPERTY (RESERVED)~~

~~35.01 ——— DAMAGE CAUSED BY CUSTOMER~~

~~———— Each customer shall be responsible for any damage to District property caused by an intentional act, carelessness or neglect of the customer or agents of the customer. Bills issued by the District for damage shall be due and payable on the date of mailing or presentation. Service may be discontinued if bills for damage are not paid within five (5) days after the date of mailing or presentation of a notice of delinquency for the damage. all damage must be paid for before water service will be restored. ———~~

~~35.02 ——— PENALTIES FOR DAMAGE TO DISTRICT PROPERTY~~

~~———— Any violation of District ordinances, rules and regulations causing damage to the District may be cause for the Board of Directors to assess such penalties as may be lawful, or to take other action deemed appropriate, including termination of water service. ———~~

**ATTACHMENT 7 TO ORDINANCE 519**

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SECTION 51—DISTRICT SEWER SYSTEM51.01 CONTROL AND OPERATION OF SYSTEM

The District sewer system and appurtenances thereto shall be under the management and control of the General Manager. No person, other than an employee or agent of the District, shall have any right to operate any part of a District sewer system. ~~Any As provided in Division IV, any person who tampers or interferes with any part the Districts systems or component of said system facilities, or causes or permits any such act of tampering or interference with the system, shall be liable responsible for any injury or damage caused thereby or resulting therefrom. In addition, the General Manager is authorized to impose a charge of \$5,000 per occurrence on any person or company who operates any part of the District sewer system without proper authorization.~~

51.02 CONNECTIONS AND DISCONNECTIONS TO SEWER SYSTEM

Connection to and disconnection from a District sewer main shall be made only by District employees. Connection to and disconnection from a District sewer lateral shall be made by the customer subject to inspection and approval of the District.

51.03 INSPECTION OF CUSTOMER PREMISES

Authorized District personnel shall have unrestricted access at reasonable hours to all premises served by District sewers for inspection and testing purposes, and to determine whether the customer is complying with the rules, regulations and ordinances of the District concerning sewer services.

51.04 UNAUTHORIZED CONNECTION TO DISTRICT SEWER SYSTEM (RESERVED)

~~Charges for Unlawful Connections. In addition to all other civil and criminal remedies provided by law, any person making a connection to a District sewer system without prior District approval shall be assessed a fine equal to the annexation fee per Section 9, plus pay the annexation fee per Section 9 for each unauthorized sewer connection. A customer who is already annexed into a sewer improvement district shall only pay the fine. Failure to pay the fine and annexation fee may result in disconnection per Section 53.~~

~~51.05 DISCONNECTION FOR VIOLATION OF CODE NOTICE 51.05  
PERMIT REVOCATED OR SUSPENDED.~~

~~The General Manager shall will give not less than at least five- (5) days notice of intention to disconnect a premise or to suspend prior to suspending or revoke a permit, stating the reasons therefore, and may grant reason for the proposed action and, if determined to be reasonable by the General Manager, providing a reasonable time for elimination of the to correct the violation; provided, however, that if the General Manager determines that the danger is imminent, and such action is necessary for the immediate protection of the health, safety or welfare of persons or property, or for the protection of the sewer system, any premise may be disconnected and service terminated concurrently with the giving of such notice. Notice shall be given to the occupant of the premise, if any, and to the recorded owner of the property as shown upon the last equalized assessment roll of the County of San Diego by United States mail, registered or certified, return receipt requested, postage prepaid, or by posting such notice on the premise. Notice shall be given to the holder of the permit, at the address for such person on file with the District.~~

~~When a premise has been disconnected, it shall not be reconnected until all fines, delinquent fees, charges, and code violations have been corrected or paid together with reasonable charge for disconnection and reconnection as established by the General Manager, plus the penalties provided herein.~~

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**ATTACHMENT 8 TO ORDINANCE 519**

OTAY WATER DISTRICT

CODE OF ORDINANCES

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~~Drought~~ Watch Condition
- 39.05 ~~Drought~~Water Shortage Response Level 2 -  
~~Drought~~ Alert Condition
- 39.06 ~~Drought~~Water Shortage Response Level 3 -  
~~Drought~~ Critical Condition
- 39.07 ~~Drought~~Water Shortage Response Level 4 -  
~~Drought~~ Emergency Condition
- 39.08 Correlation Between ~~Drought~~Water Shortage  
Management Plan (DMP) and ~~Drought~~Water  
Shortage Response Levels
- 39.09 Procedures for Determination and Notification  
of ~~Drought~~Water Shortage Response Level

SECTIONS 41 THROUGH 49 (RESERVED)

CHAPTER 2 SEWER SERVICE

SECTION 50 Rules and Regulations for Sewer Service

SECTION 51 District Sewer System

- 51.01 Control and Operation of System
- 51.02 Connections and Disconnections to Sewer System
- 51.03 Inspection of Customer Premises
- 51.04 ~~Unauthorized Connection to District Sewer System~~  
~~Reserved~~
- 51.05 ~~Disconnection~~ for Violation of Code - Notice

SECTION 52 Waste Disposal

- 52.01 Definitions of "Sewer System," "Sewage" and "Industrial Wastes"
- 52.02 Federal and State Statutes and Regulations Applicable to District Sewer Service
- 52.03 Enforcement of District Rules and Regulations
- 52.04 Prohibitions Against Discharge of Objectionable Wastes

- 52.05 Guidelines to Determine Acceptability of Wastes
- 52.06 Discharge of Industrial Waste

SECTION 53 Fees, Rates, Charges and Conditions for Sewer Service

- 53.01 Conditions for Acquisition of Sewer Service Capacity
- 53.02 Service Areas
- 53.03 Acquisition of Sewer Connections for Service in ID 14, ID 18 and AD 4
- 53.04 Acquisition and Purchase of Sewer Capacity for Service in the Russell Square Sewer Service Area
- 53.05 Charges for Installation of Sewer Laterals
- 53.06 Payment of Fees
- 53.07 Sewer Service Use Changes Resulting in Increased System Utilization
- 53.08 Wastewater Discharge Permit Issuance and Limitation
- 53.09 Basis for Determination of EDUs
- 53.10 Transfer, Assignment or Resale of Sewer Connection Rights
- 53.11 Sewer Service Rates and Charges
- 53.12 Reduced Sewer charges for Low-Income Customers

SECTION 54 Deposit by Lessees or Non-Owners of Property

- 54.01 Amount of Deposit
- 54.02 Refund of Deposit
- 54.03 Letter of Credit

SECTION 55 Issuance and Payment of Sewer Bills

- 55.01 Issuance, Due Date and Final Payment of Statement of Charges for Service

SECTION 56 Location of Sewer Lines and Easements

- 56.01 Location of Sewer Lines
- 56.02 District Sewer Line Easements
- 56.03 Encroachment in District Easements
- 56.04 Concurrent Use of District Easements

SECTIONS 57 THROUGH 59 (RESERVED)

DIVISIONARTICLE III SUBDIVISION AND PARCEL MAP DEVELOPMENTS

CHAPTER 1 WATER AND SEWER SYSTEMS FOR SUBDIVISIONS AND PARCEL MAPS

SECTION 60 Utility Facilities for Subdivisions and Parcel

Map Developments

- 60.01 Installation by District
- 60.02 Installation by Developers
- 60.03 Issuance of Availability Letters for Water and/or Sewer Service
- 60.04 Requirement for a Subarea Master Plan (SAMP)
- 60.05 Requirement for a Tentative Map
- 60.06 Requirement of Easement or Right-of-Way for Utility Facilities
- 60.07 Requirement for Annexation
- 60.08 Requirement for Approved Plans and Construction Agreement
- 60.09 Requirement for District Inspection
- 60.10 Requirements for Use of Utilities for Occupancy Prior to District Acceptance
- 60.11 Requirement for Final Acceptance by the General Manager
- 60.12 Requirement for One Year Warranty Period

SECTION 61 (RESERVED)

SECTION 62 Extent of Systems for Subdivisions and Parcel Maps

- 62.01 Location and Scope of System
- 62.02 Request for Variance

ARTICLE IV PROHIBITED ACTIVITIES; REMEDIES AND ENFORCEMENT

CHAPTER 1 GENERAL PROVISIONS

SECTION 70 Definitions

- 70.01 Reference to Article
- 70.02 Definitions

SECTION 71 Violations; Prohibited Activities

CHAPTER 2 DISTRICT REMEDIES

SECTION 72 Damages, Penalties and Administrative Fines

- 72.01 General
- 72.02 Certain Specific Operational Violations
- 72.03 Violation of Conservation or Other Water Use Restriction Provisions
- 72.04 Violations Involving District Real Property
- 72.05 Administrative Fines

SECTION 73 Additional District Remedies

- 73.01 Other Remedies of District
- 73.02 Notice to District Concerning Violations





The current organization of fees and charges in the District's Code of Ordinances can cause confusion and inefficiency when doing research, evaluations, and periodic updates. The new Appendix A provides a consolidated look at all fees and charges and will be easy to view and update. It will be posted on the District's website and other shared locations for easy accessibility by customers, Board members, and staff.

The summary of fees and charges in Appendix A are the same fees and charges that currently exist in the Code of Ordinances as of the 4th quarter of calendar year 2009 with the exception of the fees, rates, and charges in Section 53 which became effective January 1, 2010. The fees and charges will continue to be updated per Board authorization or as indicated in the Code of Ordinances.

**FISCAL IMPACT:**



None.

**STRATEGIC GOAL:**

Ensure financial health through formalized policies, prudent investing, and efficient operations.

**LEGAL IMPACT:**

\_\_\_\_\_

None.



\_\_\_\_\_  
**General Manager**

Attachments:

- A) Committee Action Form
- B) Ordinance No. 523 and Strike-through copies
- C) Appendix A
- D) Proposed Sections and Policy 5
- E) Deleted Policy 17 (incorporated into Section 31)



## ATTACHMENT A

**SUBJECT/PROJECT:**

Adopt Ordinance No. 523 Removing Fees and Charges from Sections 9,10,23,25,26,28,31,33,34,53,60 and from Policy 5 of the District's Code of Ordinances and Incorporating Them in a Newly Created Appendix A; Deleting Policy 17 and Incorporating it into Section 31; and Amending Section 53 - Fees, Rates, Charges and Conditions for Sewer Service

**COMMITTEE ACTION:**

The Finance/Administration and Communications Committee reviewed this item at a meeting held on January 19, 2010 and the following comments were made:

- Staff indicated that District fees and charges are currently noted in different sections throughout the District's Code of Ordinances. Staff is proposing that all such fees and charges be centralized into a newly created Appendix A.
- This change will create efficiency and will eliminate confusion when researching or updating information in the Code. Appendix A will also provide a complete view of all District fees and charges.
- Staff noted that the fees and charges reflected in the proposed Appendix A are the same fees and charges that currently exist in the Code of Ordinances as of the 4<sup>th</sup> quarter of calendar year 2009 with the exception of fees, rates, and charges in Section 53 (sewer rates) which were updated with the new rates effective January 1, 2010.
- Staff is recommending that Ordinance No. 523 be adopted removing fees and charges from Sections 9, 10, 23, 25, 26, 28, 31, 33, 34, 53, 60 and from Policy 5 of the District's Code of Ordinances and incorporating them in a newly created Appendix A; deleting Policy 17 and incorporating it into Section 31; and amending Section 53 - Fees, Rates, Charges and Conditions for Sewer Service

Following the discussion, the Committee supported staffs' recommendation and presentation to the full Board on the consent calendar.

ORDINANCE NO. 523

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE OTAY WATER DISTRICT REMOVING FEES AND CHARGES FROM SECTIONS 9, 10, 23, 25, 28, 31, 33, 34, 53, 60 AND FROM POLICY 5 OF THE DISTRICT'S CODE OF ORDINANCES AND INCORPORATING THEM IN A NEWLY CREATED APPENDIX A; DELETING POLICY 17 AND INCORPORATING IT INTO SECTION 31; AND AMENDING SECTION 53 - FEES, RATES, CHARGES AND CONDITIONS FOR SEWER SERVICE

WHEREAS, it would be more efficient for updating purposes to consolidate all the District's fees and charges into a central location within the District's Code of Ordinances; and

WHEREAS, staff has integrated all the District's fees and charges into a newly created Appendix A of the District's Code of Ordinances; and

WHEREAS, this information will be posted to the District's website and other shared locations for easy accessibility by customers, Board members and staff.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Otay Water District as follows:

This Ordinance and the amendments to Sections 9, 10, 23, 25, 28, 31, 33, 34, 53, 60 and Policy 5 of the District's Code of Ordinances (strike-through copies attached) shall become effective upon adoption of this Ordinance.

The deletion of Policy 17 and its incorporation into Section 31 (strike-through copy attached) shall also become effective upon adoption of this Ordinance.

The amendments concerning sewer rates, charges and fees, and periodic pass-through increases of the Code of Ordinances being incorporated into Section 53 became effective on January 1, 2010 as adopted by the Board on August 24, 2009.

PASSED, APPROVED AND ADOPTED by the Board of Directors of the Otay Water District at a regular meeting duly held this 3rd day of February, 2010, by the following roll call vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

---

President

ATTEST:

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Secretary

Attachment B includes the following strike-through copies of the Code of Ordinances Sections 9, 10, 23, 25, 28, 31, 33, 34, 53 & 60 and Policy 5

CHAPTER 6 MISCELLANEOUS ADMINISTRATION PROCEDURES

SECTION 9 ANNEXATIONS AND DETACHMENTS

9.01 REQUIREMENT OF ANNEXATION FOR SERVICE

Except as provided elsewhere in this Code, whenever utility service is requested for land outside the boundaries of an improvement district, the land to be serviced must first be annexed to an improvement district(s). If the land is located outside the boundaries of the District, the land must also be annexed to the District.

9.02 ANNEXATIONS TO OR DETACHMENTS FROM IMPROVEMENTS DISTRICTS

An owner or owners of land within the District desiring to annex to or detach land from an improvement district within the District must file a petition for such proceeding with the District. Annexation proceedings shall be conducted pursuant to Chapter I (commencing with Section 72670) of Part 11, Division 20 of the California Water Code. Detachment or exclusion proceedings shall be conducted pursuant to Part 8.5 (commencing with Section 72080) of Division 20 of the California Water Code.

9.03 ANNEXATIONS TO OR DETACHMENTS FROM THE DISTRICT THROUGH LAFCO

An owner or owners desiring to annex land to or to detach land from the District may either (i) file a petition directly with the Local Agency Formation Commission (LAFCO) for the annexation or detachment or (ii) request the District to file the petition with LAFCO for such annexation or detachment. Any such proceeding for annexation or detachment, which is deemed a change of organization or reorganization pursuant to the Cortese-Knox Local Government Reorganization Act of 1985, shall be initiated, conducted and completed pursuant to Title 6, Division 1 (commencing with Section 56000) of the California Government Code.

9.04 FEES AND CHARGES FOR ANNEXATIONS OR DETACHMENTS

A petitioner requesting an annexation to or detachment from the District or an improvement district within the District shall pay the following applicable fees and charges:

A. Administrative Processing Fees

1. District Processing Fee. A District processing fee ~~(see Appendix A, 9.04 A.1. for fee)~~ shall be paid to the District for each annexation or detachment proceeding, regardless of the number of parcels involved, provided all parcels are included in one proceeding. ~~This~~ fee shall constitute the "base rate" on March 3, 1997. The base rate shall be adjusted annually for fluctuations in the Consumer Price Index (Urban Wage Earners and Clerical Workers - Los Angeles) and subsequent cost-of-living adjustment (COLA).

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2. Additional Processing Fees or Charges. The petitioner shall pay all processing fees and charges due LAFCO, the State Board of Equalization and any other applicable government agency.

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3. Concurrent Annexations to or Detachments from the District and an Existing Improvement District. No additional processing costs or fees will be charged to a petitioner for an annexation to or detachment from an existing improvement district when the proceeding is part of an annexation to or detachment from the District.

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4. Payment of Fees and Charges. The District processing fees and charges shall be paid to the District at the time the petition for such proceeding is filed. Where a petition is filed with LAFCO, the District shall notify LAFCO that payment of all required fees and charges to the District shall be a condition for District approval of the annexation or detachment.

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B. Annexation Fees for Annexations to Water Improvement Districts. The annexation fee ~~(see Appendix A, 9.04 B.)~~ shall constitute the "base rate" on March 13, 2006 (effective July 1, 2006). The base rate shall be adjusted quarterly for fluctuations in construction costs, as measured by the Engineering News Record Construction Cost Index for the Los Angeles Region. The ENR Construction Cost Index of 8552.3 (as of March 13, 2006) shall be deemed the "base index." The adjustment shall be in an amount equal to the percentage change in the ENR Construction Cost Index from the base index for the period from March 13, 2006 to the date of payment

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1. No water annexation fee shall be required for existing and future agricultural water service

furnished by the District under the COMMERCIAL AGRICULTURAL category of Section 25 of the Code.

2. Non-permanent irrigation water service furnished by the District under Section 30 of the Code shall be available without payment of a water annexation fee.
3. Open Space to be Annexed. Open space lands shall not be excluded from annexations of land to a water improvement district.
4. Water Meter Type Exclusions. Annexation fees shall be collected on all water meters sold except for temporary water meters, water tank truck meters, nonpermanent irrigation water meters and outside user meters, all as defined elsewhere in this Code.
5. Effective Date. Annexation fees shall be collected on all lands annexing to a water improvement district on or after March 5, 1997.
6. Basis for Determination. For annexations of land to a water improvement district within the District, the petitioner shall pay an annexation fee. The fee shall be paid at the time of water meter purchase.

For permanent water meters, except for commercial agricultural meters, the annexation fee shall be determined on the basis of the demand to be placed on the District-wide water system. The fee will be determined on the basis of the size of the water meter required, as set forth in Section 27 of the Code. The fee shall be determined by multiplying the demand factor for the meter size, as set forth in Section 28 of the Code, by the annexation fee per EDU. See Appendix A, 9.04 B. for fees.

C. Annexation Fees for Annexations to Sewer Improvement Districts

1. Improvement District Annexation. All annexation for sewer service shall be into Improvement District No. 18 on or after December 16, 1998.
2. Open Space to be Annexed. Open space lands shall not be excluded from annexations of land to a sewer improvement district.
3. Effective Date. Annexation fees shall be collected on all lands annexing to a sewer

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improvement district on or after December 16, 1998.

4. Basis for Determination. For annexations of land to a sewer improvement district within the District, the petitioner shall pay an annexation fee. The fee shall be determined on the basis of the demand to be placed on the District sewer system. The fee shall be paid at the time of sewer service connection request or General Manager's approval of plans, whichever occurs earlier. The extent of the demand will be determined on the basis of each equivalent dwelling unit (EDU) of service which is to be connected to the District sewer system. The number of EDUs prescribed in Section 53 of the Code shall be the basis for computation of the amount of the annexation fee. The fee will be determined by multiplying the number of EDUs by the annexation fee per EDU. See Appendix A, 9.04 C.4 for fees.

This annexation fee shall constitute the "base rate" on December 16, 1998. The base rate shall be adjusted quarterly for fluctuations in construction costs as measured by the Engineering News Record Construction Cost Index for the Los Angeles Region. The ENR Construction Cost Index of \$6,859.45 (as of November 9, 1998) shall be deemed the "base index." The adjustment shall be in an amount equal to the percentage change in the ENR Construction Cost Index from the base index for the period from November 9, 1998 to the date of payment.

D. Detachment Fees

For each detachment of land from an improvement district, the petitioner shall pay such fees as the General Manager determines are appropriate for the detachment. Determinations shall be made by the General Manager on a case-by-case basis.

9.05 TAXATION OF PROPERTY AFTER ANNEXATION TO IMPROVEMENT DISTRICT

Where property is annexed by a petitioner, other than a tax-exempt agency, the property in the annexed area shall be subject to taxation after the annexation thereof for the purposes of the improvement district, including the payment of principal and interest on bonds and other obligations of the improvement district authorized and outstanding at the time of the annexation. The Board of Directors shall

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provide as a condition of the annexation that the annexed area shall be subject to taxation as if the property had always been a part of the improvement district.

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SECTION 10      APPLICATION FOR WAIVER OR MODIFICATION OF  
ORDINANCE REQUIREMENTS

10.01      FILING OF PETITION

Any person may present a petition to the Board of Directors requesting that the Board consider a waiver or modification of requirements of a section of an ordinance set forth in this Code. The petition for waiver or modification shall be in writing on forms furnished by the District. A fee as set forth in Appendix A, 10.01 shall be paid at the time of submission of the petition requesting the waiver or modification.

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10.02      REVIEW BY BOARD OF DIRECTORS

The grant or denial of such waiver or modification shall be determined solely by the Board of Directors. Any such waiver or modification shall be effective only upon such Board approval which shall set forth the terms and conditions thereof. Each waiver or modification shall be limited to the person and property involved in the application.

SECTION 23 NON-RESPONSIBILITY OF DISTRICT

23.01 INTERRUPTIONS OF WATER SERVICE

District does not guarantee continuous delivery of water on demand. From time to time it may be necessary for the District to shut off the flow of water in any of its water systems. Except in emergencies, such stoppages will not be made without prior notice to the customers involved. District shall not assume any responsibility for loss or damages which may occur due to interruption of water service.

23.02 PRIVATELY-OWNED WATER LINES

The District assumes no responsibility for the delivery of water through privately-owned pipelines or systems, nor shall it assume any responsibility for damages resulting from the operation of any such system even though water may be received from a district water distribution system.

23.03 WATER PRESSURE REGULATION

A. Customer Responsibility. The District shall assume no responsibility for water pressure regulation within a customer's service area. The customer shall be responsible for providing adequate safeguard measures for the customer's water system wherever pressure regulation is necessary.

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B. Requirement for Installation in New Construction. Customers making application for water service for new construction for residential, commercial or industrial use shall be required to install an appropriate pressure regulation device for such service.

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23.04 CROSS-CONNECTIONS AND BACKFLOW DEVICES

State Regulations for Cross-Connections.

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The California Department of Public Health has issued Regulations Relating to Cross-Connections (Calif. Adm. Code, Title 17 - Public Health) for the purpose of safeguarding drinking water supplies by preventing backflow into public water systems. The term "cross connection" means any unprotected connection between any part of a District water system and any other source or system containing water or substance that is not or cannot be approved as safe, wholesome, and potable for human consumption. The District has adopted Rules, Regulations, and Fees Regarding Cross-Connections as uncodified Ordinance No. 386 which is available in the Operations and Engineering Departments. The backflow fees are as set forth in Appendix A, 23.04.

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23.05 WATER SERVICE FOR STEAM BOILERS

Customers using District water to supply steam boilers are required to provide adequate storage of water for boiler use for a minimum period of 12 hours.

23.06 ELECTRICAL GROUND CONNECTIONS

The connection of electrical ground wire to water pipes is prohibited. The District shall assume no responsibility for any loss or damage resulting from such a connection.

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25.01 SERVICE AREA

Water service shall be furnished by the District only to property within (annexed to) a water improvement district within the District's service area. Water service to property located outside an improvement district may be furnished only upon prior approval of the Board of Directors. Temporary water service to property located outside an improvement district may be furnished, in accordance with Section 25.03 E.10., upon the approval of the General Manager.

25.02 DEFINITION OF "H.C.F." AND "UNIT OF WATER"

As used in the Code the terms "H.C.F." and "unit of water" are interchangeable and each shall mean 100 cubic feet or 748 gallons of water.

25.03 DEFINITIONS OF WATER SERVICE CATAGORIES, WATER RATES, CHARGES AND FEES

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Water service furnished by the District shall be under the categories of services and at the rates, charges and fees as set forth in Appendix A, Section 25.

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Five-year Rate Increase Schedule - All District water rates, charges and fees are subject to a five-year schedule of rate increases beginning September 1, 2009 and periodically thereafter through June 30, 2014. The increases under this schedule shall be the amount sufficient to cover cost increases related to operations and maintenance, but not to exceed 10% per year

Five-year Periodic Pass-through Rate Increases or Decreases from District Wholesalers - All District water rates, charges and fees are subject to periodic rate changes from the District's public agency wholesalers for a five-year period beginning September 1, 2009 through June 30, 2014.

A. Set-up Fees for Accounts. A set-up fee shall be charged for each account transferred to another customer. See Appendix A, 25.03 A. for charges. A deposit will be required of all customers who do not own the property to be served. See Appendix A, 25.04 A. for deposit amounts.

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B Monthly Fixed MWD & CWA Charges. Each potable water service customer shall pay a monthly MWD and CWA fixed charge, as set forth in Appendix A, 25.03 C., Proceeds of the charge will be used to pay for operating and maintenance costs, including the following: MWD Readiness-to-Serve Charge and Capacity Reservation Charge; CWA Infrastructure Access Charge, Customer Service Charge, and

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Emergency Storage Charge. The MWD & CWA charge is based on the size of the water meter(s) in service. The MWD & CWA charge shall start upon installation of the meter.

C. Monthly Fixed System Charges. Each water service customer shall pay a monthly fixed system charge, as set forth in Appendix A, 25.03 C. Proceeds of the charge will be used to pay for water system replacement, maintenance, and operation expenses. The system charge is based on the size of the water meter(s) in service. The system charge shall start upon installation of the meter

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D. Water Conservation Drought Pricing. To promote conservation, base tiered water rates for all water services are subject to percentage increases during drought stages, as shown in the table below:

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**Drought Stage Pricing**

	Stage 2	Stage 3	Stage 4
Tier 1*	0%	0%	0%
Tier 2	Up to 5%	Up to 10%	Up to 15%
Tier 3	Up to 30%	Up to 60%	Up to 90%

\*Domestic residential water service has four tiered base rates as outlined in Appendix A, 25.03 E.1.(b). Tier 1 of the above table applies to the first two tiered base rates. Tier 2 of the above table applies to the third tiered base rate. Tier 3 of the above table applies to the fourth tiered base rate.

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E. Categories of Water Service. The definitions and rates and charges for water service furnished by the District shall be as follows:

**1. DOMESTIC RESIDENTIAL WATER**

- (a) Defined as: Water service for single residential and individually metered attached households as well as other domestic uses (other than that provided for in Paragraph 2 below).
- (b) Base Rate: The tiered base rates of water furnished under this category shall be set forth in Appendix A, 25.03 E.1.(b).

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The tiered base rates for this category of service are subject to the increased drought pricing outlined in Section 25.03 D.

2. MULTIPLE RESIDENTIAL WATER

(a) Defined as: Master metered water service for multiple residential households, for example, duplexes, townhomes, apartments and mobile homes.

(b) Base Rate: The tiered base rates of water furnished for each dwelling unit under each block of service in this category shall be as set forth in Appendix A, 25.03 E.2.(b).

The tiered base rates for this category of service are subject to the increased drought pricing outlined in Section 25.03 D.

3 BUSINESS AND PUBLICLY-OWNED WATER

(a) Defined as: Potable water service for commercial, industrial and publicly-owned establishments.

(b) Base Rate: The tiered base rate for water furnished under this category shall be determined by meter size and usage block as set forth in Appendix A, 25.03 E.3.(b).

The tiered base rates for this category of service are subject to the increased drought pricing outlined in Section 25.03 D.

4. IRRIGATION AND COMMERCIAL AGRICULTURAL USING POTABLE WATER

(a) Irrigation is potable water service provided solely for irrigation of landscape or landscaping, as defined in Section 0.02.

(b) Commercial agricultural engaged in the growing or raising of live stock, in conformity with recognized practices of husbandry, for the purpose of commerce, trade or industry, or for the use by public educational or correctional institutions or agricultural horticultural or floricultural products and produced,

(i) for human consumption or for the market, or

(ii) for the feeding of fowl or livestock produced for human consumption or for the market, or

(iii) for feeding fowl or livestock for the purpose of obtaining their products for human consumption or for the market, such

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The four tiered base rates for water furnished under each block of service under this category shall be as follows: ¶

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products to be grown or raised on a parcel of land having an area of not less than one acre utilized exclusively therefore.

- (c) Base Rate: The tiered base rate for water furnished under this category shall be determined by meter size and usage block as set forth in Appendix A, 25.03 E.4.(c).

The tiered base rates for this category of service are subject to the increased drought pricing outlined in Section 25.03 D.

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5. RECYCLED WATER

- (a) Defined as: Non-potable and recycled water service provided for irrigation of landscaping, as defined in Section 0.02 A. of the Code, and certain non-irrigation purposes, other than domestic use, in compliance with federal, state and local laws and regulations regarding use of recycled water.

- (b) The provisions of this Code, relating to use of recycled water, set forth in Section 26 of the Code, including but not limited to cross-connections and backflow protective devices, shall be strictly enforced in connection with the use of recycled water.

- (c) Base Rate: The tiered base rate for water furnished under this category shall be determined by meter size and usage block as set forth in Appendix A, 25.03 E.5.(c).

The tiered base rates for this category of service are subject to the increased drought pricing outlined in Section 25.03 D

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- (d) Monthly system charge: The monthly system charge for recycled water service is set forth in Appendix A, 25.03 C.

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6. TEMPORARY AND CONSTRUCTION WATER SERVICE

- (a) Defined as: Water service provided by the District on a temporary basis, pursuant to Section 31 of this Code.

- (b) If capacity fees have not been paid by the customer, the rates for water furnished under this category is set forth in Appendix A, 25.03 E.6.(b).

- (c) If the customer has paid capacity and annexation fees, the base rate for water furnished under

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this category shall be the base rate charged customers in the same category of service on a permanent meter basis.

- (d) The tiered base rates for this category of service are subject to the increased drought pricing outlined in Section 25.03 D.
- (e) The applicable monthly system and MWD & CWA charge shall be the same rates charged to customers in the same category of service on a permanent meter basis, per Appendix A, 25.03 C.

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7. WATER SERVICE UNDER SPECIAL AGREEMENTS

- (a) Defined as: Water service provided under express agreements approved by the Board of Directors for service to golf courses and other entities, which service may be curtailed or interrupted by the District under conditions provided in such agreements.
- (b) For water service under this category the base rate shall be determined on a case-by-case basis.

Unless otherwise specified in the particular agreement, the tiered base rates for this category of service are subject to the increased drought pricing outlined in Section 25.03 D.

8. TANK TRUCKS

- (a) Defined as: Water service provided for the filling of tanks on motor vehicles transporting water used for other than earth grading purposes, which service shall be made only through a portable meter issued by the District to a customer specifically for use in accordance with the provisions herein for such service.
- (b) The rate for metered water furnished under this category is reflected in Appendix A, 25.03 E.8 (b), plus a monthly system charge at the rate set forth in Appendix A, 25.03 C.

The tiered base rates for this category of service are subject to the increased drought pricing outlined in Section 25.03 D.

- (c) Requirements for Use of Water Meter

- (1) To receive such service, the customer must make a deposit for the use a water meter furnished by the District. The fee is set forth in Appendix A, 31.03 A.1.

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- (2) Upon termination of the service, the District will refund the amount of deposit remaining after making the following deductions:
- (i) Cost of repairing or replacing the meter, fire hydrant and/or any fittings damaged or lost while in use; and
  - (ii) Unpaid charges for water or other applicable charges.
- (3) Prior to the end of each six month period following issuance of a meter under this section, or at the request of the District, whichever is earlier, the customer shall return the meter to the District for inspection, repair, or calibration as deemed necessary by the District.
- (4) Payment for water service under this category shall be made as follows:
- (i) The bill shall be based on the amount of water actually used, which shall be determined by the District's reading of the meter or by a report made by the customer to the District in the manner prescribed by the District.
  - (ii) Where the actual amount of water used cannot be determined as provided in (i), the District will issue a bill based on a District estimate of the amount of water used, as determined by the District. Such estimates shall be reconciled with actual amounts used when the customer returns the meter to the District as provided in paragraph 3 above.
  - (iii) Payments shall be made as specified on the bill.

9. WATER SERVICE OUTSIDE DISTRICT

- (a) Defined as: Water service for real property outside the service area of the District.
- (b) This service will be provided only upon prior approval of the General Manager when there is a surplus of water over and above the existing needs for service in the District. This service is temporary and may be terminated upon written notice from the District. Customers for this

service are sometimes referred to as "outside users."

(c) Customers applying for this category of service shall pay an application fee as set forth in Appendix A, 25.03 E.9.(c).

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(d) The rate for metered water furnished under this category shall be charged the rate as described in Appendix A, 25.03 E.9.(d), plus a monthly system charge at the rate set forth in Appendix A, 25.03 C.

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The tiered base rates for this category of service are subject to the increased drought pricing outlined in Section 25.03 D.

(e) Customers requesting only fire service or a fire hydrant under this category shall be charged a capacity fee based on one (1) EDU for a permanent meter in the improvement district from which the fire service derives its flow, plus a monthly system charge at the rate set forth in Appendix A, 25.03 E.11.(c).

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10. WATER SERVICE OUTSIDE AN IMPROVEMENT DISTRICT

(a) Defined as: Water service for property located within the boundaries of the District, but not within a water improvement district. Customers for this service are sometimes referred to as "outside users."

(b) Customers applying for this service shall pay an application fee as set forth in Appendix A, 25.03 E.10.(b). The District will review the application to determine whether the land to be served should be annexed to an improvement district. If it is determined that annexation is not practical, the Board of Directors may authorize service as an outside user. This service will be reviewed periodically until it is determined that the property must be annexed to an improvement district or that service must be terminated.

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(c) The rate for metered water furnished under this category is as set forth in Appendix A, 25.03 E.10.(c), plus a monthly system charge as set forth in Appendix A, 25.03.C.

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The tiered base rates for this category of service are subject to the increased drought pricing outlined in Section 25.03 D.

(d) Upon approval of the Board of Directors, a customer, who has paid all construction costs for facilities necessary to serve the customer's property in lieu of annexation to a water improvement district, shall be exempt from the provision for this category of service.

11. SERVICE FOR FIRE PROTECTION

(a) Defined as: Water service provided by the District solely to feed fire hydrants or fire sprinkler systems from lines or laterals connected to District water mains.

(b) The District will not make a charge for the quantity of water used for fire protection purposes.

(c) The monthly system charge for this category of service is set forth in Appendix A, 25.03 E.11.(c), for each connection to a District water main made for fire protection service.

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12. WATER SERVICE TO PROPERTY NOT SUBJECT TO DISTRICT TAXES

(a) Pursuant to Section 71613 of the California Water Code, the District may furnish water to property, not subject to District taxes, at special rates, terms and conditions as are determined by the Board of Directors for such service. Such rates, terms and conditions shall be uniformly applied to like classes and conditions of service in the same improvement district or geographical area.

(b) Customers in this category, such as publicly-owned establishments, shall pay an additional fee as outlined in Appendix A, 25.03 E.12.(b).

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13. INTERIM WATER SERVICE IN IMPROVEMENT DISTRICT 7

(a) Definition of Interim Service. This is water Service furnished to a customer in Improvement District 7 (ID 7) for temporary use.

(b) Rates for Interim Service Customers applying for interim service in ID 7 shall not be required to pay the ID 7 water capacity fee and San Diego County Water Authority fee, as required under Section 2801 of this Code. The water rate is set forth in Appendix A, 25.03 E.13.(b).

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be the same as temporary and construction water.¶

(c) Conversion to Permanent Service. At such time as use expires, the customer shall be required to

pay all fees in effect at the time the permanent use is implemented.

F. Energy Charges for Pumping Water

In addition to water rates and other charges provided for in this Section 25.03, customers shall be charged an energy pumping charge based on the quantity of water used and the elevation to which the water has been lifted to provide service. The energy pumping charge shall be made at the rate set forth in Appendix A, 25.03, F.

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G. Additional Water Charge for Service in the North District

1. In addition to other applicable water rates and charges provided for in this Section 25.03, each customer receiving water service in the North District shall pay a charge as set forth in Appendix A, 25.03 G.1. The North District area is defined in Section 0.02 of this Code

**Deleted:** of \$0.08 per H.C.F. for water furnished by the District; provided, however, the additional charge shall not apply to the first 5 H.C.F. furnished during the billing cycle for the customer's account under Section 25.03 E.1 DOMESTIC RESIDENTIAL WATER.

2. All proceeds from charges collected pursuant to this Section 25.03 G. shall be set aside by the District in a separate account and shall be used solely for payment of costs and borrowings for construction, installation and maintenance of water storage reservoirs, pump stations and water lines to provide service in the North District.

H. Additional Water Charges and Monthly System Charges for Service in the ID 9 Water Service Zone

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1. In addition to other applicable water rates and charges provided for in this Section 25.03, effective May 1, 1986, each customer receiving water service in the ID 9 Water Service Zone shall pay a charge set forth in Appendix A, 25.03 H.1. The ID 9 Water Service Zone area is defined in Section 0.02 of this Code.

**Deleted:** of \$0.27 per H.C.F. of water furnished by the District; provided, however, the additional charge shall not apply to the first 5 H.C.F. furnished during the billing cycle for a customer's account under Section 25.03 E.1 DOMESTIC RESIDENTIAL WATER.

2. In addition to the monthly system charges provided for, effective May 1, 1986, each customer receiving water service in the ID 9 Water Service Zone shall pay a monthly meter system charge as outlined in Appendix A, 25.03 H.2. for each meter in service.

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3. All proceeds from charges collected pursuant to this Section 25.03 H shall be set aside by the District in a separate account and shall be used solely for payment of costs and borrowing for construction, installation and maintenance of water storage reservoirs, pump stations and water lines to provide service in the ID 9 Water Service Zone.

I. Additional Water Charges for Services in the ID 3, ID 10 and La Presa Water Service Zones.

1. In addition to other applicable water rates and charges provided for in this Section 25.03, effective May 17, 1993, each customer receiving water service in ID 3, ID 10 and La Presa Water Service Zones is assessed an additional charge per H.C.F. of water furnished by the District. Said surcharge is assessed as set forth in Appendix A, 25.03 I.1.(a),(b), and (c).

2. All proceeds from charges collected pursuant to this Section 25.03 I. shall be set aside by the District in a separate account and shall be used solely for payment of costs and borrowings for construction, installation and maintenance of water storage, reservoirs, pump stations and water lines to provide service in the ID 3, ID 10 and La Presa Water Service Zones, respectively.

25.04 DEPOSITS BY LESSEES OR NON-OWNERS OF PROPERTY

When an application for water service is made by a customer who does not own the land to be served, the customer be required to make a cash deposit to assure payment of account. In lieu of a deposit, the customer may have payment of water service bills guaranteed in writing by owner of the property. The amount of deposit, determined by the size of meter is outlined in Appendix A, 25.04

A. AMOUNT OF DEPOSIT

The customer's deposit shall be applied to reduce or satisfy any delinquent payment or other amount due the District at the time of termination of water service to the customer. Any portion of the deposit remaining, after satisfaction of the amount due, shall be refunded to the customer that made the deposit.

The deposits listed above may be waived for a new residential applicant where the applicant demonstrates credit worthiness based upon prior utility payments or a non-delinquent water account for one year or other similar evidence of credit.

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B. REFUND OF DEPOSIT

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Where funds have been on deposit for twelve months in a domestic service account and there has been no more than one delinquent payment on that account during that period, the District will apply a credit to the water account in the amount of the deposit.

C. LETTER OF CREDIT

A letter of credit, in a form approved by the General Manager or Department Head of Finance, may be submitted to the District to satisfy the deposit requirements.

25.05 SERVICE TO SUBSEQUENT CUSTOMERS

After a water meter has been installed for a customer and all fees and charges have been paid, water service may be furnished to a subsequent customer through the water meter installed without payment of further charges, except for the set-up fee for transferred accounts, payment of delinquent charges for the applicant's service or other deposits that may be required by this Code.

Meter	System	MWD & CWA	Total F:
Size	Charge	Fixed Charge	Charg
3/4"	14.58	9.77	24.35
1"	18.52	16.28	34.80
1-1/2"	28.37	32.61	60.98
2"	40.18	52.15	92.33
3"	71.68	104.30	175.98
4"	107.13	162.98	270.11
6"	205.59	325.92	531.51
8"	323.73	521.51	845.24
10"	461.57	749.61	1211.18

The four tiered base rates for water furnished under each block of service under this category shall be as follows:

H.C.F.	Rate per H.C.F.
1-5	\$1.35
6-10	\$2.10
11-22	\$2.73
23 and over	\$4.21

Customers who use more than 10 units per month shall not receive the benefit of the lower rate for units 1 through 5. These customers will pay Tier 2 rates, \$2.10, for units 1 through 10.

H.C.F per Dwelling unit	Rate per H.C.F.
1-4	\$2.08

5-8	\$2.70
9 and over	\$4.15

Page 25-3: [4] Deleted	SusanA	11/6/2009 11:25:00 AM	Rate
	H.C.F. (meter size: less than 10")	H.C.F. (meter size: 10" and greater	H.C.F.
	1 - 173	1 - 7,426	\$2.2
	174 - 831	7,427 - 14,616	\$2.2
	832 and over	14,617 and over	\$2.3

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	H.C.F. (Meter Size: 1" and less)	H.C.F. (Meter Size: 1.5 through 2")	H.C.F. (Meter Size: 3" and Larger)
	1-49	1-144	1-1,044
	50-132	145-355	1,045-8,067
	133 and over	356 and over	8,068 and over

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	H.C.F. (Meter Size: 1" and less)	H.C.F. (Meter Size: 1.5 through 2")	H.C.F. (Meter Size: 3 through 4")
	1-42	1-168	1-403
	43-97	169-402	404-820
	98 and over	403 and over	821 and over
			1-7,916
			7,917-16,357
			16,358 and over

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	Meter Size	System Charge
	3/4"	14.58
	1"	18.52
	1-1/2"	28.37

2"	40.18
3"	71.68
4"	107.13
6"	205.59
8"	323.73
10"	461.57

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a.      ID 3

<b>Calendar Year</b>	<b>Amount per H.C.F.</b>
2009	.17
2010	.18
2011	.19
2012	.20
2013	.21

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b. ID 10

Calendar Year	Amount per H.C.F.
2009	.25
2010	.26
2011-18	.27

c. La Presa

Calendar Year	Amount per H.C.F.
2008-10	.07
2011-13	.08

2. The additional charge shall not apply to the first 5 H.C.F. furnished during the billing cycle for a customer's account under Section 25.03 E.1. DOMESTIC RESIDENTIAL WATER.

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CONNECTION FEES AND CHARGES FOR POTABLE OR RECLAIMED WATER SERVICE

28.01 COLLECTION OF FEES AND CHARGES

A. Fees and Charges to be paid by the Customer.

The following fees and charges shall be paid by the customer to connect to a District water system for potable water or reclaimed water service; these are in addition to the fees and charges in Section 9 and 25. Fees and charges shall include, but not be limited to, District fees, San Diego County Water Authority fees, applicable zone charge and charges for work performed by District personnel on behalf of the customer. These charges may include the installation by District personnel of a water service lateral, and inspections required due to the requirement of a back flow device. These charges may also include a meter fee, installation fee (where lateral exists), lateral fee, meter box fee, and excavation permit fee.

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B. Basis for Determination of Connection Fees and Charges.

The fees and charges shall be determined as follows:

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1. For permanent water meters, including potable or recycled irrigation service, the total water connection fee shall be determined on the basis of the demand to be placed on the District water system. The extent of demand will be determined on the basis of the size of the water meter, as set forth in Section 27 of the Code. The water connection fee will be determined by multiplying the demand factor, as set forth below, for the meter size by the total of the District-wide capacity fee and applicable zone charge.

<u>Meter Size</u>	<u>Demand Factor</u>
3/4"	1
1	2-1/2
1-1/2"	5
2"	8
3"	16
4"	25
6"	50
8"	80
10"	115

The District-wide capacity fee and the applicable zone charge shall constitute the "base rate." For fees or charges after January 1, 2003, the base rate shall be adjusted quarterly for fluctuations in construction costs, as measured by the *Engineering News Record Construction Cost Index for the Los Angeles Region*. The ENR Construction Cost Index of 7,402.75 (as of January 1, 2003) shall be deemed the "base index." The adjustment shall be in an amount equal to the percentage change in the ENR Construction Cost Index from the base index for the period from April 2, 2003 to the date of payment.

28.02 INSTALLATION CHARGES FOR WATER METER AND WATER SERVICE LATERALS

The determination of the water meter or service lateral size shall be based upon the information provided by the customer as detailed in Section 27 of the Code. The installation charges are set forth in Appendix A, 28.02.

Where a water meter larger than 2-inch or a new water lateral is required, a customized, written estimate of the District's costs will be prepared.

The customer shall deposit the estimated costs with the District prior to commencement of the work. If actual costs incurred by the District are less than the amount deposited, the District shall refund the excess to the customer. If the actual costs incurred exceed the amount deposited, the customer shall reimburse the District for the additional costs.

28.03 METER FEE REFUND

- A. If a water meter/service has been paid for but not installed, a customer may receive a refund of the District's capacity fee and charges. If San Diego County Water Authority capacity fees have been paid to San Diego County Water Authority, the customer shall request a refund from San Diego County Water Authority.
- B. If the customer wants to change the meter/service size, they will be credited with the number of equivalent dwelling units they have previously purchased and will be refunded any balance per Section 28.03 A, above. If additional equivalent dwelling units are required, the customer will be charged based on 28.01 and 28.02

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Improvement Zone	Capacity Total Water	Capacity Fee
District	Charge	Capacity Fee
La Presa	\$4,120.00	\$4,120.00
.2	4,120.00	4,120.00
.3	4,120.00	4,120.00
.5	4,120.00	4,120.00
.7	4,120.00	4,120.00
.9	4,120.00	4,120.00
ID 9 Zone 1655	4,120.00	23,550.00
10	4,120.00	4,120.00
19	4,120.00	4,120.00
20	4,120.00	4,120.00
22	4,120.00	4,120.00
25	4,120.00	4,120.00
22/27 (excluding Triad)	4,120.00	4,120.00
Triad	3,102.00	3,102.00
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Meter Size	Installation	Total
3/4"	\$59.00	\$47.00 \$60.00 \$166.00
1"	117.00	47.00 60.00 224.00
1 1/2"	250.00	61.00 103.00 ... [1]
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28.04 FEES FOR CONSTRUCTION OF WATER FACILITIES FOR RANCHO JAMUL  
PRESSURE ZONE 1655

There is hereby established a fee for construction of water facilities that are required to provide water service in Pressure Zone 1655 within Improvement District 9. The pressure zone area is as shown on the map on file in the office of the District Secretary. See Appendix A, 28.01 B.1. for list of fees per meter size.

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<u>Size</u>	Meter <u>Fee</u>	Meter <u>Box*</u>	Meter <u>Installation</u>	<u>Total</u>
3/4"	\$59.00	\$47.00	\$60.00	\$166.00
1"	117.00	47.00	60.00	224.00
1-1/2"	250.00	61.00	103.00	414.00
2"	475.00	61.00	240.00	776.00

\*Charge applies only when installation of a meter box is required.

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Temporary water service is water service provided for a limited period of time not to exceed 365 days, and used for temporary purposes such as construction, hydrotesting water systems, vegetation of slopes, and other uses noted in this section. Temporary water service shall not be provided to residential dwellings or commercial business enterprises.

31.02 REQUIREMENT OF TEMPORARY METER FOR SERVICE

Temporary service may be provided after installation of a temporary meter pursuant to a customer's written application for such service. Temporary service by means of a "jumper" or other unauthorized connection to the District water system is prohibited.

A Size and Location.

- 1. The size and location of temporary meters will be determined solely by the District.
- 2. For temporary service from a fire hydrant, a meter of at least 4" in size will be required. Only one 2½" fire hydrant port per fire hydrant shall be occupied by a temporary meter at one time.

B. Temporary water service from a fire hydrant shall be limited to the following applications:

- 1. Filling of water trucks and drop tanks.
- 2. General construction requirements, such as backfill and compaction, guniting and stuccoing, and block wall building.
- 3. Flushing of storm drains and sewer lines.
- 4. Filling, hydrotesting, chlorination, and flushing of newly constructed potable and reclaimed water lines.
- 5. Filling, flushing, hydrotesting, and the initial operational coverage testing of reclaimed water irrigation systems. Temporary service provided for this application shall be limited to a maximum of 60 days.
- 6. Operation of landscape irrigation for the establishment of vegetation on slopes or other planted

areas. Temporary service provided for this application shall be limited to a maximum of 180 days.

Item 5 and 6 above shall require the installation by the customer of a District approved and tested reduced pressure backflow device prior to the temporary service being established. The backflow device shall be installed in plain view and within 3 feet of the temporary hydrant meter.

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C. Temporary service to construction trailers or other temporary construction buildings shall be provided as follows:

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1. Through a temporary meter connected to the 1 or 2 inch service lateral for the lot the trailer is placed on.
2. Where Item 1 above is not possible, through a temporary meter connected to appurtenances other than a fire hydrant, such as a blow off.
3. Where either Item 1 or 2 above is not possible, from a temporary 4 inch meter connected to a fire hydrant.

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Service to construction trailers or other temporary construction buildings shall require the installation by the customer of a District approved and tested reduced pressure backflow device prior to the temporary service being established. The backflow device shall be installed in accordance with District requirements.

D. Temporary service to community service organizations shall be provided under the conditions set forth below:

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1. The community service organization shall make a minimum payment for the temporary connection. See Appendix A, 31.02 D.1. for charges.
2. If the cost of the water used exceeds \$25.00, the community service organization shall pay the excess cost. See Temporary Water Service Rates in Appendix A, 25.03 E.6.(b) for rates per meter.
3. The temporary service shall be limited to 48 hours within any one month period.
4. The meter shall be installed by District staff.
5. The rate for water service shall be two times the normal domestic rate.

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E. If any unauthorized connection, disconnection or relocation of a temporary meter, or other connection device is made by other than District employees, District may discontinue further water service to the entire project.

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F. Extensions to the time limits referenced in this section may be made by the General Manager. Requests for time extensions shall be made by the customer in writing.

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31.03 FEES AND CHARGES FOR TEMPORARY METERS

A. Temporary Service. Temporary water service shall be furnished to the property owner or the owners authorized agent only and shall be provided under the following conditions:

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1. Requirement of Deposit. At the time application is made for temporary service, the customer shall deposit with the District the amount set forth in Appendix A, 31.03 A.1.

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2. Delinquency. No temporary meters shall be furnished to any person with a delinquent account with the District.

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Meter Size	Deposit¶
3/4"	\$ 150¶
1"	180¶
1-1/2"	330¶
2"	445¶
3"	850¶
4"	850¶
6"	2,075

3. Refund of Deposit or Additional Payment. Upon cancellation or termination of the temporary service, the District will refund the amount of deposit remaining after making the following deductions:

- a) cost of installing, moving and removing the meter;
- b) cost of repairing or replacing the meter, fire hydrant, and/or any fittings damaged or lost while in use; and
- c) unpaid charges for water used or other applicable charges.

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4. Temporary Meter Set-up & Removal. The charges to set-up and remove a temporary meter are set forth in Appendix A, 31.03 A.4.

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5. Temporary Meter Move Fee. If a meter needs to be moved from one location to another, see Appendix A., 31.03 A.5.

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~~B. Rates for Temporary Service. Payment for temporary water service shall be in accordance with rates and charges set forth in Section 25.03 E.6.(b).~~

31.04

PAYMENT OF CAPACITY AND ANNEXATION FEES FOR TEMPORARY METERS

- A. Customers, whose property has been annexed into an Improvement District, may elect to pay the capacity and annexation fees in addition to the deposit amount shown in Section 31.03 A.1.
- B. Capacity and annexation fees for this type of temporary service shall be calculated in accordance with Section 28.
- C. Payment for this type of temporary service shall be in accordance with the rates and charges set forth in Section 25.03 E.4(c).
- D. Customers electing this type of temporary service shall be credited the number of equivalent dwelling units they have previously purchased when the meter(s) is returned to the District. The credit shall be applicable to permanent meters purchased within the same subdivision or development where the temporary meter was used.

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SECTION 33 GENERAL REGULATIONS FOR USE OF WATER METERS

33.01 FURNISHED AND INSTALLED ONLY BY DISTRICT

Water meters used for service from a District water distribution system shall be furnished and installed by the District. Meters will be furnished only for use for a specific parcel of land. Master meters and meters for irrigation purposes may be furnished for more than one specific parcel of land upon the approval by the District. The Fees and charges are set forth in Appendix A, 28.02.

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33.02 OWNERSHIP OF METERS

The District shall retain title to all meters installed within the District. Payment by a customer of installation fees, capacity fees, meter charges, connection charges or any other fees or charges shall not transfer ownership of a meter from the District to the customer.

33.03 RELOCATION OF METERS

With prior District approval, water meters may be moved at the request of the owner from one location to another location on the same parcel or within the same tract owned by the customer upon payment of an amount determined by the District.

33.04 METER TURN-OFF REQUESTED BY CUSTOMER

At the request of the customer, a water meter may be turned off and locked without charge; provided, however, the system charge shall continue to apply.

33.05 REMOVAL OF METERS

A. Abandonment of Service. The District may remove any water meter where the customer has abandoned water service through that meter.

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B. Permanent Removal of Meters for Agricultural or Irrigation Service. When service is no longer required, meters for agricultural and irrigation service may be removed upon the request of a lessee who paid the fees and charges (or upon request of the owner if the lease has expired), or upon the request of the owner if the fees were paid by the owner.

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C. Request for Removal of a Water Meter After Installation. If, after installation of a water meter, a request is made by a customer for the removal of that water meter from service, the customer shall be credited with the number of Equivalent Dwelling Units ("EDU")

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for that meter size. If thereafter a request is made for the installation of the same size water meter at the same location, no capacity fee shall be due. If the customer's request is for a larger meter, all capacity fees and charges per 28.01 and 28.02 shall be due and payable for all EDUs, less the EDU credit for the meter previously removed. No refund shall be due or payable for any portion of a capacity fee previously paid. The customer shall pay any expenses incurred by the District for removing and replacing the meters.

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D. Removal of Meters for Delinquent Payment of Water System Charges. If an owner/customer remains delinquent in the payment of water charges or system charges after written notice of delinquency from the District, the District may remove the owner/customer's water meter. Refer to Section 72 for additional information regarding the procedure for removal of the meters. The fees and charges are set forth in Appendix A, 72.04 A.1.

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If the request for such service is made more than six months after removal of the meter, the request shall be processed as a new order for service and all applicable fees and charges for a new service (except for capacity fees) shall be due and payable.

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33.06 READING OF METERS

Meters shall be read once each calendar month.

Meters are read each time a meter is "turned-on" or "turned-off" and when water service is established as a new account.

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¶ 1. all charges that were delinquent at the time of removal of the meter and¶  
¶ 2. the District's then current charges for meter installation of the size to be installed for the resumption of service

33.07 ADJUSTMENT FOR METER INACCURACIES

A. Customer Request for Meter Test. A customer may request that the meter for the customer's service be tested for accuracy upon making a deposit with the District. The deposit is set forth in Appendix A, 33.07 A. per meter size.

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B. Results of Meter Test. If upon testing, the meter does not register more than five percent (5%) in excess of the rated calibration for such meter size, the deposit shall be retained by the District. If the meter so tested registers more than five percent (5%) in excess of the rated calibration for such meter size, the meter will be replaced by the District and the deposit shall be returned to the customer. No adjustment in billing shall be made for excess registration during any period prior to 120 days before the request for the test.

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¶ .5/8" x 3/4", 3/4" and 1" \$25.00  
¶ 1-1/2" and 2" \$50.00  
¶ 3" and larger \$125.00

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C. Failure of Meter to Register During Service. Should any meter in service fail to register during a billing period, a bill will be issued by the District for the estimated amount of water used during the period of the meter failure, based on prior use under that account.

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**Deleted:** A. Tampering Punishable as Misdemeanor. California Penal Code Section 499 provides as follows: "Every person who, with intent to injure or defraud, connects or causes to be connected, any pipe, tube or other instrument, with any main, service-pipe or conduit or flume, for the purpose of taking water from such main, service-pipe, conduit or flume, without the knowledge of the owner thereof, and with intent to evade payment therefor, and every person who, with intent to injure or defraud, injures or alters any water meter, water meter seal, service valve, or other service connection, is guilty of misdemeanor." ¶

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**Deleted:** B. Locking or Removing Damaged or Tampered Meters. Whenever the General Manager has determined that a water meter has been damaged or tampered with, in such a manner that the ... [1]

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.c) For 3", 4" and 6" meters, the charges li: ... [5]

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3. A meter installat: ... [6]

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B. Locking or Removing Damaged or Tampered Meters. Whenever the General Manager has determined that a water meter has been damaged or tampered with, in such a manner that the meter does not properly register the consumption of water, the meter shall be locked or removed. The meter shall not be opened or reinstalled for service until all of the following charges have been paid:

1. Outstanding water bills for the property being served by that meter;

2. A charge for servicing or repairing the meter in accordance with the following schedule:

a) For 3/4" and 1" meters

, the charge shall be as follows:

\$56.00	Broken Lock/Locking Device
158.00	Cap Lock (Welded)
170.00	To Pull and Reset Meter
192.00	Broken Curbstop or Tabs
149.00	If Customer Uses Jumper

See Appendix A, 33.08 B. 2. (a) for charges.

b) For 1-1/2" and 2" meters, the charges listed in a) above shall be the same with the

exception in Appendix A, 33.08 B. 2. (b).

c) For 3", 4" and 6" meters, the charges listed in a) above shall apply with the following exceptions listed in Appendix A, 33.08 B. 2. (c).

3. A meter installation fee in accordance with Section 28; and

4. A charge for estimated quantity of water consumed but not paid for since the last regular correct reading, which shall be determined on the basis of prior use under the customer's account for the damaged or tampered meter.

SECTION 34 ISSUANCE AND PAYMENT OF WATER BILLS

34.01 ISSUANCE, DUE DATE AND FINAL PAYMENT DATE OF STATEMENT OF CHARGES FOR SERVICE

A. Issuance of Statements. Statements for water service or other charges will be mailed or presented as soon as practicable after the water meter has been read and the applicable charges have been determined.

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B. Due Date. Each statement issued by the District for such charges shall be due and payable on the date of mailing or other presentation to the customer.

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C. Final Payment Date. All charges in each statement must be paid on or before the final payment date shown on the statement, which shall be at least 20 calendar days following the date of mailing or presentation of the statement.

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D. Payment of Charges

1. Place of Payment. Payments shall not be credited to a customer's account until either cash, an acceptable check or money order has been received by the District at the District business office during regular office hours. Deposit of payment in the mail or at a location other than the District business office shall not be credited to a customer's account until received at the business office.

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2. Returned Check Charges. A returned payment charge (see Appendix A, 34.01 D.2. for charge) shall be added to a customer's account in each instance where payment has been made to the District with funds that have been returned to the District by the bank upon which it is drawn.

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34.02 DELINQUENT ACCOUNTS

A. For Non-Payment of Charges. If full payment of a statement for a water service account is not received at the District business office on or before the final payment date, the account shall become delinquent.

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B. Late Payment Charge. A late payment charge (see Appendix A, 34.02 B. for charge) of the total amount delinquent shall be added to each delinquent account at the time any amount becomes delinquent, provided that the charge shall not be made on any account

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which at that time has no delinquencies of record. When a late payment charge is made, such shall be added to the delinquent account as of the date the account becomes delinquent and such charges shall become an inseparable part of the amount due as of that time.

C. Notice of Delinquency. A delinquency notice shall be mailed to each customer whose account is delinquent, notifying the customer that service will be turned off unless payment is made. The notice shall indicate the amount due, including late payment charges, and that the total amount must be paid within fifteen (15) calendar days from the date of mailing or presentation of the notice to the customer, or service will be discontinued.

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D. Record of Delinquent Accounts. The District maintains records of delinquent accounts. Each year one delinquency shall be removed from the record of each account that has one or more delinquencies.

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E. Partial Payment on Delinquent Account. A partial payment on a delinquent account may be accepted and credited to a customer's account; however, the partial payment shall not cause removal of the account from a delinquent status and furthermore, the partial payment shall not preclude the meter from being turned off for delinquency.

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F. Financial Arrangements for Delinquent Accounts.

1. Continuation of Service. The General Manager, Controller, or any person delegated by the General Manager, may authorize continuation of service to a delinquent account if financial arrangements, satisfactory to the District, have been established.

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2. Requirement of Deposit Due to Repeated Delinquencies. If payments on a customer account have become delinquent five or more times, or if a meter has been turned off three or more times for non-payment of charges, the General Manager, Controller, or any person delegated by the General Manager, shall be authorized to require the customer to make a cash deposit with the District in an amount equal to two times the amount of the average monthly bill for the three month period preceding the discontinuance of service before further water service will be provided under the customer's account.

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G. Termination and Reinstatement of Water Service Under Delinquent Accounts

1. Delinquency Tag. The water meter or meters under delinquent accounts may be turned off and locked if payment has not been made in accordance with the Notice of Delinquency.

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(a) Where an owner or manager is listed by the District as the customer of record of the service, the District shall make every good faith effort to inform the actual users of the services when the account is in arrears by means of a notice that service will be terminated in ten days. The notice shall further inform the actual users that they have the right to become customers of the District without being required to pay the amount due on the delinquent account.

(b) Residential water service shall not be terminated for non-payment in any of the following situations:

(1) During an investigation by the District of a customer dispute or complaint. Any residential customer who has initiated a complaint or requested an investigation within five days of receiving the disputed bill, or who has, within 13 days of the mailing of the notice that the customer's service will be terminated for non-payment, or made a request for extension of the payment period of a bill asserted to be beyond the means of the customer to pay in full during the normal period for payment, shall be given an opportunity for a review. The review shall include consideration of whether the customer shall be permitted to amortize the unpaid balance of the account over a reasonable period of time not to exceed 12 months. No termination of service shall be effected for any customer complying with an amortization agreement, if the customer also keeps the account current as charges accrue in each subsequent billing period.

Any customer, whose complaint or request for an investigation has resulted in an adverse determination by the District, may appeal the determination to the Board.

- (2) When a customer has been granted an extension of the period for payment of a bill.
- (3) On the certification of a licensed physician and surgeon that to do so will be life threatening to the customer and the customer is financially unable to pay for service within the normal payment period and is willing to enter into an amortization agreement to pay the unpaid balance of any bill asserted to be beyond the means of the customer over a period not to exceed 12 months.
- (c) The ten-day notice of proposed termination may not be sent to the customer until at least 19 days from the date of mailing of the bill for services. The ten-day period shall not commence until five days after the mailing of the notice
- (d) The District shall make a reasonable, good faith effort to contact an adult person residing at the premises of the customer by telephone or in person, at least 48 hours prior to any termination of service. A charge (see Appendix A, 34.02 G.L.(d) for charge) shall be added to the bill for a contact made in person.
- (e) Every notice of termination of service pursuant to subdivisions (a) and (c) shall include all of the following information:
  - (1) The name and address of the customer whose account is delinquent
  - (2) The amount of the delinquency.
  - (3) The date by which payment or arrangements for payment is required in order to avoid termination.
  - (4) The procedure by which the customer may initiate a complaint or request an investigation concerning service or charges, except that if the bill for service contains a description of that procedure, then the notice is not required to contain that information.
  - (5) The procedure by which the customer may request amortization of the unpaid charges.

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- (6) The procedure for the customer to obtain information on the availability of financial assistance including private, local, state or federal sources, if applicable.
- (7) The telephone number of a representative of the District who can provide additional information or institute arrangements for payment.
- (f) If a residential customer fails to comply with an amortization agreement, the District shall not terminate service without giving notice to the customer at least 48 hours prior to termination of the conditions the customer is required to meet to avoid termination, but the notice does not entitle the customer to further investigation by the District.
- (g) Termination of service shall not occur on any Friday, Saturday, Sunday, legal holiday or at any time during which the business offices of the District are not open to the public
- (h) No termination of service may be effected without compliance with this section and any service wrongfully terminated shall be restored, without charge, for the restoration of service.

(See California Government Code Section 60373.)

2. Reinstatement of Service. Water service terminated for delinquency may not be reinstated until all amounts due and payable, including late payment charges and meter "turn-on" charges, have been paid at the District business office, or unless credit arrangements satisfactory to the District have been made.

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3. Meter "Turn-On" Charge A "turn-on" charge shall be made for turning on any meter which has previously been turned off for a delinquent account. The charges for turn-on shall be as follows:

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- (a) For any account turned on during the District's regular business hours the turn-on charge is set forth in Appendix A, 34.02 G.3. (a).
- (b) For any account turned on after the District's regular business hours, the turn-on charge is set forth in Appendix A, 34.02 G.3. (b).

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SECTION 53 FEES, RATES, CHARGES AND CONDITIONS FOR SEWER SERVICE

53.01 CONDITIONS FOR ACQUISITION OF SEWER SERVICE CAPACITY

Sewer service capacity may be acquired only for service to a specific address, parcel of land, or a land development project covered by an approved map. An approved map shall mean a recorded final map, a recorded parcel map or a tentative subdivision map that has been approved by the County or by a City, as applicable.

53.02 SERVICE AREAS

A. Service Areas. Sewer service shall be furnished by the District only to property located in Improvement District No. 14 ("I.D. 14"), Improvement District No. 18 ("I.D. 18"), and Assessment District No. 4 ("A.D. 4"), and the Russell Square Sewer Service Area. Sewer service to property located outside such areas may be furnished only upon annexation to ID 18 and payment of all applicable annexation fees.

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53.03 ACQUISITION OF SEWER CONNECTIONS FOR SERVICE IN I.D. 14, I.D. 18 AND A.D. 4

A. There shall be no connection capacity fee for sewer service to parcels already annexed into Improvement District No. 14, Improvement District No. 18 and Assessment District No. 4 on or after December 16, 1998.

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53.04 ACQUISITION AND PURCHASE OF SEWER CAPACITY FOR SERVICE IN THE RUSSELL SQUARE SEWER SERVICE AREA

A. District Acceptance of Sewer Facilities for Russell Square Area. Under an Agreement with Cal Dorado Development, Inc., dated June 28, 1981, the District accepted title to a sewer pump station, force main and appurtenances for a sewage system to provide sewer service to the residential dwelling units to be constructed within the parcels of land in San Diego County Tentative Parcel Map 17150. Under an Agreement with Cal Dorado Development, Inc., dated June 18, 1981, the District agreed to provide service to such parcels on the terms and conditions contained therein. On October 1, 1984, pursuant to Resolution No. 2139, the District Board of Directors accepted title to the facilities.

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B. Designation of Russell Square Sewer Area. The geographical area described on the District Map entitled "Russell Square Sewer Service Area," dated October 11, 1988, on file with the District Secretary, constitutes the Russell Square Sewer Service Area.

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C. Connection Fees for Connections for Sewer Service through the Russell Square Sewer Pump Station.

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1. Sewer Connection Fee

A connection fee, (see Appendix A, 53.04 C.1. for fee) for each EDU of sewer service provided through Russell Square Pump Station shall be collected. The connection fee is due at the time an application for sewer service is submitted. The number of EDUs for the connection shall be as set forth in Section 53.09 of the Code. Since the Russell Square Pump Station and force main were constructed by the developer or his assignee, at their expense, for the purpose of providing service to the parcels within Tentative Parcel Map 17150, the connection fee shall not apply to connections for sewer service to the parcels within said map. Such exempt parcels are currently identified as Assessor Parcel Nos. 497-011-41, 497-011-42, 497-011-44, 497-011-46 and 497-011-47

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2. Monthly Sewer Service Charge

A monthly sewer service charge, (see Appendix A, 53.04 C.2. for charge) to cover normal operational costs of the Russell Square Pump Station and force mains shall be collected. This charge shall be reviewed by the Board of Directors from time to time to assure that such charges cover the costs for operation of the sewer facilities.

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3. The proceeds of the fees and charges received by the District under 1 and 2 above shall be used by the District solely for maintenance, replacement or repair under C.1. above and for the operation of the facilities under C.2. above.

4. In addition, the customer for such service shall pay the monthly service charge for sewer service set forth in Section 53.11.

53.05

CHARGES FOR INSTALLATION OF SEWER LATERALS

Upon application for construction of one or more sewer laterals, the customer shall deposit with the District the estimated costs to be incurred by the District in connection with the installation of the facilities required, as determined by the District. Upon completion of the work, the District shall calculate the actual costs incurred by the District in performing the work. If actual costs are less than the amount deposited, the District shall refund the balance of the deposit to the customer. If actual costs exceed the amount deposited, the customer shall reimburse the District for the additional costs.

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53.06

PAYMENT OF FEES

All fees prescribed in the Code shall become owing, due and payable at the time application is made to connect a premise to the sewer system of the District. The fees shall be paid to the District prior to the issuance of any permit authorizing the connection of such premise to the District sewer system. If the proposed connection cannot be made, the fee may be refunded when approved by the General Manager.

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53.07

SEWER SERVICE USE CHANGES RESULTING IN INCREASED SYSTEM UTILIZATION

The use of a sewer connection shall be limited to the type and number of EDUs authorized by the original wastewater discharge permit. Before adding any additional equivalent dwelling units, buildings, modifying existing buildings, or change of occupancy type, the property owner shall make a supplementary wastewater permit application to the District for such change in use and pay additional sewer annexation fees per EDU, if necessary, as may be applicable. Periodic inspection of the premises may be made by the District and if actual use is greater than estimated use, an assessment for additional annexation fees shall be assessed in accordance with the fee schedule in the then current Code of Ordinances.

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WASTEWATER DISCHARGE PERMIT ISSUANCE AND LIMITATION

1. A wastewater discharge permit shall be required for any property for which a request is made to discharge into the District sewage system.

2. Every wastewater discharge permit shall expire by limitations and shall become null and void, if the construction or work authorized by such permit is not commenced within 120 days from date of issuance of such wastewater discharge permit or if the construction or work authorized by such wastewater discharge permit is suspended or abandoned for a period of 120 days at any time after the work is commenced.
  
3. Before such work can be recommenced, a new wastewater discharge permit application must be filed with the District. The District may reactivate the previous wastewater discharge permit provided that wastewater quantity and type is the same as the wastewater discharge allowed under the original permit, and provided further that such suspension and abandonment has not exceeded one year. Fees paid for the previous wastewater discharge permit may be credited toward the total permit fees required on the new permit application. Reactivation of the previous wastewater discharge permit shall be subject to District sewer capacity being available at the time of new application and subject to any additional costs or charges imposed during the period of such suspension or abandonment.

53.09 BASIS FOR DETERMINATION OF EDUS

1. The number of EDUs for sewer service shall be determined on the following basis:

a)	<u>Residential Facilities</u>	EDUs
1)	Single-Family Residence (Includes manufactured homes, and mobile homes which are on private lots	1.0
	A secondary structure with a kitchen is considered an additional EDU	
2)	Apartments and Multiple Family Housing Each individual living unit	1.0
3)	Residential condominiums Each individual living unit	1.0
4)	Mobile Home and Trailer Parks Per each individual space	1.0
b)	<u>Commercial/Industrial Facilities</u>	

- 1) Food Service Establishments
  - a) Take-out restaurants with disposable utensils, no dishwasher and no public restrooms 3.0
  - b) Miscellaneous food establishments - ice cream/yogurt shops, bakeries (sales on premise only) 3.0
  - c) 1) Take-out/eat-in restaurants with disposable utensils, but with seating and public restrooms 3.0
    - 2) Restaurants with reusable utensils, seating and public restrooms (0-18 seats)
 

3.0

Each additional 6 seat unit, or portion thereof 1.0
- 2) Hotels and Motels
  - a) Per living unit without kitchen 0.38
  - b) Per living unit with kitchen 0.60
- 3) Commercial, Professional, Industrial Buildings, Establishments not specifically listed herein
  - a) Any office, store or industrial condominium or establishments. first 1,000 sq. ft. 1.2
 

Each additional 1,000 sq. ft. or portion thereof

0.7
  - b) Where occupancy type or usage is unknown at the time of application for service, the following EDUs shall apply. This shall include, but not be limited to, shopping centers, industrial parks and professional office buildings.

First 1,000 sq. ft. of gross building floor area 1.2

Each additional 1,000 square feet of gross building floor area. Portions less than 1,000 sq. ft. will be prorated. 0.7

4) Self-service laundry per washer 1.0

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5) Churches, theaters and auditoriums per each 150 person seating capacity, or any fraction thereof. (Does not include office spaces, schoolrooms, day-care facilities, food preparation areas, etc. Additional EDUs will be assigned for these supplementary uses.) 1.5

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6) Schools

a. Elementary Schools - For each 50 pupils or fraction thereof 1.0

b. Junior High Schools - For each 40 pupils or fraction thereof 1.0

c. High Schools, Colleges and Universities - For each 24 pupils or fraction thereof 1.0

Additional EDUs will be prorated based on above values.

The number of pupils shall be based on the average daily attendance of pupils at the school during the preceding fiscal year, computed in accordance with the education code of the State of California. However, where the school has had no attendance during the preceding fiscal year, the General Manager shall estimate the average daily attendance for the fiscal year for which the fee is to be paid and compute the fee based on such estimate.

7) Convalescent Homes

- a) Skilled nursing care facilities, psychological hospitals, convalescent hospitals; licensed by the Department of Health. 0.7/bed
- b) Community Care Facilities with 16 or more beds licensed by the State Department of Health. 0.5/bed
- c) Small Community Care Facilities with 7 to 15 beds licensed by the County Department of Social Services 0.5/bed
- d) Community Care Homes with six or fewer total residents, including resident staff and housekeepers (to be the same EDU as a single-family residence). 1.0

8) Other

In the case of commercial, industrial and other business establishments such as bottling works, supermarkets, markets, deli/markets, convenience stores, hospitals, laundries (other than self-service laundries), automobile service stations, mortuaries, day-care centers, bars, pool halls, and other establishments not included in items 1) through 7) inclusive, or when the EDUs specified in items 1) through 7) are not representative of actual flow due to the number of employees or type of operation, the number of equivalent dwelling units shall be determined in each case by the General Manager and shall be based upon the estimated volume and type of wastewater discharge into the sewer.

53.10 TRANSFER, ASSIGNMENT, OR RESALE OF SEWER CONNECTION RIGHTS

EDU sewer connection rights obtained by a customer may not be sold, transferred, or assigned separately from ownership of the real property for which they were obtained, unless otherwise stated in an agreement with the District.

53.11 SEWER SERVICE RATES AND CHARGES

A. Set-up Fees for Accounts. A set-up fee, (see Appendix A, 53.11 A. for fee) shall be charged for each account transferred to another customer.

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B. Residential Sewer Charges.

(1) Winter Average Determination. Sewer service usage fee shall be based on the "Winter Average" water consumption, measured in units of hundred cubic feet (HCF). For Otay water customers, the winter period is December through March, and for Helix water customers, the winter period is January through April. The winter average for Otay is calculated by adding the four months of the preceeding winter together and dividing by four. The winter average for Helix is calculated by adding the two billing periods of the four months together and dividing by four. For both Otay and Helix water customers, this average is then reduced by a 15% usage discount, recognizing that not all water used flows into the sewer system, to determine the "Winter Average" for billing purposes.

(2) Usage Fee. The usage fee rate, (see Appendix A, 53.11 B.2., for rate) is multiplied by the "Winter Average" calculation for each customer (after the above noted 15% discount) and the resulting amount is added to the Fixed Service Charge applicable to the size of meter. The resulting fixed fee shall be charged on a monthly basis for an entire calendar year, until a new "Winter Average" is determined for the following year.

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(3) Base Fee. The monthly base fee per meter size is set forth in Appendix A, 53.11 B.3.,

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(4) Monthly Residential Sewer Rate Without Consumption History. The average residential sewer charge shall be calculated by calculating the total usage fee for all residential

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customers and dividing by the number of residential customers. Then the monthly base fee for 3/4 inch meter is added to this average fee and this shall be used to determine the rate per ASU to be used for commercial customers. The monthly residential sewer rate without consumption history is as set forth in Appendix A, 53.11 B.4., for charge).

C. Single Residential Winter Averaging

- (1) Defined as: Sewer service for individually metered residential households.
- (2) The monthly sewer bill is calculated by adding the base fee plus the usage fee as described in 5.11.B.(1),(2), & (3) above.
- (3) The maximum "Winter Average" for individually metered residential customers is (after the 15% discount) as follows:
  - i. January through December 2008 - 18 units
  - ii. January through December 2009 - 22 units
  - iii. After December 31, 2009 - 30 units

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- (4) New Customers. New customers that do not have a prior winter consumption history to determine their monthly usage fee shall be assigned a "Winter Average" for single individually metered households. See Appendix A, 53.11 C.4. for Winter Averaging fees.

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D. Multi-Residential Rate Charges

- (1) Defined as: Sewer service for master metered water service for multiple-residential households including for example; duplex, townhomes, apartments, and mobile homes.
- (2) The monthly sewer bill for the complex is calculated by adding a 3/4 inch base fee (as set forth in Appendix A, 53.11.B.3.) times the number of units in the complex plus the usage fee (as set forth in Appendix A, 53.11.D.2.) for the entire complex. (Note: There is no cap on consumption for the multi-residential customers.)
- (3) New complexes that do not have a prior winter consumption history to determine their monthly usage fee shall be assigned a "Winter Average" for each multiple-residential unit in a master metered

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residential complex. See Appendix A, 53.11 C.4. for Winter Averaging fees.

E. Commercial Sewer Charges

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- (1) ASU Determination: The charges for commercial sewer service shall be based on the rate of discharge and the strength of sewage. The Board of Directors may adjust the charges in proportion to the amount of water not entering the sewer which is substantiated by the property owner or discharger.
- (2) The strength of sewage is based on its biochemical oxygen demand (BOD) and the cost of removing suspended solids (SS).
- (3) The formula is derived by taking the total cost of providing sewer service and charging each user for a pro-rata share.
- (4) The State Revenue Program Guidelines require use of an "Assigned Service Unit Assignment Formula" which converts higher strength uses into a service unit value which is comparable to the use impact of a single-family residential user or equivalent dwelling unit. The formula for determining an Assigned Service Unit (ASU) for a single-family dwelling is set forth in the annual budget, which is incorporated herein by reference.
- (5) The formula is based on an estimated daily flow of 250 gallons per day plus 280 milligrams per liter of BOD and 234 milligrams per liter of SS for a residential equivalent dwelling unit.
- (6) For commercial users the flow is based on 85% of their prior 12-month water consumption to reflect the amount of water that returns to the system. The strength of discharge for commercial user is based on whether it is classified as a low-strength, medium-strength or high-strength user.

User Classification

Low-Strength Commercial = 1.000 Strength Factor

Car wash  
General office and buildings  
Barber and beauty shops  
Department, retail stores and general  
commercial

Hospitals and convalescent homes  
Laundromat, laundry and dry cleaners  
Professional office or office building  
Warehouse  
Other uses having a similar strength as  
determined by the District

Medium-Strength Commercial = 1.238 Strength Factor

Bars without dining facilities  
Bowling alley  
Hotels without dining facilities or cooking  
facilities  
Auto repair/sales shop and service station  
Shopping centers  
Other uses having a similar strength as  
determined by the District

High-Strength Commercial = 2.203 Strength Factor

Bakery or bakery with deli  
Hotel with dining facilities  
Restaurants and bars with food  
Supermarkets  
Other uses having a similar strength as  
determined by the District

Institutional = 1.000 Strength Factor

Churches: Treated the same as Low-Strength  
Commercial.

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Schools: For public schools flow is based on  
average daily attendance ("ADA") for the prior  
school year, including summer school, as  
reported by schools to meet state requirements.  
Private schools will be required to file a  
report verifying their attendance. For  
elementary schools 50 students shall equal 1  
ASU. For junior high schools 40 students shall  
equal 1 ASU and for high schools 24 students  
equals 1 ASU. The formula for schools shall be  
the same as applies to single-family  
residential. For charges see Appendix A, 53.11  
E.6.

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Colleges: For colleges, flow is based on the  
number of Certificated and Classified Staff,  
and students enrolled in each school session  
(Spring, Summer, and Fall):

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$$\begin{aligned}
 \text{Gallons per day (GPD)} &= \text{no. of students and staff} \times \\
 &\quad \text{no. of weeks Spring} \\
 &\quad \text{session)} \\
 &+ \quad (\text{no. of students and staff} \\
 &\quad \times \text{no. of weeks Summer} \\
 &\quad \text{session)} \\
 &+ \quad (\text{no. of students and staff} \\
 &\quad \times \text{no. of weeks Fall} \\
 &\quad \text{session)} \\
 &+ \quad (\text{no. of staff} \times \text{no. of non-} \\
 &\quad \text{session weeks)} \\
 &\times \quad 23 \div 52
 \end{aligned}$$

$$\begin{aligned}
 \text{ASU} &= \text{Daily Flow} \times \text{Strength Factor} \\
 &= [(\text{GPD} \times 85\%) \div 250] \times 1.000
 \end{aligned}$$

The minimum charge for commercial shall be no lower than 1 ASU at low strength. Charges are determined each fiscal year. The formula is set forth in the annual budget, which is incorporated herein by reference.

- F. Charges to Cover the State Loan Program for the Treatment Facility. A (see Appendix A, 53.11 F. for fee) fee per ASU shall be attached to the property tax bills to cover the annual payment on the \$5,000,000 state loan until such loan is paid in full.

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- G. Monthly Service Charges for Commercial Sewer Service. The Monthly Sewer Service charges for service furnished by the District, shall be:

1. Commercial and Institutional (per ASU):  
Commercial users shall be charged based upon the ASUs derived in Section 53.11 E.(4). For charges see Appendix A, 53.11.G.1.
2. Industrial and Other Users  
Charges determined by the Board of Directors on a case-by-case basis.

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Monthly sewer service charges shall commence upon installation of the water meter to serve the premises receiving the sewer service, upon connection to the District sewer system, upon start of occupancy of the premises to be served, or one year after the date the application for sewer service is filed, whichever is earlier. If a sewer service connection has been obtained and if sewer service will not be used until some time after

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installation of the water meter, commencement of the sewer service charge may be deferred until the later date only upon prior approval of the General Manager.

UTILITY FACILITIES FOR SUBDIVISIONS AND  
PARCEL MAP DEVELOPMENTS

60.01 INSTALLATION BY THE DISTRICT

The District will not construct facilities to provide utility service to land being divided for a subdivision or parcel map development, except where facilities are constructed as part of the Capital Improvement Program for the utility system of an improvement district.

60.02 INSTALLATION BY DEVELOPERS

Developers of land shall provide, at their own expense, all facilities required for utility service within the area to be developed. In order to obtain required services it may be necessary for a Developer, in some instances, to also provide certain off-site facilities or to provide for oversizing of the facilities which are to become part of the District system. In such event, the Developer may be entitled to reimbursement of certain costs for such off-site or oversizing facilities as provided in Policy 26 of this Code.

60.03 ISSUANCE OF AVAILABILITY LETTERS FOR WATER AND/OR SEWER SERVICE

Upon request, the General Manager will provide a written statement (sometimes referred to as "availability" or "will-serve" letters) advising whether water and/or sewer service is available and, if not, whether such service could be made available, for a proposed development project within the District. A charge (see Appendix A, 60.03) will be made for each statement furnished by the District.

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60.04 REQUIREMENT FOR A SUBAREA MASTER PLAN (SAMP)

In some instances, a Subarea Master Plan (SAMP) may be necessary to establish the water, recycled water and sewer system facilities for adequate District service within and to a proposed subdivision project. A SAMP shall be required when any of the following situations have occurred:

- A. No previous SAMP was prepared and the complexity of the proposed subdivision requires integration into the District Water Resources Master Plan.
- B. The Developer is seeking to modify the requirements of the District's Water Resources Master Plan.
- C. The previously submitted SAMP for the proposed subdivision is no longer representative of the current development proposal.

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D. The previously submitted Developer SAMP for the proposed subdivision project is over two years old.

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E. The General Manager has determined a SAMP is required.

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The Developer may elect to have the SAMP performed by a private Engineering firm and submitted to the District for approval by the General Manager. The Developer may request the District to prepare the SAMP and deposit with the District the estimated cost of the SAMP. Prior to implementation, the SAMP shall be reviewed and approved by the General Manager. Approval of the SAMP shall occur prior to approval of any Construction Agreement for a Developer's improvement plans by the General Manager.

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60.05 REQUIREMENT FOR A TENTATIVE MAP

A. The Developer shall file with the District a tentative map of the proposed subdivision or parcel map project.

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B. The Developer shall deposit with the District a sum determined by the General Manager to cover the estimated cost of plan checking and engineering services.

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C. The General Manager will review the tentative map and return it to the Developer indicating thereon the water and/or sewer system that will be required for the development.

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60.06 REQUIREMENT OF EASEMENT OR RIGHT-OF-WAY FOR UTILITY FACILITIES

Whenever the plans, as approved, provide for any portion of the utility facilities to be constructed in other than a dedicated public street or road, the Developer shall grant or cause to be granted an easement or right-of-way to the District in the form specified by the General Manager. Whenever facilities are terminated at a point short of the boundary of the parcel owned by the Developer, a permanent easement, in accordance with Section 36.02, shall be granted to District in order to provide for future extension of the facility to adjoining parcels of land. This requirement shall also apply to those cases where the County or a city requires the Developer to provide a one foot buffer between the subdivision or lot-split boundary and the adjoining property.

60.07 REQUIREMENT FOR ANNEXATION

A. The Developer desiring service to properties which lie outside the District or outside an Improvement

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District shall request annexation. The Developer shall request such annexation in writing to the General Manager.

B. The Engineering Department shall provide an annexation packet outlining the required information and charges as detailed in Chapter 6, Section 9 of this Code.

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C. Annexation shall occur prior to approval of any Construction Agreement for the Developer's improvement plans by the General Manager.

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60.08 REQUIREMENT FOR APPROVED PLANS AND CONSTRUCTION AGREEMENT

A. ~~Developer shall prepare detailed engineering drawings for construction of the proposed system shown on the tentative map and submit such drawings to the District for review and approval. Each system shall provide for water service and/or sewer service, where applicable, to each lot in a subdivision and to each parcel in a parcel map development. The utility system proposed shall not be detrimental in any way to operation of the District utility system and shall conform to the requirements of the approved SAMP.~~

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B. ~~The General Manager shall review the construction drawings and either accept, reject, or revise them for compliance with District standards and specifications. Upon approval of the drawings, the General Manager shall return them to the Developer with the following: (i) District estimates for construction costs and the amount of additional District deposit; (ii) the required standard District agreement for installation of water or sewer facilities; and (iii) the amount of security required to guarantee performance of the agreement.~~

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C. ~~Developer shall return to the District the revised drawings, if required, the executed subdivision construction agreement, together with the required deposits and security, either cash, surety bond, or letter of credit, acceptable to the General Manager, and the grant of easements or rights-of-way that may be required. If such are complete, and the proposed subdivision has been annexed into an Improvement District, the Construction Agreement for the project will be authorized by the General Manager.~~

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D. ~~Upon approval of the construction agreement by the General Manager, the Developer shall submit the~~

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mylar construction plans for signature by the General Manager.

60.09 REQUIREMENT FOR DISTRICT INSPECTION

A. Upon receipt by the General Manager of the approved plans, and prior to beginning construction of the facilities, the Developer shall schedule a pre-construction meeting with the General Manager.

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B. Upon completion of the pre-construction meeting, the Developer shall commence construction of the facilities and complete the same in accordance with the standard construction agreement, the approved plans, and the District's Standard Specifications for Water, Sewer, and Reclaimed Water Facilities and the instructions given at the pre-construction meeting.

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C. During the construction of the facilities, they shall be subject, at all times, to inspection by the District's Quality Control Division.

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60.10 REQUIREMENTS FOR USE OF UTILITIES FOR OCCUPANCY PRIOR TO DISTRICT ACCEPTANCE

The Developer may purchase and obtain permanent water meters and sewer services for occupancy in the project prior to acceptance of the project by the General Manager, subject to the conditions stated below:

A. Water Meter

1. The purchase of permanent meter(s) shall be in accordance with Sections 27 and 28 of this Code, and:

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a. There shall be sufficient funds in the Developer's District account to cover District expenses.

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b. Per Section 60.06 above, the Developer shall have in effect a valid construction agreement with the District.

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2. Prior to installation of any meter(s) the Developer shall meet the following conditions:

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a. The water system shall be hydrostatically tested, disinfected, pass a District bacteriological examination, be connected to the District's existing system with a permanent connection(s), and be installed in accordance with the District specifica-

tions and requirements prior to the use of the system.

- b. The meter box(es) shall be set to final grade and the installation shall be complete per the District's standard specifications.

B. Sewer Connection

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- 1. For acquisition of each sewer service connection, the Developer shall meet the following conditions:

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- a. There shall be sufficient funds in the Developer's District account to cover District expenses.
- b. Pay all fees and charges for each connection requested, and identify the parcel for which the sewer service is being provided.

- 2. Prior to connection(s) of any sewer services, the sewer system shall be constructed and complete in accordance with District specifications and requirements.

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- C. Prior to the installation of the last purchased meter or connection of the last sewer service, the project shall be referred to the General Manager for acceptance. In order to be accepted, all aspects of a project shall be complete per Section 60.11 below.

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60.11 REQUIREMENT FOR FINAL ACCEPTANCE BY THE GENERAL MANAGER

- A. Upon completion of the facilities, with only minor outstanding construction items remaining, a preliminary walk-through inspection and punch list of any outstanding items will be prepared. It shall be the responsibility of the Developer to assure any outstanding items are completed in a timely manner.

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- B. Upon completion of construction of the facilities in accordance with District specifications and requirements, a final inspection, completion of all outstanding punch list items, submittal and acceptance of the mylar record drawings, submittal and acceptance of the soils compaction report, and when all Developer accounts with the District have been made current, the facilities shall be referred to the General Manager for acceptance.

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60.12 REQUIREMENT FOR ONE YEAR WARRANTY PERIOD

A. Upon acceptance by the General Manager, the District shall own and operate the facilities.

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B. The Developer shall guarantee the facilities against defects in materials or workmanship for a minimum period of one (1) year from the date of acceptance by the Board of Directors. The method of guarantee shall be a warranty bond, or other means acceptable to the General Manager, in the amount of twenty-five (25) per cent of the District's estimated value of the project.

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C. Defects in materials or workmanship discovered during the one (1) year warranty period shall be repaired by the Developer and at the sole expense of the Developer. Any collateral damage caused by a defect in materials or workmanship during the warranty period, including District expenses, shall be borne solely by the Developer. This section does not limit the developer's liability for latent or patent defects.

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OTAY WATER DISTRICT  
BOARD OF DIRECTORS POLICY

Subject	Policy Number	Date Adopted	Date Revised
FURNISHING COPIES OF DOCUMENTS AND PREPARATION OF OTHER INFORMATION	05	10/15/84	4/3/96

Purpose

To establish charges for making copies of documents and for gathering other information.

Background

The District frequently receives requests for copies of documents prepared by the District or on file in District records. Occasionally the District receives requests for information not readily available from District records, but which could be made available after research and study performed by the District staff.

In such cases the District should be reimbursed for costs incurred in complying with such requests.

Policy

The charges for furnishing copies of documents such as identifiable public records, agendas, ratified minutes, or the preparation of other information is set forth in Appendix A, Policy 5.

1. For requests for non-identifiable documents or information that requires staff research.

- (a) Requests for such information shall be made in writing on a District Information Request Form.
- (b) Individuals or entities making such a request shall reimburse the District for the costs incurred by the District in providing the information requested.
- (c) Requests for information, the production of which would involve substantial costs in time and/or material to the District, shall be presented to the Board of Directors for review.

2. Charges for copies may be waived for the benefit of the District.

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1. For copies of identifiable public records the charge shall be \$0.10 per copy.

2. For the Service of Providing Agendas and Minutes of Meetings of the Board of Directors:

Agendas and/or Minutes shall be furnished upon written request. Charges for such copies shall be made as follows:

Agendas \$20.00 per year (\$ .50 per meeting)

Agendas and Minutes \$100.00 per year for the first copy and \$200.00 per year for each copy thereafter.

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Otay Water District  
Appendix A

Section #	Code #	Fee Description	Meter Size	Charges
9	9.04 A.1.	District Processing Fee		\$692.00
	9.04 B.	Annexation Fees for Annexations to Water Improvement Districts	Meter Size	District-wide Annexation Fee
		- I.D.'s 1,2,3,5,7,10, 19,20, 22, 22/27 (excluding Triad), and 25 (only I.D.'s 5,7,10, 19, 22, and 22/27 require reclaimed irrigation meters). (For properties annexed after 3/5/97.)	3/4"	\$1,601.00
			1"	\$4,003.00
			1 1/2"	\$8,005.00
			2"	\$12,808.00
			3"	\$25,616.00
			4"	\$40,025.00
			6"	\$80,050.00
			8"	\$128,080.00
			10"	\$184,115.00
		- ID 9	3/4"	\$1,601.00
			1"	\$4,003.00
			1 1/2"	\$8,005.00
			2"	\$12,808.00
			3"	\$25,616.00
			4"	\$40,025.00
			6"	\$80,050.00
			8"	\$128,080.00
			10"	\$184,115.00
		- 22/27 TRIAD	3/4"	\$1,601.00
			1"	\$4,003.00
			1 1/2"	\$8,005.00
			2"	\$12,808.00
			3"	\$25,616.00
			4"	\$40,025.00
			6"	\$80,050.00
			8"	\$128,080.00

			10"	\$184,115.00		
	9.04 C.4.	Annexation Fees for Annexations to Sewer Improvement Districts			\$5,442.00	
10	10.01	Filing of Petition			\$50.00	
23	23.04	Backflow Certification				
		- Second Notification			\$10.00	
		- Third Notification			\$25.00	
		- Reconnection (service resumed)			\$50.00	
		- Initial Filing Fee (New applicants for addition to the list of approved backflow prevention device testers)			\$25.00	
		- Renewal Filing Fee (to remain on list of approved backflow prevention device testers)		Annually	\$10.00	
25	25.03 A.	Set-up Fees for Accounts			\$10.00	
25	25.03 C.	Monthly Fixed System Charges, MWD & CWA Charges	Meter Size	System Charge	MWD & CWA Fixed Charge	Total Fixed Charge
			3/4"	\$14.58	\$9.77	\$24.35
			1"	\$18.52	\$16.28	\$34.80
			1-1/2"	\$28.37	\$32.61	\$60.98
			2"	\$40.18	\$52.15	\$92.33
			3"	\$71.68	\$104.30	\$175.98
			4"	\$107.13	\$162.98	\$270.11
			6"	\$205.59	\$325.92	\$531.51
			8"	\$323.73	\$521.51	\$845.24
			10"	\$461.57	\$749.61	\$1,211.18
25	25.03 E.1.(b)	Domestic Residential Water Rates		Unit	Charge	
				1 - 5	\$1.35	
				6-10	\$2.10	
				11-22	\$2.73	
				23 & over	\$4.21	

25	25.03 E.2.(b)	Multiple Residential Water Rates - Per Dwelling Unit		1-4	\$2.08		
				5-8	\$2.70		
				9 & over	\$4.15		
25	25.03 E.3.(b)	Business and Publicly-Owned Water Rates	under 10"	1-173	\$2.22		
				174-831	\$2.27		
				832 & over	\$2.31		
			10" & larger	1-7426	\$2.22		
				7427-14616	\$2.27		
				14617 & over	\$2.31		
25	25.03 E.4.(c)	Irrigation and Commercial Agricultural Using Potable Water Rates	1" & smaller	1-49	\$3.02		
				50-132	\$3.08		
				133 & over	\$3.14		
			1.5 & 2"	1-144	\$3.02		
				145-355	\$3.08		
				356 & over	\$3.14		
			3" & larger	1-1044	\$3.02		
				1045-8067	\$3.08		
				8068 & over	\$3.14		
25	25.03 E.5.(c)	Recycled Water Rates	1" & smaller	1-42	\$2.58		
				43-97	\$2.62		
				98 & over	\$2.67		
			1.5 & 2"	1-168	\$2.58		
				169-402	\$2.62		
				403 & over	\$2.67		
			3 & 4"	1-403	\$2.58		
				404-820	\$2.62		
				821 & over	\$2.67		

			6" & larger	1-7916	\$2.58		
				7917-16357	\$2.62		
				16358 & over	\$2.67		
25	25.03 E.6.(b)	Temporary and Construction Water Service Rates	1" & smaller	1-49	\$6.04		
				50-132	\$6.16		
				133 & over	\$6.28		
			1.5 & 2"	1-144	\$6.04		
				145-355	\$6.16		
				356 & over	\$6.28		
			3" & larger	1-1044	\$6.04		
				1045-8067	\$6.16		
				8068 & over	\$6.28		
25	25.03 E.8.(b)	Tank Trucks Water Rates	1" & smaller	1-49	\$6.04		
				50-132	\$6.16		
				133 & over	\$6.28		
			1.5 & 2"	1-144	\$6.04		
				145-355	\$6.16		
				356 & over	\$6.28		
			3" & larger	1-1044	\$6.04		
				1045-8067	\$6.16		
				8068 & over	\$6.28		
25	25.03 E.9.(c)	Application Fee for Water Service Outside District Boundaries			\$500.00		
25	25.03 E.9.(d)	Water Rate for Service Outside District Boundaries	1" & smaller	1-49	\$6.04		
				50-132	\$6.16		
				133 & over	\$6.28		
			1.5 & 2"	1-144	\$6.04		
				145-355	\$6.16		
				356 & over	\$6.28		

			3" & larger	1-1044	\$6.04	
				1045-8067	\$6.16	
				8068 & over	\$6.28	
25	25.03 E.10.(b)	Application Fee for Water Service Outside an Improvement District			\$275.00	
25	25.03 E.10.(c)	Water Rate for Service Outside Improvement District	1" & smaller	1-49	\$6.04	
				50-132	\$6.16	
				133 & over	\$6.28	
			1.5 & 2"	1-144	\$6.04	
				145-355	\$6.16	
				356 & over	\$6.28	
			3" & larger	1-1044	\$6.04	
				1045-8067	\$6.16	
				8068 & over	\$6.28	
25	25.03 E.11.(c)	Fire Service Monthly Charge			\$30.11	
25	25.03 E.12.(b)	Additional Water Service for Property Not Subject to District Taxes		per unit	\$0.29	
25	25.03 E.13.(b)	Interim Service Water Rate in Improvement District 7	1" & smaller	1-49	\$6.04	
				50-132	\$6.16	
				133 & over	\$6.28	
			1.5 & 2"	1-144	\$6.04	
				145-355	\$6.16	
				356 & over	\$6.28	
			3" & larger	1-1044	\$6.04	
				1045-8067	\$6.16	
				8068 & over	\$6.28	

25	25.03 F.	Energy Charges for Pumping Water		Per 100 ft of list over 450 ft per unit	\$0.038		
25	25.03 G.1.	Additional Water Charge for Service in the North District		Per unit charge except for the first 5 units of residential	\$0.08		
25	25.03 H.1.	Additional Water Charges for Service in the Improvement District 9 Water Service Zone		Per unit charge except for the first 5 units of residential	\$0.27		
25	25.03 H.2.	Additional Monthly System Fee for Improvement District 9			\$2.00		
25	25.03 I.1.(a)	Additional Water Charges for Services in Improvement District 3		Per unit charge except for the first 5 units of residential	\$0.17		
25	25.03 I.1.(b)	Additional Water Charges for Services in Improvement District 10		Per unit charge except for the first 5 units of residential	\$0.25		
25	25.03 I.1.(c)	Additional Water Charges for Services in La Presa		Per unit charge except for the first 5 units of residential	\$0.07		
25	25.04 A.	Deposits for Non-Property Owners	3/4"		\$75.00		
			1"		\$150.00		
			1-1/2"		\$200.00		
			2"		\$360.00		
			3"		\$800.00		
			4"		\$1,350.00		

			6"		\$3,300.00			
			8"		\$4,400.00			
			10"		\$5,500.00			
28	28.01 B.1.	Capacity Fees and Zone Charge	Meter Size	District-wide Capacity Fee	Rancho Jamul Zone 1655 Fee			
		- I.D.'s 1,2,3,5,7,10, 19,20, 22, 22/27 (excluding Triad), and 25 (only I.D.'s 5,7,10, 19, 22, and 22/27 require reclaimed irrigation meters).	3/4"	\$5,434.00				
			1"	\$13,585.00				
			1 1/2"	\$27,170.00				
			2"	\$43,472.00				
			3"	\$86,944.00				
			4"	\$135,850.00				
			6"	\$271,700.00				
			8"	\$434,720.00				
			10"	\$624,910.00				
			- ID 9	3/4"	\$5,434.00	\$25,628.00		
			1"	\$13,585.00	\$64,070.00			
			1 1/2"	\$27,170.00	\$128,140.00			
			2"	\$43,472.00	\$205,024.00			
			3"	\$86,944.00	\$410,048.00			
			4"	\$135,850.00	\$640,700.00			
			6"	\$271,700.00	\$1,281,400.00			
			8"	\$434,720.00	\$2,050,240.00			
			10"	\$624,910.00	\$2,947,220.00			
		- 22/27 TRIAD	3/4"	\$4,091.00				
			1"	\$102,228.00				
			1 1/2"	\$20,455.00				
			2"	\$32,728.00				
			3"	\$65,456.00				
			4"	\$102,275.00				
			6"	\$204,550.00				
			8"	\$327,280.00				
			10"	\$470,465.00				
28	28.02	Installation Charges for Water Meter and Water Service Laterals	Meter Size	Meter Fee	Meter Box	Installation	Total Fee	
			3/4"	\$59.00	\$47.00	\$60.00	\$166.00	

			1"		\$117.00	\$47.00	\$60.00	\$224.00
			1 1/2"		\$250.00	\$61.00	\$103.00	\$414.00
			2"		\$475.00	\$61.00	\$240.00	\$776.00
			3" and larger		\$653.00	n/a	\$300.00	\$953.00
31	31.02 D.1.	Requirement of Temporary Meter for Service		minimum/per day		\$25.00		
31	31.03 A.1.	Requirement of Deposit - Temporary Meters						
			3/4"			\$150.00		
			1"			\$180.00		
			1-1/2"			\$330.00		
			2"			\$445.00		
			3"			\$850.00		
			4"			\$850.00		
			6"			\$2,075.00		
31	31.03 A.4.	Temporary Meter Install & Removal				\$128.00		
31	31.03 A.5.	Temporary Meter Move Fee (includes backflow certification)	3/4" - 2"			\$64.00		
			3" and larger	No backflow test		\$64.00		
33	33.07 A.	Customer Request for Meter Test (Deposit)	5/8, 3/4 & 1"			\$25.00		
			1 1/2 & 2 "			\$50.00		
			3" & Larger			\$125.00		
34	34.01 D.2.	Returned Check Charges				\$25.00		
34	34.02 B.	Late Payment Charge				5% of Delinquent Balance		
34	34.02 G.1.(d)	Delinquency Tag				\$10.00		
34	34.02 G.3.(a)	Meter "Turn-On" Charge		During regular business hours		\$35.00		

34	34.02 G.3.(b)	Meter "Turn-On" Charge			After regular business hours	\$65.00	
53	53.04 C.1.	Sewer Connection Fee - Russell Square				\$7,500.00	
53	53.04 C.2.	Monthly Sewer Service Charge - Russell Square				\$200.00	
53	53.11 A.	Set-up Fees for Accounts				\$10.00	
53	53.11 B.2.	Residential Sewer Charges			Rate multiplied by winter average units)	\$1.56	
53	53.11 B.3.	Residential Sewer Charges Base Fee	5/8" & 3/4"			\$10.80	
			1" & larger			\$15.75	
53	53.11 B.4.	Monthly Residential Sewer Rate Without Consumption History	5/8" & 3/4"			\$36.88	
			1" & larger			\$41.83	
53	53.11.C.4.	Winter Averaging - Sewer					
		- Single Residential			19.68 - 15% discount = 16.73 units		
		- Multi-Residential			8 units - 15% discount = 6.8 units		
53	53.11 D.2.	Multi-Residential Rate Charges - Sewer			Rate multiplied by winter average units	\$1.56	
53	53.11 E.6.	Public Schools Sewer Rate			Per ASU (Based on Student Count)	\$36.88	
53	53.11 F.	Sewer State Loan Annual Charge			Per ASUs & Charged on annual tax bills	\$54.00	

53	53.11 G.1.	Monthly Service Charge for Commercial and Institutional Sewer		Per ASU	\$36.88		
60	60.03	Issuance of Availability Letters for Water and/or Sewer Service			\$75.00		
72	72.04 A.1.	Locking or Removing Damaged or Tampered Meters					
		- To Pull and Reset Meter	3/4" - 1"		\$170.00		
		- Broken Curbstop or Tabs	3/4" - 1"		\$192.00		
		- If Customer uses Jumper	3/4" - 1"		\$149.00		
		- Broken Lock/Locking Device	3/4" - 1"		\$56.00		
		- Cap Lock (Welded)	3/4" - 1"		\$158.00		
		- Broken Curbstop or Tabs	1.5" - 2"		\$265.00		
		- To Pull and Reset Meter	3"		\$351.00		
		- To Pull and Reset Meter	4"		\$454.00		
		- To Pull and Reset Meter	6"		\$454.00		
		- To Pull and Reset Meter	8"		\$600.00		
		- To Pull and Reset Meter	10"		\$600.00		
72	72.05 D. A.	Type I Fine					
		- First Violation			\$100.00		
		- Second Violations			\$200.00		
		- Third or each additional violation of that same ordinance or requirement within a twelve-month period			\$500.00		
		Type II Fine		Will not exceed per each day the violation is identified or continues.	\$5,000.00		
		Type III Fine		Fine up to amount specified per each day the violation is identified or continues.	\$500.00		

		Type IV Fine			Fine up to amount specified per each day the violation is identified or continues.	\$500.00	
State Water Code	#71630 & Annual Board Resolution #4142	Water Availability/Standby Annual Special Assessment Charge			Less Than One Acre all I.D.s &	\$10.00	
					Per Acre in I.D. 1, 5, & Outside an I.D.	\$10.00	
					Per Acre in I.D. 2,3,7,9,10,19,20, 22,25,& 27	\$30.00	
					Less Than One one acre Outside I.D. and greater than one mile from District facilities.	\$3.00	
					Per Acre for Outside I.D. & greater than one mile from District facilities.	\$3.00	
State Water Code	#71630 & Annual Board Resolution #4142	Sewer Availability/Standby Annual Special Assessment Charge			Less Than One Acre I.D. 4, 14, & 18	\$10.00	

				Per Acre I.D. 4, 14, & 18	\$30.00		
Annual Board Resolution		General Obligation Bond Annual Tax Assessment		Per \$1000 of assessed value for I.D. 27	\$0.005		
<b>Policies</b>							
5		Copies of Identifiable Public Records			\$0.10/page		
		Cassette Tape Duplication			\$2.00/tape		
		Yearly Subscription Service for Agendas and Ratified Minutes			\$20.00/year or \$0.50/meeting		
		Yearly Subscription Service for Board Packet and Ratified Minutes			\$100.00/year for first copy and \$200.00/year for each copy thereafter		

Attachment D includes the following proposed copies of the Code of Ordinances Sections 9, 10, 23, 25, 28, 31, 33, 34, 53 & 60 and Policy 5

CHAPTER 6 MISCELLANEOUS ADMINISTRATION PROCEDURES

SECTION 9 ANNEXATIONS AND DETACHMENTS

9.01 REQUIREMENT OF ANNEXATION FOR SERVICE

Except as provided elsewhere in this Code, whenever utility service is requested for land outside the boundaries of an improvement district, the land to be serviced must first be annexed to an improvement district(s). If the land is located outside the boundaries of the District, the land must also be annexed to the District.

9.02 ANNEXATIONS TO OR DETACHMENTS FROM IMPROVEMENTS DISTRICTS

An owner or owners of land within the District desiring to annex to or detach land from an improvement district within the District must file a petition for such proceeding with the District. Annexation proceedings shall be conducted pursuant to Chapter I (commencing with Section 72670) of Part 11, Division 20 of the California Water Code. Detachment or exclusion proceedings shall be conducted pursuant to Part 8.5 (commencing with Section 72080) of Division 20 of the California Water Code.

9.03 ANNEXATIONS TO OR DETACHMENTS FROM THE DISTRICT THROUGH LAFCO

An owner or owners desiring to annex land to or to detach land from the District may either (i) file a petition directly with the Local Agency Formation Commission (LAFCO) for the annexation or detachment or (ii) request the District to file the petition with LAFCO for such annexation or detachment. Any such proceeding for annexation or detachment, which is deemed a change of organization or reorganization pursuant to the Cortese-Knox Local Government Reorganization Act of 1985, shall be initiated, conducted and completed pursuant to Title 6, Division 1 (commencing with Section 56000) of the California Government Code.

9.04 FEES AND CHARGES FOR ANNEXATIONS OR DETACHMENTS

A petitioner requesting an annexation to or detachment from the District or an improvement district within the District shall pay the following applicable fees and charges:

- A. Administrative Processing Fees
1. District Processing Fee. A District processing fee (see Appendix A, 9.04 A.1. for fee) shall be paid to the District for each annexation or detachment proceeding, regardless of the number of parcels involved, provided all parcels are included in one proceeding. This fee shall constitute the "base rate" on March 3, 1997. The base rate shall be adjusted annually for fluctuations in the Consumer Price Index (Urban Wage Earners and Clerical Workers - Los Angeles) and subsequent cost-of-living adjustment (COLA).
  2. Additional Processing Fees or Charges. The petitioner shall pay all processing fees and charges due LAFCO, the State Board of Equalization and any other applicable government agency.
  3. Concurrent Annexations to or Detachments from the District and an Existing Improvement District. No additional processing costs or fees will be charged to a petitioner for an annexation to or detachment from an existing improvement district when the proceeding is part of an annexation to or detachment from the District.
  4. Payment of Fees and Charges. The District processing fees and charges shall be paid to the District at the time the petition for such proceeding is filed. Where a petition is filed with LAFCO, the District shall notify LAFCO that payment of all required fees and charges to the District shall be a condition for District approval of the annexation or detachment.
- B. Annexation Fees for Annexations to Water Improvement Districts. The annexation fee (see Appendix A, 9.04 B.) shall constitute the "base rate" on March 13, 2006 (effective July 1, 2006). The base rate shall be adjusted quarterly for fluctuations in construction costs, as measured by the Engineering News Record Construction Cost Index for the Los Angeles Region. The ENR Construction Cost Index of 8552.3 (as of March 13, 2006) shall be deemed the "base index." The adjustment shall be in an amount equal to the percentage change in the ENR Construction Cost Index from the base index for the period from March 13, 2006 to the date of payment.
1. No water annexation fee shall be required for existing and future agricultural water service

furnished by the District under the COMMERCIAL AGRICULTURAL category of Section 25 of the Code.

2. Non-permanent irrigation water service furnished by the District under Section 30 of the Code shall be available without payment of a water annexation fee.
3. Open Space to be Annexed. Open space lands shall not be excluded from annexations of land to a water improvement district.
4. Water Meter Type Exclusions. Annexation fees shall be collected on all water meters sold except for temporary water meters, water tank truck meters, nonpermanent irrigation water meters and outside user meters, all as defined elsewhere in this Code.
5. Effective Date. Annexation fees shall be collected on all lands annexing to a water improvement district on or after March 5, 1997.
6. Basis for Determination. For annexations of land to a water improvement district within the District, the petitioner shall pay an annexation fee. The fee shall be paid at the time of water meter purchase.

For permanent water meters, except for commercial agricultural meters, the annexation fee shall be determined on the basis of the demand to be placed on the District-wide water system. The fee will be determined on the basis of the size of the water meter required, as set forth in Section 27 of the Code. The fee shall be determined by multiplying the demand factor for the meter size, as set forth in Section 28 of the Code, by the annexation fee per EDU. See Appendix A, 9.04 B. for fees.

- C. Annexation Fees for Annexations to Sewer Improvement Districts
  1. Improvement District Annexation. All annexation for sewer service shall be into Improvement District No. 18 on or after December 16, 1998.
  2. Open Space to be Annexed. Open space lands shall not be excluded from annexations of land to a sewer improvement district.
  3. Effective Date. Annexation fees shall be collected on all lands annexing to a sewer

improvement district on or after December 16, 1998.

4. Basis for Determination. For annexations of land to a sewer improvement district within the District, the petitioner shall pay an annexation fee. The fee shall be determined on the basis of the demand to be placed on the District sewer system. The fee shall be paid at the time of sewer service connection request or General Manager's approval of plans, whichever occurs earlier. The extent of the demand will be determined on the basis of each equivalent dwelling unit (EDU) of service which is to be connected to the District sewer system. The number of EDUs prescribed in Section 53 of the Code shall be the basis for computation of the amount of the annexation fee. The fee will be determined by multiplying the number of EDUs by the annexation fee per EDU. See Appendix A, 9.04 C.4 for fees.

This annexation fee shall constitute the "base rate" on December 16, 1998. The base rate shall be adjusted quarterly for fluctuations in construction costs as measured by the Engineering News Record Construction Cost Index for the Los Angeles Region. The ENR Construction Cost Index of \$6,859.45 (as of November 9, 1998) shall be deemed the "base index." The adjustment shall be in an amount equal to the percentage change in the ENR Construction Cost Index from the base index for the period from November 9, 1998 to the date of payment.

D. Detachment Fees

For each detachment of land from an improvement district, the petitioner shall pay such fees as the General Manager determines are appropriate for the detachment. Determinations shall be made by the General Manager on a case-by-case basis.

9.05 TAXATION OF PROPERTY AFTER ANNEXATION TO IMPROVEMENT DISTRICT

Where property is annexed by a petitioner, other than a tax-exempt agency, the property in the annexed area shall be subject to taxation after the annexation thereof for the purposes of the improvement district, including the payment of principal and interest on bonds and other obligations of the improvement district authorized and outstanding at the time of the annexation. The Board of Directors shall

provide as a condition of the annexation that the annexed area shall be subject to taxation as if the property had always been a part of the improvement district.

SECTION 10      APPLICATION FOR WAIVER OR MODIFICATION OF  
ORDINANCE REQUIREMENTS

10.01      FILING OF PETITION

Any person may present a petition to the Board of Directors requesting that the Board consider a waiver or modification of requirements of a section of an ordinance set forth in this Code. The petition for waiver or modification shall be in writing on forms furnished by the District. A fee as set forth in Appendix A, 10.01 shall be paid at the time of submission of the petition requesting the waiver or modification.

10.02      REVIEW BY BOARD OF DIRECTORS

The grant or denial of such waiver or modification shall be determined solely by the Board of Directors. Any such waiver or modification shall be effective only upon such Board approval which shall set forth the terms and conditions thereof. Each waiver or modification shall be limited to the person and property involved in the application.

SECTION 23            NON-RESPONSIBILITY OF DISTRICT

23.01            INTERRUPTIONS OF WATER SERVICE

District does not guarantee continuous delivery of water on demand. From time to time it may be necessary for the District to shut off the flow of water in any of its water systems. Except in emergencies, such stoppages will not be made without prior notice to the customers involved. District shall not assume any responsibility for loss or damages which may occur due to interruption of water service.

23.02            PRIVATELY-OWNED WATER LINES

The District assumes no responsibility for the delivery of water through privately-owned pipelines or systems, nor shall it assume any responsibility for damages resulting from the operation of any such system even though water may be received from a district water distribution system.

23.03            WATER PRESSURE REGULATION

- A.    Customer Responsibility. The District shall assume no responsibility for water pressure regulation within a customer's service area. The customer shall be responsible for providing adequate safeguard measures for the customer's water system wherever pressure regulation is necessary.
  
- B.    Requirement for Installation in New Construction. Customers making application for water service for new construction for residential, commercial or industrial use shall be required to install an appropriate pressure regulation device for such service.

23.04            CROSS-CONNECTIONS AND BACKFLOW DEVICES

State Regulations for Cross-Connections.

The California Department of Public Health has issued Regulations Relating to Cross-Connections (Calif. Adm. Code, Title 17 - Public Health) for the purpose of safeguarding drinking water supplies by preventing backflow into public water systems. The term "cross connection" means any unprotected connection between any part of a District water system and any other source or system containing water or substance that is not or cannot be approved as safe, wholesome, and potable for human consumption. The District has adopted Rules, Regulations, and Fees Regarding Cross-Connections as uncodified Ordinance No. 386 which is available in the Operations and Engineering Departments. The backflow fees are as set forth in Appendix A, 23.04.

23.05      WATER SERVICE FOR STEAM BOILERS

Customers using District water to supply steam boilers are required to provide adequate storage of water for boiler use for a minimum period of 12 hours.

23.06      ELECTRICAL GROUND CONNECTIONS

The connection of electrical ground wire to water pipes is prohibited. The District shall assume no responsibility for any loss or damage resulting from such a connection.

25.01 SERVICE AREA

Water service shall be furnished by the District only to property within (annexed to) a water improvement district within the District's service area. Water service to property located outside an improvement district may be furnished only upon prior approval of the Board of Directors. Temporary water service to property located outside an improvement district may be furnished, in accordance with Section 25.03 E.10., upon the approval of the General Manager.

25.02 DEFINITION OF "H.C.F." AND "UNIT OF WATER"

As used in the Code the terms "H.C.F." and "unit of water" are interchangeable and each shall mean 100 cubic feet or 748 gallons of water.

25.03 DEFINITIONS OF WATER SERVICE CATAGORIES, WATER RATES, CHARGES AND FEES

Water service furnished by the District shall be under the categories of services and at the rates, charges and fees as set forth in Appendix A, Section 25.

Five-year Rate Increase Schedule - All District water rates, charges and fees are subject to a five-year schedule of rate increases beginning September 1, 2009 and periodically thereafter through June 30, 2014. The increases under this schedule shall be the amount sufficient to cover cost increases related to operations and maintenance, but not to exceed 10% per year.

Five-year Periodic Pass-through Rate Increases or Decreases from District Wholesalers - All District water rates, charges and fees are subject to periodic rate changes from the District's public agency wholesalers for a five-year period beginning September 1, 2009 through June 30, 2014.

- A. Set-up Fees for Accounts. A set-up fee shall be charged for each account transferred to another customer. See Appendix A, 25.03 A. for charges. A deposit will be required of all customers who do not own the property to be served. See Appendix A, 25.04 A. for deposit amounts.
- B. Monthly Fixed MWD & CWA Charges. Each potable water service customer shall pay a monthly MWD and CWA fixed charge, as set forth in Appendix A, 25.03 C. Proceeds of the charge will be used to pay for operating and maintenance costs, including the following: MWD Readiness-to-Serve Charge and Capacity Reservation Charge; CWA Infrastructure Access Charge, Customer Service Charge, and

Emergency Storage Charge. The MWD & CWA charge is based on the size of the water meter(s) in service. The MWD & CWA charge shall start upon installation of the meter.

- C. Monthly Fixed System Charges. Each water service customer shall pay a monthly fixed system charge, as set forth in Appendix A, 25.03 C. Proceeds of the charge will be used to pay for water system replacement, maintenance, and operation expenses. The system charge is based on the size of the water meter(s) in service. The system charge shall start upon installation of the meter
- D. Water Conservation Drought Pricing. To promote conservation, base tiered water rates for all water services are subject to percentage increases during drought stages, as shown in the table below:

	<b>Drought Stage Pricing</b>		
	<b>Stage 2</b>	<b>Stage 3</b>	<b>Stage 4</b>
Tier 1*	0%	0%	0%
Tier 2	Up to 5%	Up to 10%	Up to 15%
Tier 3	Up to 30%	Up to 60%	Up to 90%

\*Domestic residential water service has four tiered base rates as outlined in Appendix A, 25.03 E.1.(b). Tier 1 of the above table applies to the first two tiered base rates. Tier 2 of the above table applies to the third tiered base rate. Tier 3 of the above table applies to the fourth tiered base rate.

- E. Categories of Water Service. The definitions and rates and charges for water service furnished by the District shall be as follows:

1. DOMESTIC RESIDENTIAL WATER

- (a) Defined as: Water service for single residential and individually metered attached households as well as other domestic uses (other than that provided for in Paragraph 2 below).
- (b) Base Rate: The tiered base rates of water furnished under this category shall be set forth in Appendix A, 25.03 E.1.(b).

The tiered base rates for this category of service are subject to the increased drought pricing outlined in Section 25.03 D.

2. MULTIPLE RESIDENTIAL WATER

- (a) Defined as: Master metered water service for multiple residential households, for example, duplexes, townhomes, apartments and mobile homes.
- (b) Base Rate: The tiered base rates of water furnished for each dwelling unit under each block of service in this category shall be as set forth in Appendix A, 25.03 E.2.(b).

The tiered base rates for this category of service are subject to the increased drought pricing outlined in Section 25.03 D.

3. BUSINESS AND PUBLICLY-OWNED WATER

- (a) Defined as: Potable water service for commercial, industrial and publicly-owned establishments.
- (b) Base Rate: The tiered base rate for water furnished under this category shall be determined by meter size and usage block as set forth in Appendix A, 25.03 E.3.(b).

The tiered base rates for this category of service are subject to the increased drought pricing outlined in Section 25.03 D.

4. IRRIGATION AND COMMERCIAL AGRICULTURAL USING POTABLE WATER

- (a) Irrigation is potable water service provided solely for irrigation of landscape or landscaping, as defined in Section 0.02.
- (b) Commercial agricultural engaged in the growing or raising of live stock, in conformity with recognized practices of husbandry, for the purpose of commerce, trade or industry, or for the use by public educational or correctional institutions or agricultural horticultural or floricultural products and produced,
  - (i) for human consumption or for the market, or
  - (ii) for the feeding of fowl or livestock produced for human consumption or for the market, or
  - (iii) for feeding fowl or livestock for the purpose of obtaining their products for human consumption or for the market, such

products to be grown or raised on a parcel of land having an area of not less than one acre utilized exclusively therefore.

- (c) Base Rate: The tiered base rate for water furnished under this category shall be determined by meter size and usage block as set forth in Appendix A, 25.03 E.4.(c).

The tiered base rates for this category of service are subject to the increased drought pricing outlined in Section 25.03 D.

#### 5. RECYCLED WATER

- (a) Defined as: Non-potable and recycled water service provided for irrigation of landscaping, as defined in Section 0.02 A. of the Code, and certain non-irrigation purposes, other than domestic use, in compliance with federal, state and local laws and regulations regarding use of recycled water.
- (b) The provisions of this Code, relating to use of recycled water, set forth in Section 26 of the Code, including but not limited to cross-connections and backflow protective devices, shall be strictly enforced in connection with the use of recycled water.
- (c) Base Rate: The tiered base rate for water furnished under this category shall be determined by meter size and usage block as set forth in Appendix A, 25.03 E.5.(c).

The tiered base rates for this category of service are subject to the increased drought pricing outlined in Section 25.03 D.

- (d) Monthly system charge: The monthly system charge for recycled water service is set forth in Appendix A, 25.03 C.

#### 6. TEMPORARY AND CONSTRUCTION WATER SERVICE

- (a) Defined as: Water service provided by the District on a temporary basis, pursuant to Section 31 of this Code.
- (b) If capacity fees have not been paid by the customer, the rates for water furnished under this category is set forth in Appendix A, 25.03 E.6.(b).
- (c) If the customer has paid capacity and annexation fees, the base rate for water furnished under

this category shall be the base rate charged customers in the same category of service on a permanent meter basis.

- (d) The tiered base rates for this category of service are subject to the increased drought pricing outlined in Section 25.03 D.
- (e) The applicable monthly system and MWD & CWA charge shall be the same rates charged to customers in the same category of service on a permanent meter basis per Appendix A, 25.03 C.

7. WATER SERVICE UNDER SPECIAL AGREEMENTS

- (a) Defined as: Water service provided under express agreements approved by the Board of Directors for service to golf courses and other entities, which service may be curtailed or interrupted by the District under conditions provided in such agreements.
- (b) For water service under this category the base rate shall be determined on a case-by-case basis.

Unless otherwise specified in the particular agreement, the tiered base rates for this category of service are subject to the increased drought pricing outlined in Section 25.03 D.

8. TANK TRUCKS

- (a) Defined as: Water service provided for the filling of tanks on motor vehicles transporting water used for other than earth grading purposes, which service shall be made only through a portable meter issued by the District to a customer specifically for use in accordance with the provisions herein for such service.
- (b) The rate for metered water furnished under this category is reflected in Appendix A, 25.03 E.8. (b), plus a monthly system charge at the rate set forth in Appendix A, 25.03 C.

The tiered base rates for this category of service are subject to the increased drought pricing outlined in Section 25.03 D.

- (c) Requirements for Use of Water Meter
  - (1) To receive such service, the customer must make a deposit for the use a water meter furnished by the District. The fee is set forth in Appendix A, 31.03 A.1.

- (2) Upon termination of the service, the District will refund the amount of deposit remaining after making the following deductions:
  - (i) Cost of repairing or replacing the meter, fire hydrant and/or any fittings damaged or lost while in use; and
  - (ii) Unpaid charges for water or other applicable charges.
- (3) Prior to the end of each six month period following issuance of a meter under this section, or at the request of the District, whichever is earlier, the customer shall return the meter to the District for inspection, repair, or calibration as deemed necessary by the District.
- (4) Payment for water service under this category shall be made as follows:
  - (i) The bill shall be based on the amount of water actually used, which shall be determined by the District's reading of the meter or by a report made by the customer to the District in the manner prescribed by the District.
  - (ii) Where the actual amount of water used cannot be determined as provided in (i), the District will issue a bill based on a District estimate of the amount of water used, as determined by the District. Such estimates shall be reconciled with actual amounts used when the customer returns the meter to the District as provided in paragraph 3 above.
  - (iii) Payments shall be made as specified on the bill.

9. WATER SERVICE OUTSIDE DISTRICT

- (a) Defined as: Water service for real property outside the service area of the District.
- (b) This service will be provided only upon prior approval of the General Manager when there is a surplus of water over and above the existing needs for service in the District. This service is temporary and may be terminated upon written notice from the District. Customers for this

service are sometimes referred to as "outside users."

- (c) Customers applying for this category of service shall pay an application fee as set forth in Appendix A, 25.03 E.9.(c).
- (d) The rate for metered water furnished under this category shall be charged the rate as described in Appendix A, 25.03 E.9.(d), plus a monthly system charge at the rate set forth in Appendix A, 25.03 C.

The tiered base rates for this category of service are subject to the increased drought pricing outlined in Section 25.03 D.

- (e) Customers requesting only fire service or a fire hydrant under this category shall be charged a capacity fee based on one (1) EDU for a permanent meter in the improvement district from which the fire service derives its flow, plus a monthly system charge at the rate set forth in Appendix A, 25.03 E.11.(c).

#### 10. WATER SERVICE OUTSIDE AN IMPROVEMENT DISTRICT

- (a) Defined as: Water service for property located within the boundaries of the District, but not within a water improvement district. Customers for this service are sometimes referred to as "outside users."
- (b) Customers applying for this service shall pay an application fee as set forth in Appendix A, 25.03 E.10.(b). The District will review the application to determine whether the land to be served should be annexed to an improvement district. If it is determined that annexation is not practical, the Board of Directors may authorize service as an outside user. This service will be reviewed periodically until it is determined that the property must be annexed to an improvement district or that service must be terminated.
- (c) The rate for metered water furnished under this category is as set forth in Appendix A, 25.03 E.10.(c), plus a monthly system charge as set forth in Appendix A, 25.03.C.

The tiered base rates for this category of service are subject to the increased drought pricing outlined in Section 25.03 D.

- (d) Upon approval of the Board of Directors, a customer, who has paid all construction costs for facilities necessary to serve the customer's property in lieu of annexation to a water improvement district, shall be exempt from the provision for this category of service.

11. SERVICE FOR FIRE PROTECTION

- (a) Defined as: Water service provided by the District solely to feed fire hydrants or fire sprinkler systems from lines or laterals connected to District water mains.
- (b) The District will not make a charge for the quantity of water used for fire protection purposes.
- (c) The monthly system charge for this category of service is set forth in Appendix A, 25.03 E.11.(c) for each connection to a District water main made for fire protection service.

12. WATER SERVICE TO PROPERTY NOT SUBJECT TO DISTRICT TAXES

- (a) Pursuant to Section 71613 of the California Water Code, the District may furnish water to property, not subject to District taxes, at special rates, terms and conditions as are determined by the Board of Directors for such service. Such rates, terms and conditions shall be uniformly applied to like classes and conditions of service in the same improvement district or geographical area.
- (b) Customers in this category, such as publicly-owned establishments, shall pay an additional fee as outlined in Appendix A, 25.03 E.12.(b).

13. INTERIM WATER SERVICE IN IMPROVEMENT DISTRICT 7

- (a) Definition of Interim Service. This is water Service furnished to a customer in Improvement District 7 (ID 7) for temporary use.
- (b) Rates for Interim Service. Customers applying for interim service in ID 7 shall not be required to pay the ID 7 water capacity fee and San Diego County Water Authority fee, as required under Section 2801 of this Code. The water rate is set forth in Appendix A, 25.03 E.13.(b).
- (c) Conversion to Permanent Service. At such time as use expires, the customer shall be required to

pay all fees in effect at the time the permanent use is implemented.

F. Energy Charges for Pumping Water

In addition to water rates and other charges provided for in this Section 25.03, customers shall be charged an energy pumping charge based on the quantity of water used and the elevation to which the water has been lifted to provide service. The energy pumping charge shall be made at the rate set forth in Appendix A, 25.03 F.

G. Additional Water Charge for Service in the North District

1. In addition to other applicable water rates and charges provided for in this Section 25.03, each customer receiving water service in the North District shall pay a charge as set forth in Appendix A, 25.03 G.1. The North District area is defined in Section 0.02 of this Code.
2. All proceeds from charges collected pursuant to this Section 25.03 G. shall be set aside by the District in a separate account and shall be used solely for payment of costs and borrowings for construction, installation and maintenance of water storage reservoirs, pump stations and water lines to provide service in the North District.

H. Additional Water Charges and Monthly System Charges for Service in the ID 9 Water Service Zone

1. In addition to other applicable water rates and charges provided for in this Section 25.03, effective May 1, 1986, each customer receiving water service in the ID 9 Water Service Zone shall pay a charge set forth in Appendix A, 25.03 H.1. The ID 9 Water Service Zone area is defined in Section 0.02 of this Code.
2. In addition to the monthly system charges provided for, effective May 1, 1986, each customer receiving water service in the ID 9 Water Service Zone shall pay a monthly meter system charge as outlined in Appendix A, 25.03 H.2. for each meter in service.
3. All proceeds from charges collected pursuant to this Section 25.03 H. shall be set aside by the District in a separate account and shall be used solely for payment of costs and borrowing for construction, installation and maintenance of water storage reservoirs, pump stations and water lines to provide service in the ID 9 Water Service Zone.

I. Additional Water Charges for Services in the ID 3, ID 10 and La Presa Water Service Zones.

1. In addition to other applicable water rates and charges provided for in this Section 25.03, effective May 17, 1993, each customer receiving water service in ID 3, ID 10 and La Presa Water Service Zones is assessed an additional charge per H.C.F. of water furnished by the District. Said surcharge is assessed as set forth in Appendix A, 25.03 I.1.(a), (b), and (c).
2. All proceeds from charges collected pursuant to this Section 25.03 I. shall be set aside by the District in a separate account and shall be used solely for payment of costs and borrowings for construction, installation and maintenance of water storage, reservoirs, pump stations and water lines to provide service in the ID 3, ID 10 and La Presa Water Service Zones, respectively.

25.04 DEPOSITS BY LESSEES OR NON-OWNERS OF PROPERTY

When an application for water service is made by a customer who does not own the land to be served, the customer shall be required to make a cash deposit to assure payment of the account. In lieu of a deposit, the customer may have payment of water service bills guaranteed in writing by the owner of the property. The amount of deposit, determined by the size of meter is outlined in Appendix A, 25.04 A.

A. AMOUNT OF DEPOSIT

The customer's deposit shall be applied to reduce or satisfy any delinquent payment or other amount due the District at the time of termination of water service to the customer. Any portion of the deposit remaining, after satisfaction of the amount due, shall be refunded to the customer that made the deposit.

The deposits listed above may be waived for a new residential applicant where the applicant demonstrates credit worthiness based upon prior utility payments or a non-delinquent water account for one year or other similar evidence of credit.

B. REFUND OF DEPOSIT

Where funds have been on deposit for twelve months in a domestic service account and there has been no more than one delinquent payment on that account during that period, the District will apply a credit to the water account in the amount of the deposit.

C. LETTER OF CREDIT

A letter of credit, in a form approved by the General Manager or Department Head of Finance, may be submitted to the District to satisfy the deposit requirements.

25.05 SERVICE TO SUBSEQUENT CUSTOMERS

After a water meter has been installed for a customer and all fees and charges have been paid, water service may be furnished to a subsequent customer through the water meter installed without payment of further charges, except for the set-up fee for transferred accounts, payment of delinquent charges for the applicant's service or other deposits that may be required by this Code.

SECTION 28

CONNECTION FEES AND CHARGES FOR POTABLE OR RECLAIMED WATER SERVICE

28.01 COLLECTION OF FEES AND CHARGES

A. Fees and Charges to be paid by the Customer.

The following fees and charges shall be paid by the customer to connect to a District water system for potable water or reclaimed water service; these are in addition to the fees and charges in Section 9 and 25. Fees and charges shall include, but not be limited to, District fees, San Diego County Water Authority fees, applicable zone charge and charges for work performed by District personnel on behalf of the customer. These charges may include the installation by District personnel of a water service lateral, and inspections required due to the requirement of a back flow device. These charges may also include a meter fee, installation fee (where lateral exists), lateral fee, meter box fee, and excavation permit fee.

B. Basis for Determination of Connection Fees and Charges.

The fees and charges shall be determined as follows:

1. For permanent water meters, including potable or recycled irrigation service, the total water connection fee shall be determined on the basis of the demand to be placed on the District water system. The extent of demand will be determined on the basis of the size of the water meter, as set forth in Section 27 of the Code. The water connection fee will be determined by multiplying the demand factor, as set forth below, for the meter size by the total of the District-wide capacity fee and applicable zone charge.

<u>Meter Size</u>	<u>Demand Factor</u>
3/4"	1
1	2-1/2
1-1/2"	5
2"	8
3"	16
4"	25
6"	50
8"	80
10"	115

The District-wide capacity fee and the applicable zone charge shall constitute the "base rate." For fees or charges after January 1, 2003, the base rate shall be adjusted quarterly for fluctuations in construction costs, as measured by the *Engineering News Record Construction Cost Index for the Los Angeles Region*. The ENR Construction Cost Index of 7,402.75 (as of January 1, 2003) shall be deemed the "base index." The adjustment shall be in an amount equal to the percentage change in the ENR Construction Cost Index from the base index for the period from April 2, 2003 to the date of payment.

28.02 INSTALLATION CHARGES FOR WATER METER AND WATER SERVICE LATERALS

The determination of the water meter or service lateral size shall be based upon the information provided by the customer as detailed in Section 27 of the Code. The installation charges are set forth in Appendix A, 28.02.

Where a water meter larger than 2-inch or a new water lateral is required, a customized, written estimate of the District's costs will be prepared.

The customer shall deposit the estimated costs with the District prior to commencement of the work. If actual costs incurred by the District are less than the amount deposited, the District shall refund the excess to the customer. If the actual costs incurred exceed the amount deposited, the customer shall reimburse the District for the additional costs.

28.03 METER FEE REFUND

- A. If a water meter/service has been paid for but not installed, a customer may receive a refund of the District's capacity fee and charges. If San Diego County Water Authority capacity fees have been paid to San Diego County Water Authority, the customer shall request a refund from San Diego County Water Authority.
- B. If the customer wants to change the meter/service size, they will be credited with the number of equivalent dwelling units they have previously purchased and will be refunded any balance per Section 28.03 A, above. If additional equivalent dwelling units are required, the customer will be charged based on 28.01 and 28.02.

28.04

FEES FOR CONSTRUCTION OF WATER FACILITIES FOR RANCHO JAMUL  
PRESSURE ZONE 1655

There is hereby established a fee for construction of water facilities that are required to provide water service in Pressure Zone 1655 within Improvement District 9. The pressure zone area is as shown on the map on file in the office of the District Secretary. See Appendix A, 28.01 B.1. for list of fees per meter size.

SECTION 31

TEMPORARY WATER SERVICE

31.01 DEFINITION OF TEMPORARY SERVICE

Temporary water service is water service provided for a limited period of time not to exceed 365 days, and used for temporary purposes such as construction, hydrotesting water systems, vegetation of slopes, and other uses noted in this section. Temporary water service shall not be provided to residential dwellings or commercial business enterprises.

31.02 REQUIREMENT OF TEMPORARY METER FOR SERVICE

Temporary service may be provided after installation of a temporary meter pursuant to a customer's written application for such service. Temporary service by means of a "jumper" or other unauthorized connection to the District water system is prohibited.

A. Size and Location.

1. The size and location of temporary meters will be determined solely by the District.
2. For temporary service from a fire hydrant, a meter of at least 4" in size will be required. Only one 2½" fire hydrant port per fire hydrant shall be occupied by a temporary meter at one time.

B. Temporary water service from a fire hydrant shall be limited to the following applications:

1. Filling of water trucks and drop tanks.
2. General construction requirements, such as backfill and compaction, guniting and stuccoing, and block wall building.
3. Flushing of storm drains and sewer lines.
4. Filling, hydrotesting, chlorination, and flushing of newly constructed potable and reclaimed water lines.
5. Filling, flushing, hydrotesting, and the initial operational coverage testing of reclaimed water irrigation systems. Temporary service provided for this application shall be limited to a maximum of 60 days.
6. Operation of landscape irrigation for the establishment of vegetation on slopes or other planted

areas. Temporary service provided for this application shall be limited to a maximum of 180 days.

Item 5 and 6 above shall require the installation by the customer of a District approved and tested reduced pressure backflow device prior to the temporary service being established. The backflow device shall be installed in plain view and within 3 feet of the temporary hydrant meter.

C. Temporary service to construction trailers or other temporary construction buildings shall be provided as follows:

1. Through a temporary meter connected to the 1 or 2 inch service lateral for the lot the trailer is placed on.
2. Where Item 1 above is not possible, through a temporary meter connected to appurtenances other than a fire hydrant, such as a blow off.
3. Where either Item 1 or 2 above is not possible, from a temporary 4 inch meter connected to a fire hydrant.

Service to construction trailers or other temporary construction buildings shall require the installation by the customer of a District approved and tested reduced pressure backflow device prior to the temporary service being established. The backflow device shall be installed in accordance with District requirements.

D. Temporary service to community service organizations shall be provided under the conditions set forth below:

1. The community service organization shall make a minimum payment for the temporary connection. See Appendix A, 31.02 D.1. for charges.
2. If the cost of the water used exceeds \$25.00, the community service organization shall pay the excess cost. See Temporary Water Service Rates in Appendix A, 25.03 E.6.(b) for rates per meter.
3. The temporary service shall be limited to 48 hours within any one month period.
4. The meter shall be installed by District staff.
5. The rate for water service shall be two times the normal domestic rate.

- E. If any unauthorized connection, disconnection or relocation of a temporary meter, or other connection device is made by other than District employees, District may discontinue further water service to the entire project.
- F. Extensions to the time limits referenced in this section may be made by the General Manager. Requests for time extensions shall be made by the customer in writing.

31.03

FEES AND CHARGES FOR TEMPORARY METERS

- A. Temporary Service. Temporary water service shall be furnished to the property owner or the owners authorized agent only and shall be provided under the following conditions:
  - 1. Requirement of Deposit. At the time application is made for temporary service, the customer shall deposit with the District the amount set forth in Appendix A, 31.03 A.1.
  - 2. Delinquency. No temporary meters shall be furnished to any person with a delinquent account with the District.
  - 3. Refund of Deposit or Additional Payment. Upon cancellation or termination of the temporary service, the District will refund the amount of deposit remaining after making the following deductions:
    - a) cost of installing, moving and removing the meter;
    - b) cost of repairing or replacing the meter, fire hydrant, and/or any fittings damaged or lost while in use; and
    - c) unpaid charges for water used or other applicable charges.
  - 4. Temporary Meter Set-up & Removal. The charges to set-up and remove a temporary meter are set forth in Appendix A, 31.03 A.4.
  - 5. Temporary Meter Move Fee. If a meter needs to be moved from one location to another see Appendix A., 31.03 A.5.
- B. Rates for Temporary Service. Payment for temporary water service shall be in accordance with rates and charges set forth in Section 25.03 E.6.(b).

PAYMENT OF CAPACITY AND ANNEXATION FEES FOR TEMPORARY METERS

- A. Customers, whose property has been annexed into an Improvement District, may elect to pay the capacity and annexation fees in addition to the deposit amount shown in Section 31.03.A.1.
- B. Capacity and annexation fees for this type of temporary service shall be calculated in accordance with Section 28.
- C. Payment for this type of temporary service shall be in accordance with the rates and charges set forth in Section 25.03 E.4.(c).
- D. Customers electing this type of temporary service shall be credited the number of equivalent dwelling units they have previously purchased when the meter(s) is returned to the District. The credit shall be applicable to permanent meters purchased within the same subdivision or development where the temporary meter was used.

SECTION 33            GENERAL REGULATIONS FOR USE OF WATER METERS

33.01            FURNISHED AND INSTALLED ONLY BY DISTRICT

Water meters used for service from a District water distribution system shall be furnished and installed by the District. Meters will be furnished only for use for a specific parcel of land. Master meters and meters for irrigation purposes may be furnished for more than one specific parcel of land upon the approval by the District. The Fees and charges are set forth in Appendix A, 28.02.

33.02            OWNERSHIP OF METERS

The District shall retain title to all meters installed within the District. Payment by a customer of installation fees, capacity fees, meter charges, connection charges or any other fees or charges shall not transfer ownership of a meter from the District to the customer.

33.03            RELOCATION OF METERS

With prior District approval, water meters may be moved at the request of the owner from one location to another location on the same parcel or within the same tract owned by the customer upon payment of an amount determined by the District.

33.04            METER TURN-OFF REQUESTED BY CUSTOMER

At the request of the customer, a water meter may be turned off and locked without charge; provided, however, the system charge shall continue to apply.

33.05            REMOVAL OF METERS

- A. Abandonment of Service. The District may remove any water meter where the customer has abandoned water service through that meter.
- B. Permanent Removal of Meters for Agricultural or Irrigation Service. When service is no longer required, meters for agricultural and irrigation service may be removed upon the request of a lessee who paid the fees and charges (or upon request of the owner if the lease has expired), or upon the request of the owner if the fees were paid by the owner.
- C. Request for Removal of a Water Meter After Installation. If, after installation of a water meter, a request is made by a customer for the removal of that water meter from service, the customer shall be credited with the number of Equivalent Dwelling Units ("EDU")

for that meter size. If thereafter a request is made for the installation of the same size water meter at the same location, no capacity fee shall be due. If the customer's request is for a larger meter, all capacity fees and charges per 28.01 and 28.02 shall be due and payable for all EDUs, less the EDU credit for the meter previously removed. No refund shall be due or payable for any portion of a capacity fee previously paid. The customer shall pay any expenses incurred by the District for removing and replacing the meters.

- D. Removal of Meters for Delinquent Payment of Water System Charges. If an owner/customer remains delinquent in the payment of water charges or system charges after written notice of delinquency from the District, the District may remove the owner/customer's water meter. Refer to Section 72 for additional information regarding the procedure for removal of the meters. The fees and charges are set forth in Appendix A, 72.04 A.1.

If the request for such service is made more than six months after removal of the meter, the request shall be processed as a new order for service and all applicable fees and charges for a new service (except for capacity fees) shall be due and payable.

33.06 READING OF METERS

Meters shall be read once each calendar month.

Meters are read each time a meter is "turned-on" or "turned-off" and when water service is established as a new account.

33.07 ADJUSTMENT FOR METER INACCURACIES

- A. Customer Request for Meter Test. A customer may request that the meter for the customer's service be tested for accuracy upon making a deposit with the District. The deposit is set forth in Appendix A, 33.07 A. per meter size.
- B. Results of Meter Test. If upon testing, the meter does not register more than five percent (5%) in excess of the rated calibration for such meter size, the deposit shall be retained by the District. If the meter so tested registers more than five percent (5%) in excess of the rated calibration for such meter size, the meter will be replaced by the District and the deposit shall be returned to the customer. No adjustment in billing shall be made for excess registration during any period prior to 120 days before the request for the test.

- C. Failure of Meter to Register During Service. Should any meter in service fail to register during a billing period, a bill will be issued by the District for the estimated amount of water used during the period of the meter failure, based on prior use under that account.

SECTION 34

ISSUANCE AND PAYMENT OF WATER BILLS

34.01 ISSUANCE, DUE DATE AND FINAL PAYMENT DATE OF STATEMENT OF CHARGES FOR SERVICE

- A. Issuance of Statements. Statements for water service or other charges will be mailed or presented as soon as practicable after the water meter has been read and the applicable charges have been determined.
- B. Due Date. Each statement issued by the District for such charges shall be due and payable on the date of mailing or other presentation to the customer.
- C. Final Payment Date. All charges in each statement must be paid on or before the final payment date shown on the statement, which shall be at least 20 calendar days following the date of mailing or presentation of the statement.
- D. Payment of Charges.
  - 1. Place of Payment. Payments shall not be credited to a customer's account until either cash, an acceptable check or money order has been received by the District at the District business office during regular office hours. Deposit of payment in the mail or at a location other than the District business office shall not be credited to a customer's account until received at the business office.
  - 2. Returned Check Charges. A returned payment charge (see Appendix A, 34.01 D.2. for charge) shall be added to a customer's account in each instance where payment has been made to the District with funds that have been returned to the District by the bank upon which it is drawn.

34.02 DELINQUENT ACCOUNTS

- A. For Non-Payment of Charges. If full payment of a statement for a water service account is not received at the District business office on or before the final payment date, the account shall become delinquent.
- B. Late Payment Charge. A late payment charge (see Appendix A, 34.02 B. for charge) of the total amount delinquent shall be added to each delinquent account at the time any amount becomes delinquent, provided that the charge shall not be made on any account

which at that time has no delinquencies of record. When a late payment charge is made, such shall be added to the delinquent account as of the date the account becomes delinquent and such charges shall become an inseparable part of the amount due as of that time.

- C. Notice of Delinquency. A delinquency notice shall be mailed to each customer whose account is delinquent, notifying the customer that service will be turned off unless payment is made. The notice shall indicate the amount due, including late payment charges, and that the total amount must be paid within fifteen (15) calendar days from the date of mailing or presentation of the notice to the customer, or service will be discontinued.
- D. Record of Delinquent Accounts. The District maintains records of delinquent accounts. Each year one delinquency shall be removed from the record of each account that has one or more delinquencies.
- E. Partial Payment on Delinquent Account. A partial payment on a delinquent account may be accepted and credited to a customer's account; however, the partial payment shall not cause removal of the account from a delinquent status and furthermore, the partial payment shall not preclude the meter from being turned off for delinquency.
- F. Financial Arrangements for Delinquent Accounts.
  - 1. Continuation of Service. The General Manager, Controller, or any person delegated by the General Manager, may authorize continuation of service to a delinquent account if financial arrangements, satisfactory to the District, have been established.
  - 2. Requirement of Deposit Due to Repeated Delinquencies. If payments on a customer account have become delinquent five or more times, or if a meter has been turned off three or more times for non-payment of charges, the General Manager, Controller, or any person delegated by the General Manager, shall be authorized to require the customer to make a cash deposit with the District in an amount equal to two times the amount of the average monthly bill for the three month period preceding the discontinuance of service before further water service will be provided under the customer's account.

G. Termination and Reinstatement of Water Service Under Delinquent Accounts

1. Delinquency Tag. The water meter or meters under delinquent accounts may be turned off and locked if payment has not been made in accordance with the Notice of Delinquency.

(a) Where an owner or manager is listed by the District as the customer of record of the service, the District shall make every good faith effort to inform the actual users of the services when the account is in arrears by means of a notice that service will be terminated in ten days. The notice shall further inform the actual users that they have the right to become customers of the District without being required to pay the amount due on the delinquent account.

(b) Residential water service shall not be terminated for non-payment in any of the following situations:

(1) During an investigation by the District of a customer dispute or complaint. Any residential customer who has initiated a complaint or requested an investigation within five days of receiving the disputed bill, or who has, within 13 days of the mailing of the notice that the customer's service will be terminated for non-payment, or made a request for extension of the payment period of a bill asserted to be beyond the means of the customer to pay in full during the normal period for payment, shall be given an opportunity for a review. The review shall include consideration of whether the customer shall be permitted to amortize the unpaid balance of the account over a reasonable period of time not to exceed 12 months. No termination of service shall be effected for any customer complying with an amortization agreement, if the customer also keeps the account current as charges accrue in each subsequent billing period.

Any customer, whose complaint or request for an investigation has resulted in an adverse determination by the District, may appeal the determination to the Board.

- (2) When a customer has been granted an extension of the period for payment of a bill.
  - (3) On the certification of a licensed physician and surgeon that to do so will be life threatening to the customer and the customer is financially unable to pay for service within the normal payment period and is willing to enter into an amortization agreement to pay the unpaid balance of any bill asserted to be beyond the means of the customer over a period not to exceed 12 months.
- (c) The ten-day notice of proposed termination may not be sent to the customer until at least 19 days from the date of mailing of the bill for services. The ten-day period shall not commence until five days after the mailing of the notice.
  - (d) The District shall make a reasonable, good faith effort to contact an adult person residing at the premises of the customer by telephone or in person, at least 48 hours prior to any termination of service. A charge (see Appendix A, 34.02 G.1.(d) for charge) shall be added to the bill for a contact made in person.
  - (e) Every notice of termination of service pursuant to subdivisions (a) and (c) shall include all of the following information:
    - (1) The name and address of the customer whose account is delinquent.
    - (2) The amount of the delinquency.
    - (3) The date by which payment or arrangements for payment is required in order to avoid termination.
    - (4) The procedure by which the customer may initiate a complaint or request an investigation concerning service or charges, except that if the bill for service contains a description of that procedure, then the notice is not required to contain that information.
    - (5) The procedure by which the customer may request amortization of the unpaid charges.

- (6) The procedure for the customer to obtain information on the availability of financial assistance including private, local, state or federal sources, if applicable.
- (7) The telephone number of a representative of the District who can provide additional information or institute arrangements for payment.
- (f) If a residential customer fails to comply with an amortization agreement, the District shall not terminate service without giving notice to the customer at least 48 hours prior to termination of the conditions the customer is required to meet to avoid termination, but the notice does not entitle the customer to further investigation by the District.
- (g) Termination of service shall not occur on any Friday, Saturday, Sunday, legal holiday or at any time during which the business offices of the District are not open to the public.
- (h) No termination of service may be effected without compliance with this section and any service wrongfully terminated shall be restored, without charge, for the restoration of service.

(See California Government Code Section 60373.)

2. Reinstatement of Service. Water service terminated for delinquency may not be reinstated until all amounts due and payable, including late payment charges and meter "turn-on" charges, have been paid at the District business office, or unless credit arrangements satisfactory to the District have been made.

3. Meter "Turn-On" Charge. A "turn-on" charge shall be made for turning on any meter which has previously been turned off for a delinquent account. The charges for turn-on shall be as follows:

- (a) For any account turned on during the District's regular business hours the turn-on charge is set forth in Appendix A, 34.02 G.3.(a).
- (b) For any account turned on after the District's regular business hours, the turn-on charge is set forth in Appendix A, 34.02 G.3.(b).

SECTION 53      FEES, RATES, CHARGES AND CONDITIONS FOR SEWER SERVICE

53.01      CONDITIONS FOR ACQUISITION OF SEWER SERVICE CAPACITY

Sewer service capacity may be acquired only for service to a specific address, parcel of land, or a land development project covered by an approved map. An approved map shall mean a recorded final map, a recorded parcel map or a tentative subdivision map that has been approved by the County or by a City, as applicable.

53.02      SERVICE AREAS

- A.      Service Areas. Sewer service shall be furnished by the District only to property located in Improvement District No. 14 ("I.D. 14"), Improvement District No. 18 ("I.D. 18"), and Assessment District No. 4 ("A.D. 4"), and the Russell Square Sewer Service Area. Sewer service to property located outside such areas may be furnished only upon annexation to ID 18 and payment of all applicable annexation fees.

53.03      ACQUISITION OF SEWER CONNECTIONS FOR SERVICE IN I.D. 14, I.D. 18 AND A.D. 4

- A.      There shall be no connection capacity fee for sewer service to parcels already annexed into Improvement District No. 14, Improvement District No. 18 and Assessment District No. 4 on or after December 16, 1998.

53.04      ACQUISITION AND PURCHASE OF SEWER CAPACITY FOR SERVICE IN THE RUSSELL SQUARE SEWER SERVICE AREA

- A.      District Acceptance of Sewer Facilities for Russell Square Area. Under an Agreement with Cal Dorado Development, Inc., dated June 28, 1981, the District accepted title to a sewer pump station, force main and appurtenances for a sewage system to provide sewer service to the residential dwelling units to be constructed within the parcels of land in San Diego County Tentative Parcel Map 17150. Under an Agreement with Cal Dorado Development, Inc., dated June 18, 1981, the District agreed to provide service to such parcels on the terms and conditions contained therein. On October 1, 1984, pursuant to Resolution No. 2139, the District Board of Directors accepted title to the facilities.

B. Designation of Russell Square Sewer Area. The geographical area described on the District Map entitled "Russell Square Sewer Service Area," dated October 11, 1988, on file with the District Secretary, constitutes the Russell Square Sewer Service Area.

C. Connection Fees for Connections for Sewer Service through the Russell Square Sewer Pump Station.

1. Sewer Connection Fee

A connection fee (see Appendix A, 53.04 C.1. for fee) for each EDU of sewer service provided through Russell Square Pump Station shall be collected. The connection fee is due at the time an application for sewer service is submitted. The number of EDUs for the connection shall be as set forth in Section 53.09 of the Code. Since the Russell Square Pump Station and force main were constructed by the developer or his assignee, at their expense, for the purpose of providing service to the parcels within Tentative Parcel Map 17150, the connection fee shall not apply to connections for sewer service to the parcels within said map. Such exempt parcels are currently identified as Assessor Parcel Nos. 497-011-41, 497-011-42, 497-011-44, 497-011-46 and 497-011-47.

2. Monthly Sewer Service Charge

A monthly sewer service charge (see Appendix A, 53.04 C.2. for charge) to cover normal operational costs of the Russell Square Pump Station and force mains shall be collected. This charge shall be reviewed by the Board of Directors from time to time to assure that such charges cover the costs for operation of the sewer facilities.

3. The proceeds of the fees and charges received by the District under 1 and 2 above shall be used by the District solely for maintenance, replacement or repair under C.1. above and for the operation of the facilities under C.2. above.

4. In addition, the customer for such service shall pay the monthly service charge for sewer service set forth in Section 53.11.

53.05

CHARGES FOR INSTALLATION OF SEWER LATERALS

Upon application for construction of one or more sewer laterals, the customer shall deposit with the District the estimated costs to be incurred by the District in connection with the installation of the facilities required, as determined by the District. Upon completion of the work, the District shall calculate the actual costs incurred by the District in performing the work. If actual costs are less than the amount deposited, the District shall refund the balance of the deposit to the customer. If actual costs exceed the amount deposited, the customer shall reimburse the District for the additional costs.

53.06

PAYMENT OF FEES

All fees prescribed in the Code shall become owing, due and payable at the time application is made to connect a premise to the sewer system of the District. The fees shall be paid to the District prior to the issuance of any permit authorizing the connection of such premise to the District sewer system. If the proposed connection cannot be made, the fee may be refunded when approved by the General Manager.

53.07

SEWER SERVICE USE CHANGES RESULTING IN INCREASED SYSTEM UTILIZATION

The use of a sewer connection shall be limited to the type and number of EDUs authorized by the original wastewater discharge permit. Before adding any additional equivalent dwelling units, buildings, modifying existing buildings, or change of occupancy type, the property owner shall make a supplementary wastewater permit application to the District for such change in use and pay additional sewer annexation fees per EDU, if necessary, as may be applicable. Periodic inspection of the premises may be made by the District and if actual use is greater than estimated use, an assessment for additional annexation fees shall be assessed in accordance with the fee schedule in the then current Code of Ordinances.

53.08

WASTEWATER DISCHARGE PERMIT ISSUANCE AND LIMITATION

1. A wastewater discharge permit shall be required for any property for which a request is made to discharge into the District sewage system.

2. Every wastewater discharge permit shall expire by limitations and shall become null and void, if the construction or work authorized by such permit is not commenced within 120 days from date of issuance of such wastewater discharge permit or if the construction or work authorized by such wastewater discharge permit is suspended or abandoned for a period of 120 days at any time after the work is commenced.
  
3. Before such work can be recommenced, a new wastewater discharge permit application must be filed with the District. The District may reactivate the previous wastewater discharge permit provided that wastewater quantity and type is the same as the wastewater discharge allowed under the original permit, and provided further that such suspension and abandonment has not exceeded one year. Fees paid for the previous wastewater discharge permit may be credited toward the total permit fees required on the new permit application. Reactivation of the previous wastewater discharge permit shall be subject to District sewer capacity being available at the time of new application and subject to any additional costs or charges imposed during the period of such suspension or abandonment.

53.09      BASIS FOR DETERMINATION OF EDUS

1. The number of EDUs for sewer service shall be determined on the following basis:

- |    |   |      |
|----|---|------|
| a) | <u>Residential Facilities</u>   | EDUs |
| 1) | Single-Family Residence<br>(Includes manufactured homes, and mobile homes which are on private lots | 1.0  |
|    | A secondary structure with a kitchen is considered an additional EDU                                |      |
| 2) | Apartments and Multiple Family Housing<br>Each individual living unit                               | 1.0  |
| 3) | Residential condominiums<br>Each individual living unit   | 1.0  |
| 4) | Mobile Home and Trailer Parks<br>Per each individual space  | 1.0  |
| b) | <u>Commercial/Industrial Facilities</u>   |      |

- 1) Food Service Establishments
  - a) Take-out restaurants with disposable utensils, no dishwasher and no public restrooms 3.0
  - b) Miscellaneous food establishments - ice cream/yogurt shops, bakeries (sales on premise only) 3.0
  - c) 1) Take-out/eat-in restaurants with disposable utensils, but with seating and public restrooms 3.0
  - 2) Restaurants with reusable utensils, seating and public restrooms (0-18 seats) 3.0

Each additional 6 seat unit, or portion thereof 1.0
- 2) Hotels and Motels
  - a) Per living unit without kitchen 0.38
  - b) Per living unit with kitchen 0.60
- 3) Commercial, Professional, Industrial Buildings, Establishments not specifically listed herein
  - a) Any office, store or industrial condominium or establishments. first 1,000 sq. ft. 1.2

Each additional 1,000 sq. ft. or portion thereof 0.7

  - b) Where occupancy type or usage is unknown at the time of application for service, the following EDUs shall apply. This shall include, but not be limited to, shopping centers, industrial parks and professional office buildings.

	First 1,000 sq. ft. of gross building floor area	1.2
	Each additional 1,000 square feet of gross building floor area. Portions less than 1,000 sq. ft. will be prorated.	0.7
4)	<u>Self-service laundry per washer</u>	1.0
5)	<u>Churches, theaters and auditoriums</u> per each 150 person seating capacity, or any fraction thereof. (Does not include office spaces, schoolrooms, day-care facilities, food preparation areas, etc. Additional EDUs will be assigned for these supplementary uses.)	1.5
6)	<u>Schools</u>	
	a. Elementary Schools - For each 50 pupils or fraction thereof	1.0
	b. Junior High Schools - For each 40 pupils or fraction thereof	1.0
	c. High Schools, Colleges and Universities - For each 24 pupils or fraction thereof	1.0

Additional EDUs will be prorated based on above values.

The number of pupils shall be based on the average daily attendance of pupils at the school during the preceding fiscal year, computed in accordance with the education code of the State of California. However, where the school has had no attendance during the preceding fiscal year, the General Manager shall estimate the average daily attendance for the fiscal year for which the fee is to be paid and compute the fee based on such estimate.

7) Convalescent Homes

- a) Skilled nursing care facilities, psychological hospitals, convalescent hospitals; licensed by the Department of Health. 0.7/bed
- b) Community Care Facilities with 16 or more beds licensed by the State Department of Health. 0.5/bed
- c) Small Community Care Facilities with 7 to 15 beds licensed by the County Department of Social Services 0.5/bed
- d) Community Care Homes with six or fewer total residents, including resident staff and housekeepers (to be the same EDU as a single-family residence). 1.0

8) Other

In the case of commercial, industrial and other business establishments such as bottling works, supermarkets, markets, deli/markets, convenience stores, hospitals, laundries (other than self-service laundries), automobile service stations, mortuaries, day-care centers, bars, pool halls, and other establishments not included in items 1) through 7) inclusive, or when the EDUs specified in items 1) through 7) are not representative of actual flow due to the number of employees or type of operation, the number of equivalent dwelling units shall be determined in each case by the General Manager and shall be based upon the estimated volume and type of wastewater discharge into the sewer.

53.10

TRANSFER, ASSIGNMENT, OR RESALE OF SEWER CONNECTION RIGHTS

EDU sewer connection rights obtained by a customer may not be sold, transferred, or assigned separately from ownership of the real property for which they were obtained, unless otherwise stated in an agreement with the District.

53.11 SEWER SERVICE RATES AND CHARGES

- A. Set-up Fees for Accounts. A set-up fee (see Appendix A, 53.11 A. for fee) shall be charged for each account transferred to another customer.
- B. Residential Sewer Charges.
  - (1) Winter Average Determination. Sewer service usage fee shall be based on the "Winter Average" water consumption, measured in units of hundred cubic feet (HCF). For Otay water customers, the winter period is December through March, and for Helix water customers, the winter period is January through April. The winter average for Otay is calculated by adding the four months of the preceeding winter together and dividing by four. The winter average for Helix is calculated by adding the two billing periods of the four months together and dividing by four. For both Otay and Helix water customers, this average is then reduced by a 15% usage discount, recognizing that not all water used flows into the sewer system, to determine the "Winter Average" for billing purposes.
  - (2) Usage Fee. The usage fee rate (see Appendix A, 53.11 B.2. for rate) is multiplied by the "Winter Average" calculation for each customer (after the above noted 15% discount) and the resulting amount is added to the Fixed Service Charge applicable to the size of meter. The resulting fixed fee shall be charged on a monthly basis for an entire calendar year, until a new "Winter Average" is determined for the following year.
  - (3) Base Fee. The monthly base fee per meter size is set forth in Appendix A, 53.11 B.3.
  - (4) Monthly Residential Sewer Rate Without Consumption History. The average residential sewer charge shall be calculated by calculating the total usage fee for all residential

customers and dividing by the number of residential customers. Then the monthly base fee for 3/4 inch meter is added to this average fee and this shall be used to determine the rate per ASU to be used for commercial customers. The monthly residential sewer rate without consumption history is as set forth in Appendix A, 53.11 B.4. for charge).

C. Single Residential Winter Averaging

- (1) Defined as: Sewer service for individually metered residential households.
- (2) The monthly sewer bill is calculated by adding the base fee plus the usage fee as described in 5.11.B.(1), (2), & (3) above.
- (3) The maximum "Winter Average" for individually metered residential customers is (after the 15% discount) as follows:
  - i. January through December 2008 - 18 units
  - ii. January through December 2009 - 22 units
  - iii. After December 31, 2009 - 30 units
- (4) New Customers. New customers that do not have a prior winter consumption history to determine their monthly usage fee shall be assigned a "Winter Average" for single individually metered households. See Appendix A, 53.11 C.4. for Winter Averaging fees.

D. Multi-Residential Rate Charges

- (1) Defined as: Sewer service for master metered water service for multiple-residential households including for example; duplex, townhomes, apartments, and mobile homes.
- (2) The monthly sewer bill for the complex is calculated by adding a 3/4 inch base fee (as set forth in Appendix A, 53.11.B.3.) times the number of units in the complex plus the usage fee (as set forth in Appendix A, 53.11.D.2.) for the entire complex. (Note: There is no cap on consumption for the multi-residential customers.)
- (3) New complexes that do not have a prior winter consumption history to determine their monthly usage fee shall be assigned a "Winter Average" for each multiple-residential unit in a master metered

residential complex. See Appendix A, 53.11 C.4. for Winter Averaging fees.

E. Commercial Sewer Charges

- (1) ASU Determination: The charges for commercial sewer service shall be based on the rate of discharge and the strength of sewage. The Board of Directors may adjust the charges in proportion to the amount of water not entering the sewer which is substantiated by the property owner or discharger.
- (2) The strength of sewage is based on its biochemical oxygen demand (BOD) and the cost of removing suspended solids (SS).
- (3) The formula is derived by taking the total cost of providing sewer service and charging each user for a pro-rata share.
- (4) The State Revenue Program Guidelines require use of an "Assigned Service Unit Assignment Formula" which converts higher strength uses into a service unit value which is comparable to the use impact of a single-family residential user or equivalent dwelling unit. The formula for determining an Assigned Service Unit (ASU) for a single-family dwelling is set forth in the annual budget, which is incorporated herein by reference.
- (5) The formula is based on an estimated daily flow of 250 gallons per day plus 280 milligrams per liter of BOD and 234 milligrams per liter of SS for a residential equivalent dwelling unit.
- (6) For commercial users the flow is based on 85% of their prior 12-month water consumption to reflect the amount of water that returns to the system. The strength of discharge for commercial user is based on whether it is classified as a low-strength, medium-strength or high-strength user.

User Classification

Low-Strength Commercial = 1.000 Strength Factor

Car wash  
General office and buildings  
Barber and beauty shops  
Department, retail stores and general  
commercial

Hospitals and convalescent homes  
Laundromat, laundry and dry cleaners  
Professional office or office building  
Warehouse  
Other uses having a similar strength as  
determined by the District

Medium-Strength Commercial = 1.238 Strength Factor

Bars without dining facilities  
Bowling alley  
Hotels without dining facilities or cooking  
facilities  
Auto repair/sales shop and service station  
Shopping centers  
Other uses having a similar strength as  
determined by the District

High-Strength Commercial = 2.203 Strength Factor

Bakery or bakery with deli  
Hotel with dining facilities  
Restaurants and bars with food  
Supermarkets  
Other uses having a similar strength as  
determined by the District

Institutional = 1.000 Strength Factor

Churches: Treated the same as Low-Strength  
Commercial.

Schools: For public schools flow is based on  
average daily attendance ("ADA") for the prior  
school year, including summer school, as  
reported by schools to meet state requirements.  
Private schools will be required to file a  
report verifying their attendance. For  
elementary schools 50 students shall equal 1  
ASU. For junior high schools 40 students shall  
equal 1 ASU and for high schools 24 students  
equals 1 ASU. The formula for schools shall be  
the same as applies to single-family  
residential. For charges see Appendix A, 53.11  
E.6.

Colleges: For colleges, flow is based on the  
number of Certificated and Classified Staff,  
and students enrolled in each school session  
(Spring, Summer, and Fall):

$$\begin{aligned}
\text{Gallons per day (GPD)} &= \text{no. of students and staff} \times \\
&\quad \text{no. of weeks Spring} \\
&\quad \text{session)} \\
&+ \text{(no. of students and staff} \\
&\quad \times \text{no. of weeks Summer} \\
&\quad \text{session)} \\
&+ \text{(no. of students and staff} \\
&\quad \times \text{no. of weeks Fall} \\
&\quad \text{session)} \\
&+ \text{(no. of staff} \times \text{no. of non-} \\
&\quad \text{session weeks)} \\
&\times 23 \div 52
\end{aligned}$$

$$\begin{aligned}
\text{ASU} &= \text{Daily Flow} \times \text{Strength Factor} \\
&= [(\text{GPD} \times 85\%) \div 250] \times 1.000
\end{aligned}$$

The minimum charge for commercial shall be no lower than 1 ASU at low strength. Charges are determined each fiscal year. The formula is set forth in the annual budget, which is incorporated herein by reference.

F. Charges to Cover the State Loan Program for the Treatment Facility. A (see Appendix A, 53.11 F. for fee) fee per ASU shall be attached to the property tax bills to cover the annual payment on the \$5,000,000 state loan until such loan is paid in full.

G. Monthly Service Charges for Commercial Sewer Service. The Monthly Sewer Service charges for service furnished by the District, shall be:

1. Commercial and Institutional (per ASU):  
Commercial users shall be charged based upon the ASUs derived in Section 53.11 E.(4). For charges see Appendix A, 53.11.G.1.
2. Industrial and Other Users  
Charges determined by the Board of Directors on a case-by-case basis.

Monthly sewer service charges shall commence upon installation of the water meter to serve the premises receiving the sewer service, upon connection to the District sewer system, upon start of occupancy of the premises to be served, or one year after the date the application for sewer service is filed, whichever is earlier. If a sewer service connection has been obtained and if sewer service will not be used until some time after

installation of the water meter, commencement of the sewer service charge may be deferred until the later date only upon prior approval of the General Manager.

SECTION 60            UTILITY FACILITIES FOR SUBDIVISIONS AND PARCEL  
MAP DEVELOPMENTS

60.01            INSTALLATION BY THE DISTRICT

The District will not construct facilities to provide utility service to land being divided for a subdivision or parcel map development, except where facilities are constructed as part of the Capital Improvement Program for the utility system of an improvement district.

60.02            INSTALLATION BY DEVELOPERS

Developers of land shall provide, at their own expense, all facilities required for utility service within the area to be developed. In order to obtain required services it may be necessary for a Developer, in some instances, to also provide certain off-site facilities or to provide for oversizing of the facilities which are to become part of the District system. In such event, the Developer may be entitled to reimbursement of certain costs for such off-site or oversizing facilities as provided in Policy 26 of this Code.

60.03            ISSUANCE OF AVAILABILITY LETTERS FOR WATER AND/OR  
SEWER SERVICE

Upon request, the General Manager will provide a written statement (sometimes referred to as "availability" or "will-serve" letters) advising whether water and/or sewer service is available and, if not, whether such service could be made available, for a proposed development project within the District. A charge (see Appendix A, 60.03) will be made for each statement furnished by the District.

60.04            REQUIREMENT FOR A SUBAREA MASTER PLAN (SAMP)

In some instances, a Subarea Master Plan (SAMP) may be necessary to establish the water, recycled water and sewer system facilities for adequate District service within and to a proposed subdivision project. A SAMP shall be required when any of the following situations have occurred:

- A. No previous SAMP was prepared and the complexity of the proposed subdivision requires integration into the District Water Resources Master Plan.
- B. The Developer is seeking to modify the requirements of the District's Water Resources Master Plan.
- C. The previously submitted SAMP for the proposed subdivision is no longer representative of the current development proposal.

- D. The previously submitted Developer SAMP for the proposed subdivision project is over two years old.
- E. The General Manager has determined a SAMP is required.

The Developer may elect to have the SAMP performed by a private Engineering firm and submitted to the District for approval by the General Manager. The Developer may request the District to prepare the SAMP and deposit with the District the estimated cost of the SAMP. Prior to implementation, the SAMP shall be reviewed and approved by the General Manager. Approval of the SAMP shall occur prior to approval of any Construction Agreement for a Developer's improvement plans by the General Manager.

60.05 REQUIREMENT FOR A TENTATIVE MAP

- A. The Developer shall file with the District a tentative map of the proposed subdivision or parcel map project.
- B. The Developer shall deposit with the District a sum determined by the General Manager to cover the estimated cost of plan checking and engineering services.
- C. The General Manager will review the tentative map and return it to the Developer indicating thereon the water and/or sewer system that will be required for the development.

60.06 REQUIREMENT OF EASEMENT OR RIGHT-OF-WAY FOR UTILITY FACILITIES

Whenever the plans, as approved, provide for any portion of the utility facilities to be constructed in other than a dedicated public street or road, the Developer shall grant or cause to be granted an easement or right-of-way to the District in the form specified by the General Manager. Whenever facilities are terminated at a point short of the boundary of the parcel owned by the Developer, a permanent easement, in accordance with Section 36.02, shall be granted to District in order to provide for future extension of the facility to adjoining parcels of land. This requirement shall also apply to those cases where the County or a city requires the Developer to provide a one foot buffer between the subdivision or lot-split boundary and the adjoining property.

60.07 REQUIREMENT FOR ANNEXATION

- A. The Developer desiring service to properties which lie outside the District or outside an Improvement

District shall request annexation. The Developer shall request such annexation in writing to the General Manager.

- B. The Engineering Department shall provide an annexation packet outlining the required information and charges as detailed in Chapter 6, Section 9 of this Code.
- C. Annexation shall occur prior to approval of any Construction Agreement for the Developer's improvement plans by the General Manager.

60.08 REQUIREMENT FOR APPROVED PLANS AND CONSTRUCTION AGREEMENT

- A. Developer shall prepare detailed engineering drawings for construction of the proposed system shown on the tentative map and submit such drawings to the District for review and approval. Each system shall provide for water service and/or sewer service, where applicable, to each lot in a subdivision and to each parcel in a parcel map development. The utility system proposed shall not be detrimental in any way to operation of the District utility system and shall conform to the requirements of the approved SAMP.
- B. The General Manager shall review the construction drawings and either accept, reject, or revise them for compliance with District standards and specifications. Upon approval of the drawings, the General Manager shall return them to the Developer with the following: (i) District estimates for construction costs and the amount of additional District deposit; (ii) the required standard District agreement for installation of water or sewer facilities; and (iii) the amount of security required to guarantee performance of the agreement.
- C. Developer shall return to the District the revised drawings, if required, the executed subdivision construction agreement, together with the required deposits and security, either cash, surety bond, or letter of credit, acceptable to the General Manager, and the grant of easements or rights-of-way that may be required. If such are complete, and the proposed subdivision has been annexed into an Improvement District, the Construction Agreement for the project will be authorized by the General Manager.
- D. Upon approval of the construction agreement by the General Manager, the Developer shall submit the

mylar construction plans for signature by the General Manager.

60.09 REQUIREMENT FOR DISTRICT INSPECTION

- A. Upon receipt by the General Manager of the approved plans, and prior to beginning construction of the facilities, the Developer shall schedule a pre-construction meeting with the General Manager.
- B. Upon completion of the pre-construction meeting, the Developer shall commence construction of the facilities and complete the same in accordance with the standard construction agreement, the approved plans, and the District's Standard Specifications for Water, Sewer, and Reclaimed Water Facilities and the instructions given at the pre-construction meeting.
- C. During the construction of the facilities, they shall be subject, at all times, to inspection by the District's Quality Control Division.

60.10 REQUIREMENTS FOR USE OF UTILITIES FOR OCCUPANCY PRIOR TO DISTRICT ACCEPTANCE

The Developer may purchase and obtain permanent water meters and sewer services for occupancy in the project prior to acceptance of the project by the General Manager, subject to the conditions stated below:

A. Water Meter

- 1. The purchase of permanent meter(s) shall be in accordance with Sections 27 and 28 of this Code, and:
  - a. There shall be sufficient funds in the Developer's District account to cover District expenses.
  - b. Per Section 60.06 above, the Developer shall have in effect a valid construction agreement with the District.
- 2. Prior to installation of any meter(s) the Developer shall meet the following conditions:
  - a. The water system shall be hydrostatically tested, disinfected, pass a District bacteriological examination, be connected to the District's existing system with a permanent connection(s), and be installed in accordance with the District specifica-

tions and requirements prior to the use of the system.

- b. The meter box(es) shall be set to final grade and the installation shall be complete per the District's standard specifications.

B. Sewer Connection

1. For acquisition of each sewer service connection, the Developer shall meet the following conditions:

- a. There shall be sufficient funds in the Developer's District account to cover District expenses.

- b. Pay all fees and charges for each connection requested, and identify the parcel for which the sewer service is being provided.

2. Prior to connection(s) of any sewer services, the sewer system shall be constructed and complete in accordance with District specifications and requirements.

C. Prior to the installation of the last purchased meter or connection of the last sewer service, the project shall be referred to the General Manager for acceptance. In order to be accepted, all aspects of a project shall be complete per Section 60.11 below.

60.11 REQUIREMENT FOR FINAL ACCEPTANCE BY THE GENERAL MANAGER

A. Upon completion of the facilities, with only minor outstanding construction items remaining, a preliminary walk-through inspection and punch list of any outstanding items will be prepared. It shall be the responsibility of the Developer to assure any outstanding items are completed in a timely manner.

B. Upon completion of construction of the facilities in accordance with District specifications and requirements, a final inspection, completion of all outstanding punch list items, submittal and acceptance of the mylar record drawings, submittal and acceptance of the soils compaction report, and when all Developer accounts with the District have been made current, the facilities shall be referred to the General Manager for acceptance.

60.12

REQUIREMENT FOR ONE YEAR WARRANTY PERIOD

- A. Upon acceptance by the General Manager, the District shall own and operate the facilities.
- B. The Developer shall guarantee the facilities against defects in materials or workmanship for a minimum period of one (1) year from the date of acceptance by the Board of Directors. The method of guarantee shall be a warranty bond, or other means acceptable to the General Manager, in the amount of twenty-five (25) per cent of the District's estimated value of the project.
- C. Defects in materials or workmanship discovered during the one (1) year warranty period shall be repaired by the Developer and at the sole expense of the Developer. Any collateral damage caused by a defect in materials or workmanship during the warranty period, including District expenses, shall be borne solely by the Developer. This section does not limit the developer's liability for latent or patent defects.

**OTAY WATER DISTRICT  
BOARD OF DIRECTORS POLICY**

Subject	Policy Number	Date Adopted	Date Revised
FURNISHING COPIES OF DOCUMENTS AND PREPARATION OF OTHER INFORMATION	05	10/15/84	4/3/96

Purpose

To establish charges for making copies of documents and for gathering other information.

Background

The District frequently receives requests for copies of documents prepared by the District or on file in District records. Occasionally the District receives requests for information not readily available from District records, but which could be made available after research and study performed by the District staff.

In such cases the District should be reimbursed for costs incurred in complying with such requests.

Policy

The charges for furnishing copies of documents such as identifiable public records, agendas, ratified minutes, or the preparation of other information is set forth in Appendix A, Policy 5.

1. For requests for non-identifiable documents or information that requires staff research.
  - (a) Requests for such information shall be made in writing on a District Information Request Form.
  - (b) Individuals or entities making such a request shall reimburse the District for the costs incurred by the District in providing the information requested.
  - (c) Requests for information, the production of which would involve substantial costs in time and/or material to the District, shall be presented to the Board of Directors for review.
2. Charges for copies may be waived for the benefit of the District.

OTAY WATER DISTRICT BOARD OF DIRECTORS POLICY			
Subject	Policy Number	Date Adopted	Date Revised
TEMPORARY WATER SERVICE FOR COMMUNITY SERVICE ORGANIZATIONS	17	05/31/95	06/07/95

**Deleted: PURPOSE**

To establish a policy with regard to providing temporary water service to community service organizations.

**BACKGROUND**

From time to time, the District receives requests from community service organizations for temporary water service. Requiring the community service organization to pay capacity fees or the normal deposit could be prohibitive. Nonetheless, the District needs to insure that any connections to its system be metered.

**POLICY**

The General Manager is authorized to provide temporary water service to community service organizations under the following conditions:

1. The community service organization shall make a \$25 per day minimum payment for the temporary connection.
2. If the cost of the water used exceeds \$25, the community service organization shall pay the excess cost.
3. The temporary service shall be limited to 48 hours within any one month period.
4. The meter shall be installed by District staff.
5. The rate for water service shall be two times the normal domestic rate.



STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	February 3, 2010
SUBMITTED BY:	Mark Watton, General Manager	W.O./G.F. NO:	DIV. NO.
SUBJECT:	Adopt Resolution No. 4151 to Repeal and Replace Policy No. 05 - Furnishing Copies of Documents and Preparation of Other Information and Adopt Policy No. 05-A - Records Policies and Procedures - Records Retention and Destruction, and Policy No. 05-B - Records Policies and Procedures - Accessibility		

**GENERAL MANAGER'S RECOMMENDATION:**

That the Board of Directors adopt Resolution No. 4151 to Repeal and Replace Policy No. 05 - Furnishing Copies of Documents and Preparation of Other Information and Adopt Policy No. 05-A - Records Policies and Procedures - Records Retention and Destruction, and Policy No. 05-B - Records Policies and Procedures - Accessibility

**COMMITTEE ACTION:** \_\_\_\_\_

See Attachment A.

**PURPOSE:**

To request that the Board repeal and replace current Policy No. 05 with two Board policies regarding retention, destruction and accessibility of District records.

**ANALYSIS:**

Current Policy No. 05 is limited to establishing charges for copies of public records. District staff has determined that Policy No. 05 is outdated and recommends repealing the policy and implementing in its place two policies that will provide comprehensive guidance to District staff and the public with respect to the retention, destruction and accessibility of District records.

Proposed Policy No. 05-A will clarify the District's goals and procedures related to maintaining and disposing of District records, including electronic documents. With the advancement in technology, the District has moved and continues to move toward storing more of its records in electronic format. As a result, the District's Information Technology staff is often involved in the handling, management and destruction of District records. Accordingly,

District staff believes that the District's Chief Information Officer would be the logical choice to serve as the administrator of the policy. Ultimate record keeping responsibility will remain in the purview of the District Secretary. The District's existing Records Retention Schedule has been revised to ensure legal compliance and is incorporated into Policy No. 05-A.

Proposed Policy No. 05-B will clarify the District's goals and procedures related to the handling of requests, responses and records under the California Public Records Act. Currently, the District Secretary is tasked with receiving and responding to public records requests and with coordinating with District staff to compile and prepare requested documents. Policy No. 05-B will set forth in writing the District's procedures with respect to the California Public Records Act, thereby facilitating efficiency and consistency in responding to records requests.

**FISCAL IMPACT:** \_\_\_\_\_

None.

**LEGAL IMPACT:** \_\_\_\_\_

None.



\_\_\_\_\_  
**GENERAL MANAGER**

Attachment A: Committee Report

Attachment B: Resolution No. 4151 to Repeal Policy No. 05 -  
Furnishing Copies of Documents and Preparation of  
Other Information and Adopt Policy No. 05-A - Records  
Policies and Procedures - Records Retention and  
Destruction, and Policy No. 05-B - Records Policies  
and Procedures - Accessibility

Attachment B-I: Current Board Policy No. 05 - Furnishing Copies of  
Documents and Preparation of Other Information

Attachment B-II.a: Proposed Policy No. 05-A - Records Policies and  
Procedures - Records Retention and Destruction,  
together with Appendix 1 thereto

Attachment B-II.b: Proposed Policy No. 05-B - Records Policies and  
Procedures - Accessibility



## ATTACHMENT A

<b>SUBJECT/PROJECT:</b>	Adopt Resolution No. 4151 to Repeal Policy No. 05 - Furnishing Copies of Documents and Preparation of Other Information and Adopt Policy No. 05-A - Records Policies and Procedures - Records Retention and Destruction, and Policy No. 05-B - Records Policies and Procedures - Accessibility
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### COMMITTEE ACTION:

The Finance/Administration and Communications Committee reviewed this item at a meeting held on January 19, 2010 and the following comments were made:

- Staff is recommending that the board repeal Policy No. 5 as it is outdated and that the board adopt and implement two policies in its place. Policies 5A and 5B will provide guidance to District staff and the public concerning the retention, destruction and accessibility of District records.
- Policy 5-A will indicate procedures related to maintaining and disposing of District records, including electronic documents. Staff has updated the District's current Records Retention Schedule (adopted in 1999) which will be incorporated into Policy 5-A.
- The Records Retention Schedule specifies, in compliance with legal requirements, when the various District records will be destroyed. An electronic report showing records scheduled for destruction will be generated by the records system for staffs' review prior to the destruction of records. It was noted that District records will be converted to "pdf" files.
- Policy 5-B will clarify the District's procedures related to the handling of requests for District records under the California Public Records Act. Such requests are handled through the District Secretary.

Following the discussion, the committee supported staffs' recommendation and presentation on the consent calendar.

# ATTACHMENT B

## RESOLUTION NO. 4151

OF THE BOARD OF DIRECTORS OF THE OTAY WATER DISTRICT REPEALING AND REPLACING POLICY NO. 05 – FURNISHING COPIES OF DOCUMENTS AND PREPARATION OF OTHER INFORMATION – AND ADOPTING POLICY NO. 05 A – RECORDS POLICY AND PROCEDURES - RETENTION AND DESTRUCTION – AND POLICY 05 B - RECORDS POLICY AND PROCEDURES - ACCESSIBILITY

WHEREAS, the District staff and the General Counsel routinely evaluate Board policies and make recommendations to update, revise and replace the policies to promote best management practices, and

WHEREAS, the District staff and the General Counsel have determined that the existing Policy 05 - RECORDS POLICY AND PROCEDURES (Attachment I) - concerning District records is outdated and there is a need to repeal it and replace it with Policy 05-A – RECORDS POLICY AND PROCEDURES – Retention and Destruction (Attachment II.a) – and Policy 05-B - RECORDS POLICY AND PROCEDURES – Accessibility (Attachment II.b), to clarify the District’s goals and procedures with respect to records retention and destruction and the District’s goals and procedures with respect to the production and accessibility of District records.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Otay Water District as follows:

Section 1. Existing Policy 05 – RECORDS POLICY AND PROCEDURES (Attachment I) – is hereby repealed.

Section 2. Policy 05-A - RECORDS POLICY AND PROCEDURES – Retention and Destruction (Attachment II.a) – is hereby adopted.

Section 3. Policy 05-B - RECORDS POLICY AND PROCEDURES – Accessibility (Attachment II.b) – is hereby adopted.

Section 4. The General Manager or its designated representative is hereby authorized and directed to cause to be implemented the purpose of this Resolution to the fullest extent, including the preparation of written procedures to the extent deemed necessary and desirable to enforce, clarify or explain the provisions of this Resolution.

The District Secretary is hereby ordered to take any actions within her purview to carry out the provisions of this resolution, including, to the extent practicable and necessary, revising the Index of the Otay Water District Board Policies, inserting, replacing or substituting all policies herein adopted, amended, replaced or repealed and recalling and replacing any and all hard-copies of the Code previously provided to District staff, other public agencies or any other persons.

PASSED, APPROVED AND ADOPTED by the Board of Directors of the Otay Water District at a regular meeting held this 3rd day of February, 2010.

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
STATE OF CALIFORNIA     )  
COUNTY OF SAN DIEGO   )    ss  
OTAY WATER DISTRICT    )

I, Susan Cruz, District Secretary to the Otay Water District, do hereby certify that the foregoing Resolution was introduced and passed at a regular meeting of the Board of Directors of the Otay Water District held on the 3<sup>rd</sup> day of February, 2010, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
DISTRICT SECRETARY

**ATTACHMENT B-I**

**OTAY WATER DISTRICT  
BOARD OF DIRECTORS POLICY**

Subject	Policy Number	Date Adopted	Date Revised
<del>FURNISHING COPIES OF DOCUMENTS AND PREPARATION OF OTHER INFORMATION</del>	05	10/15/84	4/3/96

**Purpose**

~~To establish charges for making copies of documents and for gathering other information.~~

**Background**

~~The District frequently receives requests for copies of documents prepared by the District or on file in District records. Occasionally the District receives requests for information not readily available from District records, but which could be made available after research and study performed by the District staff.~~

~~In such cases the District should be reimbursed for costs incurred in complying with such requests.~~

**Policy**

~~Charges for furnishing copies of documents or the preparation of other information shall be as follows:~~

- ~~1. For copies of identifiable public records the charge shall be \$0.10 per copy~~
- ~~2. For the Service of Providing Agendas and Minutes of Meetings of the Board of Directors:~~

~~Agendas and/or Minutes shall be furnished upon written request. Charges for such copies shall be made as follows:~~

- ~~Agendas \$20.00 per year (\$ .50 per meeting)~~
- ~~Agendas and Minutes \$100.00 per year for the first copy and \$200.00 per year for each copy thereafter.~~

- ~~3. For Requests for Non-identifiable Documents or Information that Requires Staff Research~~

~~(a) Requests for such information shall be made in writing on a District Information Request Form.~~

~~(b) Individuals or entities making such a request shall reimburse the District for the costs incurred by the District in providing the information requested.~~

OTAY WATER DISTRICT  
BOARD OF DIRECTORS POLICY

Subject	Policy Number	Date Adopted	Date Revised
<del>FURNISHING COPIES OF DOCUMENTS AND PREPARATION OF OTHER INFORMATION</del>	05	10/15/84	4/3/96

~~\_\_\_\_\_ (c) Requests for information, the production of which would involve substantial costs in time and/or material to the District, shall be presented to the Board of Directors for review.~~

~~\_\_\_\_\_ 4. Charges for copies may be waived for the benefit of the District.~~

OTAY WATER DISTRICT  
**BOARD OF DIRECTORS POLICY**

Subject	Policy Number	Date Adopted	Date Revised
RECORDS POLICY AND PROCEDURES - RECORDS RETENTION AND DESTRUCTION	05-A	2/3/10	

I. PURPOSE

To ensure that necessary records and documents of the Otay Water District are adequately protected and maintained and to ensure that records that are no longer needed or are of no value are discarded at the proper time. This Policy is also for the purpose of aiding District employees in understanding their obligations in retaining electronic documents, including e-mail, Web files, text files, sound and movie files, PDF documents, and all Microsoft Office or other formatted files.

II. SCOPE

This policy is applicable to all District departments and offices directly responsible to the General Manager.

III. POLICY

This Policy represents the District's policy regarding the retention and disposal of records, including electronic documents. Attached as **Appendix 1** is a Record Retention Schedule that is approved as the District's maintenance, retention and disposal schedule for physical records and the retention and disposal of electronic documents.

IV. ADMINISTRATION

A. General

1. The District's Chief Information Officer (the "Administrator") is the officer in charge of the administration of this Policy and the implementation of processes and procedures to ensure that the Record Retention Schedule is followed.
2. The Administrator is also authorized to, in consultation with the General Manager: make modifications to the Record Retention Schedule from time to time to ensure that it is in compliance with local, state and federal laws and includes the appropriate document and record categories for the District; work with the District's General Counsel to monitor local, state and

OTAY WATER DISTRICT  
BOARD OF DIRECTORS POLICY

Subject	Policy Number	Date Adopted	Date Revised
RECORDS POLICY AND PROCEDURES - RECORDS RETENTION AND DESTRUCTION	05-A	2/3/10	

federal laws affecting record retention; annually review the record retention and disposal program; and monitor compliance with this Policy.

B. Suspension of Record Disposal due to Litigation or Claims

In the event the District is served with any subpoena or request for documents or any employee becomes aware of a governmental investigation or audit or the commencement of any litigation against or concerning the District, such employee shall inform the Administrator and any further disposal of documents shall be suspended until such time as the Administrator, with the advice of counsel, determines otherwise. The Administrator shall take steps to promptly inform all staff of any suspension in the further disposal of documents.

C. Records Retention Schedule Organization

The Record Retention Schedule is organized by type of records and reflects each department's responsibility.

D. Records Management, Filing and Destruction

If deemed necessary by the Administrator and the General Manager, a person, firm or service may be retained to assist the District with the management, filing, retention and destruction of records. If the aggregate payments under the contract do not exceed the General Manager's contracting authority, the General Manager is authorized to determine the terms and conditions of such contract in consultation with the General Counsel.

## Otay Water District - Records Retention Schedule (FY2010)

No.	Record Series Title	Record Series Description	Authority	Retention (Yrs)	
				Legal	OWD
1	Accident Reports	Records relating to accidents, including vehicle and property.	29CFR 1904.2, 29 CFR 1904.6	C+7	C+7
2	Accounting Reports	Records relating to depreciation, IAWP credits and State Controller's Report filed annually, Monthly Finance detailed reports, Interim Agricultural Water Program reports.	WC §50942; GC §60201; GC §12236	A+4/7*	A+4/7*
3	Accounts Payable	Records relating to payment of financial obligations. Includes vendor invoices, bills, statements, check requests, receiving documents and blue copy of checks.	WC §50942; GC §60201; GC §12236	A+4/7*	A+4/7*
4	Agency Filings	All departments Agency Filings that include reports, forms, and/or documentation relating but not limited to Conflict of Interest, Election card filing, EEOC, EDD, DOL, CDPH, RWQCB, APCD, DEH, Potable, Reclaimed, Sewer, Reclamation plant, Seismic Study, Risk Management Plan, Process Safety Management Program, Cal Arp Program Ammonia, BMP Reporting, Urban Water Management Plan, County of San Diego, Public Health, Regional Water Control Board.	WC §50942; GC §60201; GC §12236; WC §60201(d)(10)	P	p
5	Annexation	Records relating to annexation or de-annexation by APN number and/or address, maps, forms, packages.	WC §50942; GC §60201; GC §12236; WC §60201(d)(10)	P	p
6	Appraisals	Records relating to the appraisal of property, including working papers.	WC §50942; GC §60201; GC §12236	C+2	C+2
7	Audits	Records relating to audits. Records include reports, notes and backup information.	WC §50942; GC §60201; GC §12236	A+4/7*	CY+10
8	Availability	Listing of Availability Charges.	WC §50942; GC §60201; GC §12236	A+3	A+3
9	Backup Tapes	Backup of all electronic data, including e-mails.	WC §50942; GC §60201	SU+2	SU+2
10	Bankruptcies	Court documents reflecting Otay Water as a creditor in customer's bankruptcy.	WC §50942; GC §60201	A+2	A+2
11	Bank Statements and Reconciliation	Records relating to banking activities. Includes statements reflecting deposits, withdrawals, reconciliations, check registers and canceled checks for operating and payroll bank accounts.	GC § 34090; 26 CFR 1.6001-1	A+5	A+5
12	Benefit Administration	Documentation related to medical benefits including but not limited to SDRMA, Plan Handlers, and executive physicals, Medical/Prescription Drugs, Dental, Life Insurance, Deferred Comp, Flexible Spending Accounts, Disability Insurance, Cobra Administration/Retiree Billing, Benefits Consultant, CalPERS Retirement, Employee Assistance Program, Pre-paid Legal Plan.	GC § 6250 et seq.; OMB A-129; 29 CFR 1602.30, 1602.32	R+7	R+7
13	Board	Resolutions adopted by the Board and index of Resolutions, Ordinances, Staff reports.	WC §50942; GC §60201; GC §12236; WC §60201(d)(2)&(3)	P	P
14	Board Committee Meeting Minutes	Records including Agenda and Minutes of Board standing and ad hoc committee meetings.	WC §50942; GC §60201; GC §12236; WC §60201(d)(3)	P	P

APPENDIX I

### Event Codes:

A=Audit	CCR=Code of Cal. Reg.	GICO=Gen Ind Safety Orders	OMB=Office Mgmt & Budget	R=Revised, Cancelled, Obsolete
ACT=Active	CEQA=Cal Env Quality Act	H&S=Health & Safety Code	OPS=Opinion Attorney General	S=Sale
B&P=Business & Profes Code	CFR=Code Fed Regulations	IND=Indefinite	OSHA=Occup. Safety & Health Act	SU=Supersede
C/CL=Closed	CY=Calendar Year	L=Life of Facility	P=Permanent	T=Termination, Death
CCP=Code of Civ. Proc.	GC=Cal Goc Code	LC=Labor Code Cal	PC=Penal Code	USC=United States Code

## Otay Water District - Records Retention Schedule (FY2010)

No.	Record Series Title	Record Series Description	Authority	Retention (Yrs)	
				Legal	OWD
15	Board Meeting Minutes	Records including Agenda and meeting Minutes of the Board of Directors.	WC §50942; GC §60201; GC §12236; WC §60201(d)(3)	P	P
16	Bonds	Developer Bonds.	WC §50942; GC §60201; GC §12236; CCP §337.5	C+10	C+10
17	Budget - Supporting Documents	Records relating to internal planning and financial management. Records include reports, budget vs. cost reports, monthly activity reports, requests, summaries and worksheets.	WC §50942; GC §60201; GC §12236	A+2	A+5
18	Budget - Adopted Budgets	Published Budget as adopted by the Board of Directors.	WC §50942; GC §60201; GC §12236	P	P
19	Capacity Fees	Calculation of capacity fees for developers filed quarterly by fiscal year.	WC §50942; GC §60201(d)(10); GC §12236	P	P
20	Cash	Records relating to receipts, disbursements, investments, bank reconciliations, cash reserves, wire transfers.	WC §50942; GC §60201; GC §12236; WC §60201(d)(10); 26 CFR 1.6001-1	A+5	A+5
21	Collections	Monthly collections and monthly collection/write-offs reports (This is currently being automated in Eden.)	WC §50942; GC §60201; GC §12236	A+2	A+2
22	Complaints	Complaints related to water quality. Records maintained in IMS. Includes Water Quality, Water Pressure, Water Services, Cut-backs.	PC § 832.5; GC § 12946; PC 801.5; PC § 803(c)	C+5	C+5
23	Computer Tracking Records	Records regarding the tracking of ID / password requests and computer installations. Kept in electronic format in Active Directory.	WC §50942; GC §60201; GC §12236	R+3	R+3
24	Confined Space Tests	Records relating to confined space checklists, test data and tracking of regulatory requirements for the permitting, inspection and entrance of confined space. (Each Supervisor is responsible for maintaining their own division records within their office files.)	WC §50942; GC §60201; GC §12236;	CY+2	CY+2
25	Consultant Records	Records relating to Consultants used by OWD. Records may include work projects, compensation studies, surveys, training, copies of contracts, status reports, invoices, spreadsheets, project management timelines, and correspondence.	WC §50942; GC §60201; GC §12236; CCP §337.2; CCP §343; B&P §7042.5	T+5	T+5
26	Contracts and Agreements	Records relating to obligations under contracts and/or agreements between OWD and outside parties. Includes contracts for services, purchases, sales, transportation, leases, exchange of property, Agency MOUs', Licensing, Warranties, Utility Files, Benefits and CIP Projects. Summary Plan Descriptions and related amendments for life, health, deferred comp, disability, flex spending, Cobra administration. Conservation Garden JPA MOU.	WC §50942; GC §60201; GC §12236; CCP §337.2; CCP §343; B&P §7042.5; GC §4004; H&S § 19850	T+5 non capital	T+5
27	Correspondence	Records relating to internal and external communications, including but not limited to memos, reports, faxes and letters. Correspondence of a general nature, not related to any specific project.	WC §50942; GC §60201; GC §12236	3	3

### Event Codes:

A=Audit  
 ACT=Active  
 B&P=Business & Profes Code  
 C/CL=Closed  
 CCP=Code of Civ. Proc.

CCR=Code of Cal. Reg.  
 CEQA=Cal Env Quality Act  
 CFR=Code Fed Regulations  
 CY=Calendar Year  
 GC=Cal Goc Code

GICO=Gen Ind Safety Orders  
 H&S=Health & Safety Code  
 IND=Indefinite  
 L=Life of Facility  
 LC=Labor Code Cal

OMB=Office Mgmt & Budget  
 OPS=Opinion Attorney General  
 OSHA=Occup. Safety & Health Act  
 P=Permanent  
 PC=Penal Code

R=Revised, Cancelled, Obsolete  
 S=Sale  
 SU=Supercede  
 T=Termination, Death  
 USC=United States Code

**Otay Water District - Records Retention Schedule (FY2010)**

No.	Record Series Title	Record Series Description	Authority	Retention (Yrs)	
				Legal	OWD
28	Corrosion Control Records	Records relating to corrosion control tests, methods, procedures, test data, reports and cathodic protection.	WC §50942; GC §60201; GC §12236; 40 CFR 141.91	CY+12	CY+12
29	Customer Survey	Customer awareness and satisfaction surveys for general or call center customers prepared annually.	WC §50942; GC §60201; GC §12236	CY+2	CY+2
30	Database Management Files	Records regarding the size and statistical information of the computer databases. Kept electronically in Microsoft SQL.	WC §50942; GC §60201; GC §12236	SU+2	SU+3
31	Debt	Records relating to bond issues. Records include maturity date, coupon amounts, payments, reports, and trustee statements, Official Statements, RFP's, Investments Advisors, Bonds, Bond counsel, Legal Counsel, Triad (ID27 General Obligation Debt), State Sewer Loan.	WC §50942; GC §60201; GC §12236; CCP §337.5	C+10	P
32	Deeds, Title Transfer, Beneficiary	Records and drawings regarding deeds, grant deeds, quitclaims.	WC §50942; GC §60201; GC §12236; 24 CFR 570.502(b)(3)	P	P
33	District Policies	Current enforced adopted Ordinances and Policies. History of adopted changes to all sections and policies within the Code of Ordinances. Human Resources Policies (maintained in Sharepoint). Injury Illness Prevention Program (IIPP) and emergency procedures/plans (SEMS & NIMS). Other required programs by CalOSHA.	WC §50942; GC §60201; GC §12236	SU+2	SU+10
34	DMV	Driving records including DMV Pull notice..	WC §50942; GC §60201; GC §12236; CVC 1808.45/.46/.47; GC §12946; 8 USC 1324(a)	CY+7	CY+7
35	Drawing Indexes	Records which index microfilmed or digitized drawings.	WC §50942; GC §60201; GC §12236; H&S §19850	P	P**
36	Drawings	Records of drawings of facilities, pipelines, structures, equipment.	WC §50942; GC §60201; GC §12236; H&S §19850	P	P**
37	Drug & Alcohol Tests	Confidential records relating to drug and alcohol testing (random and suspicious, excluding pre-employment and previous employer).	WC §50942; GC §60201; GC §12236; USDOT title 49	CY+7	CY+7
38	Easements	Recordation, APN #, address, ID #, leases, correspondence, grant deed, quitclaims.	WC §50942; GC §60201; GC §12236; 24 CFR 570.502(b)(3)	P	P
39	Emergency Response	Records providing instructions in the event of a disaster – EOC and SEMS Manual. Special skills of personnel, Fire Department emergency plans, evacuation plans, emergency response inspection requirements and first response training records.	WC §50942; GC §60201; GC §12236	SU+2	R+6

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 OPS=Opinion Attorney General  
 OSHA=Occup. Safety & Health Act  
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## Otay Water District - Records Retention Schedule (FY2010)

No.	Record Series Title	Record Series Description	Authority	Retention (Yrs)	
				Legal	OWD
40	Employee Benefit Files	Records relating to individual employee benefits. Files may include but are not limited to enrollment forms and change requests for health, life, dental, vision, deferred comp and long term disability insurance.	WC §50942; GC §60201(12); GC §12236; WC §60201(d)(10); GC 6250 et seq.; OMB A-129; 29 CFR 1602.30; 29 CFR 1602.32	T+7	T+7
41	Employee Personnel Files	Records relating to individual employees. Include employment applications; employment actions (e.g. promotions, reclassifications, transfers, and salary information); performance evaluations; educational documents; and separation documents. Upon employee separation, additional information such as reference checks, ethnicity disclosures.	WC §50942; GC §60201; GC §12236	T+7	T+7
42	Employee Relations	Records including negotiations, reported grievances and actions taken. Includes employee MOU, Documentation related to employee association negotiations, Current enforced MOU and history, Records relating to Association correspondence and representatives, Reported grievances and actions taken, Documents related to employee investigations.	WC §50942; GC §60201; GC §12236; GC § 12946; 29 USC 211; 29 CFR 1602	C+2	SU+10
43	Employee Surveys	Records may include but are not limited to forms completed by OWD employees in response to questions regarding OWD administrative policy, departmental policy or amenities.	WC §50942; GC §60201; GC §12236; GC § 12946; 29 USC 516.6(2); 29 CFR 1602.14	CY+2	CY+2
44	Employment Eligibility	Records relating to immigration documentation, eligibility to work in the U.S. (e.g. Form I-9) (Maintained in the HR department.)	WC §50942; GC §60201; GC §12236;	3Y or T+1	ACT+3, or T+1 -longest
45	Environmental Workplace Safety	Records and reports relating to workplace environmental health issues.	WC §50942; GC §60201; GC §12236	P	P
46	Equal Employment Opportunities Commission	Records relating to employee complaints and discrimination claims.	WC §50942; GC §60201; GC §12236; GC § 12946; 29 CFR 1602.14	P	P
47	Equipment Maintenance Records	Records including daily maintenance reports, service checklists, preventative and corrective maintenance, schedules, service logs, task records, calibration of equipment, correspondence, drawings, operating instructions, maintenance procedures, purchase orders, reports, tests, logs, instructions, replacement parts lists regarding emergency generators. service request forms, notifications, testing and maintenance of backflow presenters, use of heavy equipment, hourly rates and work order numbers. (Maintained in IMS since 2006.)	WC §50942; GC §60201; GC §12236	ACT+2	ACT+2
48	Financial Reports and Statements	Records including financial, fiscal and monthly reports. Published audit as adopted by the Board of Directors. Records relating to audits performed by outside, contracted auditors.	WC §50942; GC §60201; GC §12236	ACT+4/ 7 *	P
49	Fixed Assets	Purchase of capital assets, equipment and facilities over \$10,000.	WC §50942; GC §60201; GC §12236	P	P

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## Otay Water District - Records Retention Schedule (FY2010)

No.	Record Series Title	Record Series Description	Authority	Retention (Yrs)	
				Legal	OWD
50	Fuel and Oil Usage Files	Records documenting the amount of fuel delivered and dispensed.	WC §50942; GC §60201; GC §12236; CCP §337	A+3	CY+7
51	Fuel Storage Tanks	Records relating to leak detection monitoring, cleanup, and condition of fuel storage tanks.	WC §50942; GC §60201; GC §12236	P	P
52	General Ledger	Records including General Journals, GL-CR, GL-CD, and AR with backup (Located in Finance Dept. filing cabinets).	WC §50942; GC §60201; GC §12236	P	p
53	Grants	Records relating to City, State, and Federal requests and approvals for new and on-going District projects whether as an individual agency or in conjunction with member agencies.	WC §50942; GC §60201; GC §12236	CL+5	CL+5
54	Hazardous	Records related to the use of hazardous waste, hazardous materials, chemicals leaks and spills, chlorine, and asbestos records. Includes asbestos training records, asbestos medical records, handling, transportation, use, generation and disposal of hazardous waste, chemical spill cleanup, disposal manifests, removal receipts, sludge reports and fees, pesticides.	WC §50942; GC §60201; GC §12236; Cal OSHA; 40 CFR 122.21	P	P
55	Help Desk Tickets	Records of Help Desk requests for computer and other assistance. (Records maintained in Microsoft SQL and SharePoint.)	WC §50942; GC §60201; GC §12236	CY+2	CY+2
56	Incorporation Records	State approved formation documents creating the Otay Municipal Water District.	WC §50942; GC §60201(1); GC §12236	P	P
57	Inspection	Records relating to Proof Load tests (every 5 years) and inspection of equipment, vehicles and facilities. (Includes Crane, hydrants, APCD, etc.)	WC §50942; GC §60201; GC §12236; GISO Cal OSHA 5031	CY+2	CY+2
58	Insurance Policies	Records relating to contracts for liability coverage involving employee on the job injuries, OWD property, or third property liability, owner - controlled insurance program, aircraft, crime, travel accident and contracts for insurance brokers.	WC §50942; GC §60201; GC §12236	P	P
59	Interagency Files	Records include correspondence and information relating to cities and other agencies. San Diego County Water Authority, Metropolitan Water District, Sister Agencies (Padre, Helix, Sweetwater, etc.), City of Chula Vista, City of San Diego. County of San Diego. State of California, Water Conservation Garden JPA.	WC §50942; GC §60201; GC §12236	CY+2	P
60	Inventory Records	Verification records of inventory related to fleet and equipment. Verification records of inventory includes materials belonging to the operation of the EOC, warehouse, fixed assets, fleet and equipment. Fixed assets under \$10,000. (Kept electronically in Microsoft SQL.)	WC §50942; GC §60201; GC §12236	P	CY+2
61	Job Descriptions	Current and historical job descriptions. (Maintained in Human Resources.)	WC §50942; GC §60201; GC §12236	SU+2	SU+10

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No.	Record Series Title	Record Series Description	Authority	Retention (Yrs)	
				Legal	OWD
62	Laboratory Analysis	Records of all laboratory analyses performed by the District or external laboratories. Analyses for potable, reclaimed water systems, and reclamation plant. Receipt of samples, tracking sheets, lists and logs showing locations and dates of samples.	WC §50942; GC §60201; GC §12236	CY+12	CY+12
63	Leases	Records including lease information on OWD property and easements. District facility ID, vendor, agreement, amendments, correspondence, insurance, permit, drawing/plan, correspondence, and photographs.	CCP §337.2; CCP §343; B&P §7042.5	C+5	C+5
64	Legal	Records relating to threatened, pending or settled litigation. Includes court cases, water hearings and briefing books, Claims against the District, Briefs, appeals, and litigations, Records relating to claims and investigations of potential and pending litigation.	WC §50942; GC §60201; GC §12236; CCP §583.320(a)(3)	C+3	C+3
65	Legal Opinions (Confidential)	Records relating to legal opinions on issues, problems and policies impacting OWD.	GC § 34090; GC § 6254	SU+2	SU+2
66	Legislation	Records include District Legislative Program, lobbying files and staff analysis.	WC §50942; GC §60201; GC §12236; CCP §343; CCP §349 et seq.	CY+4	CY+4
67	Liability and OWD Property Losses	Records related to liability claims and OWD property losses, Liability due to vehicle accidents, Property damage due to water main breaks, and FEMA Claims.	WC §50942; GC §60201; GC §12236	ACT+3	ACT+5
68	Liens	Liens on Properties/Parcels for unpaid water and/or sewer bills.	WC §50942; GC §60201; GC §12236	A+3	A+3
69	Maintenance Records	Records include notifications, reports of testing and maintenance of backflow preventers.	WC §50942; GC §60201; GC §12236	L+4	L+4
70	Material Safety Data Sheets	Records relating to the use of hazardous substances. (Maintained through outside vendor. (Reference safety bulletin boards.)	WC §50942; GC §60201; GC §12236	CY+2	CY+2
71	Media Files	Press releases and media advisories to newspapers, television, radio or member agencies for publication, publicity clippings and OWD news clippings. Public outreach materials relating to programs such as water fluoridation, water conservation, air vacs, reclaimed water, CIPs, etc. Includes brochures, fact sheets, maps, images and diagrams.	WC §50942; GC §60201; GC §12236	CY+2	CY+2
72	Medical and Dental Summary Plans	Records related to medical and dental summary plans.		T+5	P
73	Medical and Exposure Records	Medical records including but not limited to examination/exposure records, substance testing, hearing and respirator. (Maintained in Safety Dept.)	WC §50942; GC §60201; GC §12236; 29 CFR 1910.1020	T+30	P
74	Meter Calibration	Meter Calibration Records.	WC §50942; GC §60201; GC §12236	CY+2	CY+2

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No.	Record Series Title	Record Series Description	Authority	Retention (Yrs)	
				Legal	OWD
75	Meter Readings	Records for meter readings for water purchased. Records for water loss based on water sales. (This is an Excel document and would not be filed.)	WC §50942; GC §60201; GC §12236	CY+2	CY+2
76	MWD/CWA Reclaimed	Records relating to reclaimed credits.	WC §50942; GC §60201; GC §12236	A+4/7*	A+4/7*
77	Notices	Notices pertaining to public hearings for availability fees, rate increases, annexations and detachments, reference "Availability" for a list of customers to whom Availability Notices have been forwarded.	WC §50942; GC §60201; GC §12236	P	P
78	Operating Logs and Records	Records pertaining to the daily activities of potable facilities. Includes shutdown records, water delivery records, water production and demand records.	GC § 34090	CY+2 or SU+2	CY+2 or SU+2
79	Operating Manuals	Records relating to the operation of facilities and equipment. Records may include vendor instruction and installation manuals.	WC §50942; GC §60201; GC §12236	SU+2	SU+2
80	Organizational Charts History	History of departmental organizational charts.	WC §50942; GC §60201; GC §12236	CY+2	CY+2
81	Payroll	Records related to payroll including payroll filings, pension, W2, W4, tax reports, court orders, tax levies and timesheets. (Maintained in Finance.) Records relating to employee deductions, PERS/Pension.	WC §50942; GC §60201; GC §12236; 29 CFR 516.6	T+7	T+7
82	Permits, Licenses and Certifications	District-wide permits, licenses and certifications required for business. Records include licenses required to conduct business, collect taxes, etc. Records for storm water discharge, notice of intent, notice of termination, water sewer, reclaimed, and fire service, permits for potable, reclaimed, treatment plant, industrial waste, FCC licenses, vehicles, and radio permits, elevators. Records, reports, and certifications which are required to operate cranes and pressure vessels. Includes annual certifications for Cal-OSHA.	WC §50942; GC §60201; GC §12236;	T+4	T+4
83	Pesticide/Herbicide Applications	Records relating to the variety and use of pesticides and herbicides. (Out-sourced.)	WC §50942; GC §60201; GC §12236	CY+2	N/A
84	Photographs	Photographs, slides and negatives related, but not limited to construction sites, pipeline breaks, facilities, appurtenances, events and thermographs for repair purposes, Public Affairs, CIPs and District events.	WC §50942; GC §60201; GC §12236; H&S §19850	P	P
85	Power Resources	Records including energy products, on/off line times, wattage, correspondence and drawings, and power resources managed or impacted by OWD. Records may include but are not limited to contracts, correspondence and reports.	WC §50942; GC §60201; GC §12236; CCP §337.2; CCP §343; B&P §7042.5	CY+2; T+5	CY+2; T+5

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No.	Record Series Title	Record Series Description	Authority	Retention (Yrs)	
				Legal	OWD
86	Procedures & Guidelines	Records providing documentation on the use of computers, systems, equipment and OWD standards, and departmental procedures, as well as guidelines (i.e., survey, inspection, quality control, WAS, etc.) Purchasing Manual, Standard operating procedures, Current enforced adopted Human Resources procedures and guidelines including but not limited to Employee Handbook and Performance Evaluation Manual.	WC §50942; GC §60201; GC §12236	SU+2 (while active)	ACT +10
87	Projects	Records relating to the construction of OWD projects; including but not limited to: Engineering Test Records, Environmental Reports, Hydraulics, CIP, Non-CIP, Developer and Calendar Logs.	GC § 34090; CCP § 337.15	C+10	C+10
88	Property Tax Rollovers	Monies added to customers property taxes for unpaid water and/or sewer bills.	WC §50942; GC §60201; GC §12236	A+3	A+3
89	Publications	Records including internal newsletters and external customer newsletters and documents produced by OWD about OWD for external and internal use. Includes Otay at a Glance, Consumer Confidence Report, Customer Pipeline newsletters, Employee Pipeline newsletters.	WC §50942; GC §60201; GC §12236	CY+2	CY+2
90	Records Retention	Records retention schedule, location of records and destruction of records. Records relating to the listing of the period of time for retaining records. Records from outside vendors certifying documents have been destroyed in compliance with the records retention schedule. Records relating to the listing of OWD records, identifying the records title, location, record series.	WC §50942; GC §60201; GC §12236; CCP §343	SU+4	SU+4
91	Recruitment / Selection Files	Records relating to the interview and selection process for prospective employees.	GC §12946; GC §6250 et. seq.; 29 CFR 1602, et. seq.; 29 CFR 1607, 29 CFR 1627.3	C+3	C+3
92	Reports and Studies	Records of External agency reports and studies of on-going projects or areas that impact the operations of OWD. Internal reports and studies of on-going non-CIP projects or areas that impact the operations of OWD.	WC §50942; GC §60201; GC §12236	C+2	C+2
93	Request for Proposals (RFP)	Records including bid packages, deliverables, proposals, request for proposals or quotations, and rejected bids and proposals.	WC §50942; GC §60201; GC §12236	C+2	C+2
94	Safety	Records relating to Safety Records, Safety Meetings, Police Reports, OSHA Citations and OSHA Complaints, Records of a general nature regarding safety, including safety videos, checklists, training, meeting minutes and regulations.	WC §50942; GC §60201; GC §12236; 29 CFR 1904.4; OMB 1220-0029	C+5; SU+2	CY+5
95	Salary Administration	Records relating to collected survey data used in determining and monitoring salaries for various OWD classifications.	WC §50942(12); GC §60201; GC §12236; OMB 1220-0029	C+7	C+7

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96	Security Records	Records relating to the security issues for facilities; includes police incident reports.	WC §50942; GC §60201; GC §12236	CY+2	CY+2
97	Service Connections	Records relating to all new water and sewer service connections, including but are not limited to maps, water/sewer orders, work orders, memos, progress reports, and drawings.	WC §50942; GC §60201; GC §12236	P	P
98	Strategic Plan	OWD Strategic Plans and performance measure results.	WC §50942; GC §60201; GC §12236	C or SU+2	C or SU+2
99	Surveys	Records relating to information on control and boundary monuments, above and below ground structures including, but not limited to survey books, field books, and data.	WC §50942; GC §60201; GC §12236; 40 CFR 141.33	CY+10	P
100	System and Business Process Documentation	Documentation related to IT Systems and documentation of business processes and automation.	WC §50942; GC §60201	A	A
101	Taxes	Tax revenues collected through the county tax rolls, 1% Tax, including Local State and combines assessed valuation reports (County of SD), County Tax Records, and records relating to Tax Apportionment.	WC §50942; GC §60201; GC §12236	A+3	A+3
102	Technology Project Files	Records relating to the automation of manual processes.	WC §50942; GC §60201; GC §12236	CY+2	C+2
103	Test Records	Records for soil testing, pressure testing, bacteriological testing and any other testing not listed, including but are not limited to, data on construction materials, oxygen levels, cross connections, and equipment.	WC §50942; GC §60201; GC §12236	P	P
104	Timesheets	Records including timesheets, requests for leave forms (leave slips).	WC §50942; GC §60201; GC §12236; 29 CFR 516.6	T+7	T+7
105	Underground Utilities	Records regarding notices for the location of underground utilities for purpose of digging.	WC §50942; GC §60201; GC §12236; GC § 4003, GC § 4004; H&S § 19850	P	P
106	Vehicle Operating Records	Records relating to OWD vehicle registration, costs and vehicle maintenance records, and mileage.	WC §50942; GC §60201; GC §12236	SU+2	SU+2
107	Vendor Files	Records which are provided by OWD vendors. Records may include brochures, instruction manuals, drawings, catalogs and technical data sheets. Records are maintained in Eden.	WC §50942; GC §60201; GC §12236	CY+2	CY+2
108	Visitor Logs	Records relating to visitors at various OWD sites.	WC §50942; GC §60201; GC §12236	CY+2	CY+2
109	Water Availability Deferrals/ Terminations	Water and Sewer deferral agreements for availability standby charges.	WC §50942; GC §60201; GC §12236	C+10	C+10

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110	Water Conservation	Records relating to Water Conservation programs and the Water Conservation Garden JPA.	WC §50942; GC §60201; GC §12236	CL+2	CL+2
111	Work Orders	Records relating to the initiation, costs/labor and completion of work assignments. Records maintained in IMS.	WC §50942; GC §60201; GC §12236	CY+2	CY+2
112	Workers' Compensation Files	Records relating to workers' compensation. Records include checks, injuries, litigated and non-litigated cases, and ergonomic records of work site inspections/recommendations. (Maintained in HR.) Includes 300, 300A and 301.	WC §50942; GC §60201; GC §12236; 8 CCR § 15400.2; Cal. Labor Code § 110, et seq.	P	P

\*After completion of Audit; 4 years for state funds/ 7 years for federal funds or until audited whichever is first

\*\* CY+2 If not filed with case or project

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OTAY WATER DISTRICT BOARD OF DIRECTORS POLICY			
Subject	Policy Number	Date Adopted	Date Revised
RECORDS POLICY AND PROCEDURES - ACCESSIBILITY	05-B	2/3/10	

Purpose

To set forth the procedures that will facilitate the process for responding to requests under the California Public Records Act ("CPRA").

Policy

The CPRA permits local agencies to adopt regulations stating the procedures to be followed when making their records available to the public. The Otay Water District's Board of Directors desires to set forth the procedures by which such records will be made available to the public. The Board is mindful of the constitutional right of privacy accorded to individuals and it is the intent of the Board to promulgate a policy that strikes an appropriate balance between the objectives of open government and the individual's right of privacy.

Procedures

Records Available for Inspection and Copying

Except for records exempt from disclosure by express provisions of law, records available for inspection and copying include any writing containing information relating to the conduct of the public's business that is prepared, owned, used, or retained by the District, regardless of the physical form and characteristics. The records do not have to be written but may be in another format that contains information such as computer tape or disc or video or audio recording.

"Writing" includes any handwriting, typewriting, printing, photographing, and every other means of recording upon any form of communication or representation such as letters, words, pictures, sounds, or symbols, as well as all papers, maps, magnetic or paper tapes, photographic films and prints, and electronic mail.

Making a Request for Records

There is no specific form that must be used to request records. Requests may be made orally or in writing and may be delivered in person, through the mail, via e-mail or via facsimile. The

OTAY WATER DISTRICT  
BOARD OF DIRECTORS POLICY

Subject	Policy Number	Date Adopted	Date Revised
RECORDS POLICY AND PROCEDURES - ACCESSIBILITY	05-B	2/3/10	

request must contain a reasonable description of the desired records. When an oral request is received, the District may request that the public records request be confirmed in writing. The District may also follow-up verbally or in writing to clarify or eliminate any confusion concerning a request. Requests must be submitted to the District Secretary.

Locating and Identifying Records

Public records are open to inspection at all times during regular District business hours. The District Secretary shall be responsible for responding to records requests and coordinating with the various departments within the District to compile documents and information responsive to such requests.

If a request for records seeks the production of records or documents that are not in existence at the time the request is made, the District is not obligated to create a document in order to respond to the request.

Form of Records Provided

Records will be made available in their original form or by a true and correct copy. Audio, photographic and computer data, or any other such records, shall be exact replicas unless the District determines it is impracticable to provide exact replicas. Any reasonably segregable portion of a record shall be provided to the public after deletion of portions that are deemed exempt from disclosure.

Common Exemptions

Certain categories of documents are generally not subject to disclosure. These include, but are not limited to: (1) preliminary drafts of certain documents that are not retained by the District in the ordinary course of business; (2) records related to pending litigation; (3) attorney-client communications; (4) personnel records, medical information, or other similar records the disclosure of which would constitute an unwarranted invasion of personal privacy; (5) corporate financial and

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proprietary information, including trade secrets; and (6) records protected by State or Federal law.

Time for Response

Upon receipt of a request for records, the District shall make the records promptly available to the requestor. When a copy of a record is requested, the District shall determine within ten (10) calendar days whether to comply with the request, and shall promptly inform the requestor of the District's decision and reasons therefor.

In unusual circumstances, as defined in the CPRA, the initial ten (10) calendar day period to make a determination may be extended for up to an additional fourteen (14) calendar days. If so, the District will inform the requestor of the extension, in writing, within the initial ten (10) day period, setting forth the reasons for the extension, along with the estimated date of the District's further response.

If a written request for information is denied in whole or in part, the denial shall be in writing and shall contain the reasons for denial of access to the subject records.

Fees and Charges

The District charges for the direct costs of duplicating records (in paper, CDs, audio cassettes, tape or other appropriate medium) and for the direct cost of postage and other delivery methods as set forth on Appendix A to the District's Code of Ordinance.

Requestors of electronic records shall pay for production costs, including the cost to construct the record and the cost of programming and computer services necessary to produce the copy if response to the request requires the immediate production of a record that is otherwise only produced at regularly scheduled intervals, or if data compilation, extraction, or programming is required to produce the requested record. However, the District will not charge for access to electronic data that is accessible in its existing form (including PDF copies of agenda items that

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**BOARD OF DIRECTORS POLICY**

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are provided in the form previously made available on the District's website) and that does not require staff to locate, identify or extract data or to incur other costs to the District.

Responding to Requests for Particular Documents

The following procedures shall apply when responding to requests for these particular categories of documents:

*Disclosure of Litigation Materials*

1. When litigation in which the District is a party is finally adjudicated or otherwise settled, records of communications between the District and the adverse party in the litigation shall be subject to disclosure including the text and terms of any settlement agreement between the parties.

2. Such disclosure shall not apply to records that are otherwise privileged under federal or state law, such as attorney-client communications, or to records sealed by the court or where disclosure is otherwise limited by the court.

*Disclosure of Information Relating to Contracts, Bids and Proposals*

1. Records of contractors' bids shall be available for inspection immediately following the opening of bids.

2. Responses to Requests for Proposals, Qualifications or Quotations and similar submittals shall be regarded as public records and are available for inspection after District staff's recommendation has been made public, unless there are elements in the proposal which are defined by the proposer as business or trade secrets and plainly marked as "Confidential," "Trade Secret," or "Proprietary." Although trade secret information may be exempt from disclosure, the District typically is not in a position to establish whether the information that a proposer has submitted is a trade secret. If a request is made for information marked "Confidential," "Trade Secret," or "Proprietary", the District will provide the proposer who submitted the information

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with reasonable notice to allow the proposer to seek protection from disclosure by a court or government agency of competent jurisdiction.

3. When an individual, firm or organization is awarded a contract, information including financial information which was submitted to the District during the bid or proposal process from all proposers will be subject to disclosure unless otherwise exempt.

*Budgetary Information*

Budgetary information including bills or records of payments, which are submitted to the District's Board or other body having budgetary authority, shall be subject to disclosure unless the record is confidential or privileged under State or Federal law.

*Personal Information*

Requests for records and documents containing personal information such as social security numbers, home addresses, home telephone numbers, financial matters, and medical or employment history, should be reviewed on a case by case with the District's General Counsel. The District may respond to requests for personal information in one or more of the following ways:

1. delete or redact those portions of the records that include personal information and make the remaining portion of the record available for inspection if the remaining portion of the record is not otherwise exempt from disclosure;
2. notify the party whose personal information is being sought and provide the party with the opportunity to initiate legal proceedings or other appropriate process to prevent the release of such information;
3. seek a judicial determination as to whether or not the requested personal information should be disclosed; or

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4. disclose the information where permitted, allowed or compelled to do so.

*Complaints and Complaint Information*

Information regarding complaints shall be made available. However, specific information about complainants shall be redacted from any record furnished if necessary in order to protect the privacy rights and safety of individuals making complaints and to protect an individual's right to petition government for redress of grievances.

*Electronic Mail*

E-mail shall be treated the same as other written documents. If the e-mail is kept in the ordinary course of business, it is a public record unless it falls within some exception to disclosure under the CPRA.



STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	February 3, 2010
SUBMITTED BY:	Kelli Williamson, <i>KW</i> Human Resources Manager	W.O./G.F. NO:	DIV. NO. All
APPROVED BY: (Chief)	Rom Sarno, Chief, Administrative Services <i>[Signature]</i>		
APPROVED BY: (Asst. GM):	German Alvarez, Assistant General Manager, Finance and Administration <i>[Signature]</i>		
SUBJECT:	Adopt Resolution #4152 to Revise the American with Disabilities Act and the Fair Employment and Housing Act (ADA/FEHA) Disability Board Policy #48		

**GENERAL MANAGER'S RECOMMENDATION:**

That the Board adopt Resolution #4152 to revise the ADA/FEHA Disability Board Policy #48.

**COMMITTEE ACTION:** \_\_\_\_\_

See Attachment "A".

**PURPOSE:**

To request the Board approve revisions to a Board Policy.

**ANALYSIS:**

From time to time, District Policies and Procedures are reviewed and revised if necessary. After a review of the ADA/FEHA policy, District staff and General Counsel are recommending minor revisions deemed appropriate at this time. This policy was also reviewed with the Employees' Association. The Association has agreed to the policy as presented. Revisions are shown in the attached strikethrough/underlined version of the policy. (Attachment B)

The District will receive credits towards the District's Workers' Compensation premium from the Special District's Risk Management Authority (SDRMA) for having an ADA/FEHA Policy and for having reviewed it on a bi-annual basis. The District participates in the SDRMA's Credit Incentive Program (CIP) for

both the Workers' Compensation and Property and Liability Insurance Programs.  
Resolution #4152 (Attachment C)

It is requested that the Board of Directors adopt Resolution #4152 in support of the proposed revisions to Board Policy #48

**FISCAL IMPACT:** \_\_\_\_\_

None.

**STRATEGIC GOAL:**

Optimize the District's Operating Efficiency.

**LEGAL IMPACT:** \_\_\_\_\_

None

  
\_\_\_\_\_

General Manager

- Attachment A - Committee Action
- Attachment B - ADA/FEHA Disability Board Policy #48
- Attachment C - Resolution #4152



## ATTACHMENT A

<b>SUBJECT/PROJECT:</b>	Adopt Resolution #4152 to Revise the American with Disabilities Act and the Fair Employment and Housing Act (ADA/FEHA) Disability Board Policy #48
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### COMMITTEE ACTION:

The Finance/Administration and Communications Committee reviewed this item at a meeting held on January 19, 2010 and the following comments were made:

- From time to time, District Policies and Procedures are reviewed and, if necessary, revised. Staff reviewed the ADA/FEHA policy and is proposing minor revisions recommended by General Counsel.
- The District also receives credits toward its Workers' Compensation premium from the Special District's Risk Management Authority (SDRMA) for having an ADA/FEHA Policy and reviewing it on a bi-annual basis. The District participates in SDRMA's Credit Incentive Program for both Workers' Compensation and Property and Liability Insurance Programs and has received credit to its premiums from SDRMA in previous years.
- The proposed changes are not significant and are mainly language clean up.
- Human Resources reviewed these policy updates with the Employee Association and they were supportive of the updates.

Following the discussion, the committee supported staffs' recommendation and presentation on the consent calendar.

# ATTACHMENT B

## OTAY WATER DISTRICT BOARD OF DIRECTORS POLICY

Subject	Policy Number	Date Adopted	Date Revised
ADA/FEHA Disability Policy	48	05/03/06	02/03/10

### PURPOSE

To provide policies to encourage a bias free environment for disabled employees or for disabled persons who seek employment with the Otay Water District (District).

### STATEMENT OF POLICY

It is the policy of the District not to discriminate on the basis of disability for employment or the provision of services. It is the intent of the District to provide disabled employees a bias free work environment. The District will provide reasonable accommodation in compliance with the Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA), including prompt and equitable resolution of complaints alleging discrimination on the basis of a disability.

### POLICY

#### General Provisions

The District has a commitment to ensure equal opportunities for disabled District employees. Every reasonable effort will be made to provide an accessible work environment. The District will not discriminate against disabled employees or applicants in its employment practices (e.g. hiring, training, testing, transfer, promotion, compensation, benefits, termination).

#### Interactive Process

The District will engage in the interactive process, as defined by the ADA and the FEHA, to determine whether an applicant or employee is able to perform his/her essential functions. As part of the interactive process, the District may invite the employee or applicant and, if necessary, the employee or applicant's health care provider, to meet. The employee may choose to have a third party present for support as an observer. However, this person may not act as a representative or attempt to negotiate on behalf of the employee. During the interactive process the District will examine possible reasonable accommodations that would allow the employee or applicant to continue to perform the essential functions in his/her position or, if appropriate, be otherwise employed by the District.

#### Complaints

Any District employee who believes that he/she have been discriminated against because of a physical or mental disability may file a

OTAY WATER DISTRICT  
**BOARD OF DIRECTORS POLICY**

Subject	Policy Number	Date Adopted	Date Revised
ADA/FEHA Disability Policy	48	05/03/06	02/03/10

discrimination complaint pursuant to the District's Policy 47, entitled "Policy Against Discrimination and Harassment and Complaint Procedure".

Any applicant who believes that he/she have been discriminated against because of a physical or mental disability may file a discrimination complaint by writing a formal letter to the District's Human Resources Manager.

OTAY WATER DISTRICT  
**BOARD OF DIRECTORS POLICY**

Subject	Policy Number	Date Adopted	Date Revised
ADA/FEHA Disability Policy	48	05/03/06	02/03/10

PURPOSE

To provide policies to encourage a bias free environment for disabled employees or for disabled persons who seek employment with the Otay Water District (~~the "District"~~).

STATEMENT OF POLICY

It is the policy of the District not to discriminate on the basis of disability for employment or the provision of services. It is the intent of the District to provide disabled employees a bias free work environment. The District will provide reasonable accommodation in compliance with the Americans with Disabilities Act ("ADA") and the Fair Employment and Housing Act ("FEHA"), including prompt and equitable resolution of complaints alleging discrimination on the basis of a disability.

POLICY

General Provisions

The District has a commitment to ensure equal opportunities for disabled District employees. Every reasonable effort will be made to provide an accessible work environment. The District will not discriminate against disabled employees or applicants in its employment practices (e.g. hiring, training, testing, transfer, promotion, compensation, benefits, termination).

Interactive Process

The District will engage in the interactive process, as defined by the ADA and the FEHA, to determine whether an applicant or employee is able to perform his/her essential functions. ~~If the employee or applicant cannot perform the essential functions of his/her position, the District will examine possible reasonable accommodations that will make it possible for the employee or applicant to so perform. Such interactive process will include a meeting with the employee or applicant, the District, and, if necessary, the employee or applicant's health care provider.~~ As part of the interactive process, the District may invite the employee or applicant and, if necessary, the employee or applicant's health care provider, to meet. The employee may choose to have a third party present for support as an observer. However, this person may not act as a representative or attempt to negotiate on behalf of the employee. During the interactive process the District will examine possible reasonable accommodations that would allow the employee or applicant to continue to perform the essential functions in his/her position or, if appropriate, be otherwise employed by the District.

OTAY WATER DISTRICT  
**BOARD OF DIRECTORS POLICY**

Subject	Policy Number	Date Adopted	Date Revised
ADA/FEHA Disability Policy	48	05/03/06	02/03/10

~~Reasonable accommodation can include, but is not limited to job restructuring, reassignment to a vacant position for which the employee is qualified, and making facilities accessible.~~

Complaints

Any District employee who believes that he/she have been discriminated against because of a physical or mental disability may file a discrimination complaint pursuant to the District's Policy 47, entitled "Policy Against — Discrimination and Harassment and Complaint Procedure".

Any applicant who believes that he/she have been discriminated against because of a physical or mental disability may file a discrimination complaint by writing a formal letter to the District's Human Resources Manager.

# ATTACHMENT C

RESOLUTION NO. 4152

RESOLUTION OF THE BOARD OF DIRECTORS OF THE OTAY  
WATER DISTRICT  
TO REVISE POLICY 48 CONCERNING ADA/FEHA DISABILITY  
POLICY

WHEREAS, the Board of Directors of Otay Water District wishes to clearly communicate the District's position not to discriminate on the basis of disability for employment or the provision of services, as defined by the ADA and FEHA; and

WHEREAS, the District desires to provide for a work environment free of bias for disabled employees or for disabled persons who seek employment with the District; and

WHEREAS, it is the policy of the District to provide a clear policy on the interactive process, as defined by the ADA and FEHA, to ensure equal opportunities for employees and applicants regarding the District's employment practices; and

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Otay Water District revise Policy 48, "ADA/FEHA Disability Policy," in the form presented to the Board at this meeting; and

BEING FURTHER RESOLVED that the Board directs the staff of the District to comply with the provisions of revised Policy 48 "ADA/FEHA Disability Policy".

PASSED, APPROVED AND ADOPTED by the Board of Directors of the Otay Water District at a regular meeting held this 3<sup>rd</sup> of February, 2010.

---

President

ATTEST:

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Secretary

Resolution #4152 (Attachment C)

It is requested that the Board of Directors adopt Resolution #4152 in support of the proposed revisions to Board Policy #48

**FISCAL IMPACT:** \_\_\_\_\_

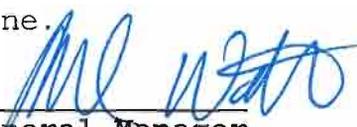
None.

**STRATEGIC GOAL:**

Optimize the District's Operating Efficiency.

**LEGAL IMPACT:** \_\_\_\_\_

None.

  
\_\_\_\_\_  
General Manager

Attachment A - Committee Action

Attachment B - ADA/FEHA Disability Board Policy #48

Attachment C - Resolution #4152



STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	February 3, 2010
SUBMITTED BY:	Frank Anderson, Utility Services Manager <i>F.A.</i>	W.O./G.F. NO:	DIV. NO. All
APPROVED BY: (Chief)	Pedro Porras, Chief, Water Operations <i>[Signature]</i>		
APPROVED BY: (Asst. GM):	Manny Magaña, <i>[Signature]</i> Assistant General Manager, Engineering & Operations		
SUBJECT:	PURCHASE OF HALF-TON PICKUP TRUCKS		

**GENERAL MANAGER'S RECOMMENDATION:**

That the Board authorize the General Manager to issue a purchase order to Villa Ford, 2550 N. Tustin, Orange, CA 92865 in the amount of \$62,349.60, for the purchase of three (3) F-150 pickup trucks.

**COMMITTEE ACTION:**

Please see Attachment "A" .

**PURPOSE:**

To provide bid results and obtain authorization to purchase three (3) half-ton two-wheel-drive pickup trucks identified within the FY 2010 Capital Purchase Budget.

**ANALYSIS:**

Included in the approved FY 2010 budget are three (3) F-150 pickup trucks.

There is one (1) replacement for a Water System Operator vehicle that is near 100,000 miles. This replacement is a downsize from the existing F-250 vehicles they currently drive. Due to the District's service area changing from more rural to urbanized, the F-150 pickups will provide the needed vehicle support with reduced fuel consumption.

There is one (1) replacement of an F-150 being purchased for the survey staff. This vehicle replaces a larger utility van that is nearing the end of its service life. The pickup replacement for the survey staff will be more efficient with fuel economy while still accommodating the equipment needs of their field tasks.

There is one (1) new F-150 pickup that will be added to the fleet that is needed to support water operations activity. This will allow each water system operator to be assigned a specific vehicle for their tasks. The cost for this pickup was offset by the elimination of the purchase of a small vehicle due to the utilization of an existing vehicle that became available by means of contracting out a prior position with a vehicle that was recently vacated.

As vehicles are replaced, they are incorporated into the District's five-year, 60,000 mile replacement program designed to reduce the fleet fuel, maintenance, and operating costs.

In accordance with District policy, bids were solicited for the three (3) half-ton pickup trucks. Of the 33 Southern California dealerships solicited, nine (9) bids were received. Prices received include all applicable fees and taxes.

Dealer	Vehicle Make/Model	Price
Villa Ford, Orange, CA	Ford F-150 Pickup	\$20,783.20 ea.
Kearny Pearson Ford, San Diego, CA	Ford F-150 Pickup	\$21,757.67 ea.
El Cajon Ford, El Cajon, CA	Ford F-150 Pickup	\$22,278.09 ea.
Carmenita Truck Center, Santa Fe Springs, CA	Ford F-150 Pickup	\$22,274.06 ea.
Raceway Ford, Riverside, CA	Ford F-150 Pickup	\$22,558.06 ea.
Gosh Auto Group, Hemet, CA	Ford F-150 Pickup	\$22,489.62 ea.
City Chevrolet, San Diego, CA	Chevy Silverado 1500 Pickup	\$23,249.00 ea.
Mossy Toyota, San Diego, CA	Toyota Tundra	\$22,118.40 ea.
Toyota Carlsbad, Carlsbad, CA	Toyota Tundra	\$27,322.00 ea.

An evaluation for total five-year/60,000 mile cost-of-ownership, including expected return on sale and gas consumption, was conducted and based on Villa Ford's bid price and the average MPG of the vehicle, the F-150 provides the lowest cost of ownership.

**FISCAL IMPACT:**

The budgeted amount for the identified vehicles and vehicles purchased prior to this request is \$121,000. Actual cost was \$108,416.20, which is a budget savings of \$12,583.80. Anticipated expenditures will not exceed budgeted vehicle replacement funds.

**STRATEGIC GOAL:**

- 3.1.1.9: Operate the system to meet demand 24/7.
- 3.1.1.10: Meet all of the health-related water standards.

**LEGAL IMPACT:**

None.

  
\_\_\_\_\_  
General Manager

Attachment "A", Committee Action



## ATTACHMENT A

**SUBJECT/PROJECT:** Purchase of FY 10 Vehicles

### COMMITTEE ACTION:

The Finance/Administration and Communications Committee reviewed this item at a meeting held on January 19, 2010 and the following comments were made:

- Staff is recommending that the board authorize the purchase of three (3) F-150 pickup trucks from Villa Ford (Orange, CA) in the amount of \$62,349.60.
- The three vehicles will be utilized as follows:
  - Replace an existing Water Systems Operator F-250 pickup truck that is nearing 100,000 miles. Staff is proposing that the truck be downsized to a F-150 as the District's service area has changed from a more rural area to an urbanized area. The F-150 will be sufficient to meet the needs of the District and would provide more fuel efficiency.
  - Replace a utility van used by the survey staff that is nearing the end of its service life. The F-150 pickup will provide fuel efficiency and would still accommodate the equipment needs of the survey staff.
  - The third F-150 will be added to the fleet to support water operations activities. With the addition of this vehicle, it will allow each water system staff member to be assigned a vehicle for their work tasks. The cost of the additional F-150 was offset by the elimination of the need to purchase a small vehicle as an existing vehicle became available when a position, recently vacated, was contracted out.
- The new vehicles will be integrated into the District's five-year/60,000 mile replacement program designed to reduce the fleet fuel, maintenance and operating costs. District fleet vehicles are evaluated for replacement at the end of their warranty period while their residual value is high. Fleet

vehicles are also replaced with smaller, fuel efficient vehicles when possible.

- An evaluation for total five-year/60,000 mile cost-of-ownership, including expected return on sale and gas consumption, was conducted and based on Villa Ford's bid price and the average MPG of the vehicles, the F-150 provides the lowest cost of ownership. The committee inquired if the residual value of the F-150 was looked at with regard to cost of ownership. Staff indicated that the residual value is part of the analysis for cost of ownership and in this particular instance, the F-150 provided the lowest cost of ownership.

Following the discussion, the committee supported staffs' recommendation and presentation on the consent calendar.



## AGENDA ITEM 8f

TYPE MEETING:	Regular Board	MEETING DATE:	February 3, 2010
SUBMITTED BY:	Mark Watton, General Manager	W.O./G.F. NO:	DIV. NO.
SUBJECT:	Amendment to and Partial Termination of Existing Agreement Preventing Water and/or Sewer Use; Waiver of Certain Related Charges and Interest		

### RECOMMENDATION:

That the Board waive all deferred availability charges and interest on the Subject Property (defined below) and authorize the release of the Subject Property from the Deferral Agreement (defined below), subject to the condition that the Subject Property be acquired by and transferred to the United States Fish and Wildlife Service (the "USFWS") to be used as a wildlife habitat and for resource protection and recreational purposes.

### BACKGROUND:

The District collects water and sewer availability charges to defray capital costs and maintenance and operating expenses of the water and/or sewer systems. Under current law, the availability charges may only be collected from parcels that derive a special benefit from the availability of the water and sewer systems. If the parcel is anticipated never to be in a position to use water or sewer services, then it is unlikely that the parcel derives a benefit from having the service available.

In August of 2003, the District entered into an Agreement Preventing Water and/or Sewer Use and Providing for Deferral of Certain Water and/or Sewer Availability Standby Charges (the "Deferral Agreement") with The Environmental Trust (the "Trust"), in connection with certain property consisting of approximately 310 acres (the "Deferred Charges Property") identified therein. The Deferral Agreement was recorded in the official records of the County of San Diego on August 28, 2003, as Document No. 2003-1053825, and for unknown reasons, it was recorded again on December 5, 2003, as Document No. 2003-1445051. The Deferral Agreement covers a 10-year period and provides that if it is earlier terminated at the request of the property owner, the owner will pay certain specified availability charges and interest.

Recently, the Trust requested that the Deferral Agreement be terminated and that all accumulated charges and interest be waived and forgiven. The District staff investigated the request and determined that the Trust is in the process of dissolution due to bankruptcy. Further investigation revealed that a portion of the Deferred Charges Property, consisting of approximately 150 acres identified by APNs 580-040-01, 580-040-41, 580-040-44 and 580-040-46 (collectively, the "Subject Property") is in the process of being acquired by and transferred to the USFWS to be managed for approved refuge purposes. A copy of the letter from the USFWS confirming the anticipated transfer is included as **Attachment B**, for reference purposes. The USFWS is also acquiring four other parcels from the Trust, but those are not covered by the Deferral Agreement.

The Trust represents that USFWS must have clean title to the Subject Property in order to proceed with its plans and that the Subject Property is not expected to ever be in the position to make use or require water or sewer services from the District. The letter from the USFWS confirms that the service does not anticipate developing or selling the land following its designation as a refuge. The accumulated charges due upon early termination are estimated at \$82,113.33, consisting of

approximately \$54,900.30 in deferred availability charges plus \$27,213.03 in interest accrued through August 2013. A copy of this calculation is included as *Attachment C* for reference.

The Deferral Agreement covers several other parcels not being transferred to the USFWS. As to those parcels, the District staff recommends that the Trust's request for termination of the Deferral Agreement and waiver of all associated charges and interest be denied. At this time, it has not been determined what will be the disposition of those parcels upon dissolution of the Trust and, as long as there is a possibility that the parcels will be developed, the District staff believes that it is in the best interest of the District to keep the Deferral Agreement in place as to those parcels.

The District staff recommends that the Board authorize the District to amend the Deferral Agreement and execute and deliver any other document, including a Quitclaim Deed, as necessary to release the Subject Property from the encumbrance of the Deferral Agreement and to waive, cancel and forgive any amounts that could have been due in connection therewith.

**FISCAL IMPACT:** \_\_\_\_\_

None. Although the District is waiving accumulated charges and interest associated with the early termination of the Deferral Agreement, the District did not anticipate that the Subject Property would ever be developed.

**LEGAL IMPACT:** \_\_\_\_\_

None at this time.

**COMMITTEE ACTION:** \_\_\_\_\_

See Attachment A.

  
\_\_\_\_\_

**General Manager**

*Attachment A: Summary of Committee's Recommendation*

*Attachment B: Correspondence dated December 4, 2009 from the United States Department of the Interior, Fish and Wildlife Service*

*Attachment C: Calculation of Amount Accumulated Under Deferral Agreement as to Subject Property*



## ATTACHMENT A

### Summary of Committee's Recommendation

<b>SUBJECT/PROJECT:</b>	Amendment to and Partial Termination of Existing Agreement Preventing Water and/or Sewer Use; Waiver of Certain Related Charges and Interest
-------------------------	--

**COMMITTEE ACTION:**

The Finance/Administration and Communications Committee reviewed this item at a meeting held on January 19, 2010 and the following comments were made:

- Staff is requesting that the board approve The Environmental Trust's request to waive all deferred availability charges and interest for four parcels of land that are subject to a Deferral Agreement they had entered into with the District in August 2003.
- The District approves Deferral Agreements for parcels of land that are open space and do not utilize or expect to utilize water or sewer services from the District.
- The parcels will be transferred to the United States Fish and Wildlife Services (USFWS) to be used as a wildlife habitat preserve. The USFWS requires that the property be clear of encumbrances prior to it receiving title.
- As the property will continue to be a wildlife habitat preserve and will be owned by the State, they will not be subject to taxes. Staff recommends that the board approve the Environmental Trust's request.

Upon completion of the discussion, the committee supported staffs' recommendation and presentation on the consent calendar.



United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Nevada Realty Field Office  
1000 Auction Road  
Fallon, Nevada 89406-2613  
Telephone: (775) 423-5128 Fax: (775) 423-0416

December 4, 2009

Susan Cruz  
District Secretary  
Otay Water District  
2554 Sweetwater Springs Blvd.  
Spring Valley, CA 91978-2004

Re: Assessor's Parcel Nos. 580-040-01, 580-040-41, 580-040-44, 580-040-46, 580-020-23, 585-030-07, 585-040-12, 585-040-14 – The Environmental Trust

Dear Ms. Cruz:

This letter is to confirm that the U.S. Fish and Wildlife Service is acquiring a 260-acre tract near Mt. Miguel from The Environmental Trust (description attached). This land will become part of San Diego National Wildlife Refuge and will be managed for approved refuge purposes, including the conservation and recovery of endangered and threatened species.

Once added to the refuge, it's extremely unlikely this land will ever be available for sale or development. Under the National Wildlife Refuge System Administration Act (16 USC 688dd-688ee) the disposal of refuge lands is strictly regulated and occurrences are infrequent. Current refuge management plans do not anticipate construction of any structures or improvements that would require water service.

Please let me know if you need any additional information about the future status of this tract. Thank you for working with TET on resolving our title issues.

Sincerely,

Richard Grimes  
Supervisory Realty Specialist

Attachment

## LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of SAN DIEGO, and is described as follows.

## PARCEL A:

THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 1, THAT PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, THOSE PORTIONS OF LOTS 1, 2 AND 3 AND ALL OF LOT 4 OF SECTION 1, THAT PORTION OF FRACTIONAL SECTION 2, THAT PORTION OF FRACTIONAL SECTION 11, AND THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 12, ALL LYING IN TOWNSHIP 17 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS SHOWN ON THE RECORD OF SURVEY NO. 8521 RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT CORNER RJ3 OF RANCHO JAMACHA; THENCE SOUTH 66°05'00" WEST ALONG THE SOUTHEASTERLY LINE OF SAID RANCHO JAMACHA, 1383.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 1°00'27" WEST, 347.10 FEET; THENCE NORTH 66°05'00" EAST, 299.65 FEET TO A POINT IN THE ARC OF A 500.00 FOOT RADIUS CURVE, THE CENTER OF WHICH BEARS SOUTH 56°56'33" WEST FROM SAID POINT; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE 53.21 FEET THROUGH A CENTRAL ANGLE OF 6°05'52"; THENCE TANGENT TO SAID CURVE SOUTH 26°57'35" EAST, 220.57 FEET; THENCE LEAVING THE BOUNDARY OF SAID ROS 8521 SOUTH 40°12'40" WEST, 1809.38 FEET; THENCE SOUTH 86°08'30" WEST, 1989.20 FEET; THENCE SOUTH 0°25'26" EAST, 2008.90 FEET; THENCE SOUTH 89°52'25" WEST, 4783.83 FEET TO THE MOST WESTERLY CORNER OF SAID ROS 8521; THENCE NORTH 35°21'05" EAST, 1189.50 FEET; THENCE NORTH 66°05'00" EAST. 7481.53 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING FROM SAID LOT 4 ALL COAL AND OTHER MINERALS AS RESERVED BY THE UNITED STATES OF AMERICA IN PATENT RECORDED MAY 24, 1939 IN BOOK 987, PAGE 186 OF OFFICIAL RECORDS.

## PARCEL B:

AN EASEMENT FOR ROAD PURPOSES OVER AND ACROSS THAT PORTION OF THAT CERTAIN 60.00 FOOT EASEMENT DESCRIBED IN GRANT OF EASEMENT AND AGREEMENT TO DEDICATE PROPERTY FOR ROAD RIGHT OF WAY, RECORDED APRIL 9, 1970, RECORDER'S FILE NO. 61520 OF OFFICIAL RECORDS, LYING WITHIN SECTION 1, TOWNSHIP 17 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT THEREOF, AS SAID 60.00 FOOT EASEMENT IS MORE PARTICULARLY DESCRIBED AS

FOLLOWS:

A 60.00 FOOT EASEMENT FOR ROAD PURPOSES OVER AND ACROSS THE EXISTING TRAVELLED ROAD THROUGH THE EAST HALF OF FRACTIONAL SECTION 1, TOWNSHIP 17 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN, LYING 30.00 FEET ON EACH SIDE OF THE FOLLOWING CENTER LINE:

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID FRACTIONAL SECTION 1; TOWNSHIP 17 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN; THENCE NORTH 82°27'31" EAST 1790.78 FEET ALONG THE SOUTH LINE OF SAID SECTION 1 TO THE TRUE POINT OF BEGINNING, SAID POINT BEING IN THE ARC OF A 150.00 FOOT RADIUS CURVE, THE CENTER OF WHICH BEARS SOUTH 66°08'33" EAST FROM SAID POINT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, 70.31 FEET THROUGH A CENTRAL ANGLE OF 26°51'18"; THENCE TANGENT TO SAID CURVE, NORTH 50°42'45" EAST, 67.61 FEET TO A TANGENT 200.00 FOOT RADIUS CURVE, TO THE RIGHT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, 146.58 FEET THROUGH A CENTRAL ANGLE OF 41°59'30"; THENCE TANGENT TO SAID CURVE, SOUTH 87°17'45" EAST, 101.23 FEET TO A TANGENT 100.00 FOOT RADIUS CURVE, TO THE LEFT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, 161.54 FEET THROUGH A CENTRAL ANGLE OF 92°33'15"; THENCE TANGENT TO SAID CURVE, NORTH 00°09'00" EAST, 824.56 FEET TO A TANGENT 50.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, 63.36 FEET THROUGH A CENTRAL ANGLE OF 77°36'33"; THENCE TANGENT TO SAID CURVE NORTH 72°45'33" EAST, 624.25 FEET TO A TANGENT 34.57 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, 57.82 FEET THROUGH A CENTRAL ANGLE OF 95°50'18" TO A TANGENT 200.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, 104.92 FEET THROUGH A CENTRAL ANGLE OF 30°03'30"; THENCE TANGENT TO SAID CURVE, NORTH 06°58'45" EAST, 73.39 FEET TO A TANGENT 250.00 FOOT RADIUS CURVE, TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, 166.02 FEET THROUGH A CENTRAL ANGLE OF 38°03'00"; THENCE TANGENT TO SAID CURVE, NORTH 31°04'15" WEST, 186.80 FEET TO A TANGENT 400.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, 121.53 FEET THROUGH A CENTRAL ANGLE OF 17°24'30" TO A TANGENT 306.07 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, 172.06 FEET THROUGH A CENTRAL ANGLE OF 32°12'35"; THENCE TANGENT TO SAID CURVE, NORTH 45°52'20" WEST, 108.94 FEET TO A TANGENT 300.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, 236.90 FEET THROUGH A CENTRAL ANGLE OF 45°14'40"; THENCE TANGENT TO SAID CURVE, NORTH 00°37'40" WEST, 170.66 FEET TO A TANGENT 300.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, 52.08 FEET THROUGH A CENTRAL ANGLE OF 99°27'45"; THENCE TANGENT TO SAID CURVE, SOUTH 79°54'35" WEST, 54.18 FEET TO A TANGENT 200.00

FOOT RADIUS CURVE, TO THE RIGHT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, 151.81 FEET THROUGH A CENTRAL ANGLE OF  $43^{\circ}29'25''$ ; THENCE TANGENT TO SAID CURVE, NORTH  $56^{\circ}36'00''$  WEST, 18.38 FEET TO A TANGENT 200.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, 103.79 FEET THROUGH A CENTRAL ANGLE OF  $29^{\circ}44'05''$ ; THENCE TANGENT TO SAID CURVE, NORTH  $26^{\circ}51'55''$  WEST, 371.25 FEET TO A TANGENT 500.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, 52.39 FEET TO THE NORTHWESTERLY BOUNDARY OF SAID PARCEL MAP NO. 6281. SAID 60.00 FOOT STRIP TO TERMINATE IN SAID NORTHWESTERLY BOUNDARY OF SAID PARCEL MAP NO. 6281 AND IN THE SOUTHERLY LINE OF SAID SECTION 1.

End of Legal Description

**ENVIRONMENTAL TRUST SUMMARY  
TERMINATION OF DEFERRAL BY OWNER**

Deferred charges plus interest, compounded annually.

580-040-01	08/28/2003-08/28/2013	\$30,851.56
580-040-46	08/28/2003-08/28/2013	\$4,258.20
580-040-41	08/28/2003-08/28/2013	\$9,793.87
580-040-44	08/28/2003-08/28/2013	<u>\$37,209.70</u>
		<u><u>\$82,113.33</u></u>

12/8/2009

**INTEREST CALCULATION ONLY**

ENVIRONMENTAL TRUST

Termination by Owner

Interest - Availability 10 yr agreement

PARCEL # 580-040-01

DEFERRAL: ENVIRONMENTAL TRUST INC.  
PARCEL # 580-040-01  
52.89 ACRES @ \$30 RATE

Deferral Date 8/28/2003

ORIGINAL BALANCE	\$	4,760.10	refund availability FY00-01, 01-02, 02-03
	\$1,586.70	\$ 6,346.80	03-04 9/1/2003
	\$1,586.70	\$ 7,933.50	04-05 9/1/2004
	\$1,586.70	\$ 9,520.20	05-06 9/1/2005
	\$1,586.70	\$ 11,106.90	06-07 9/1/2006
	\$1,586.70	\$ 12,693.60	07-08 9/1/2007
	\$1,586.70	\$ 14,280.30	08-09 9/1/2008
	\$1,586.70	\$ 15,867.00	09-10 9/1/2009
	\$4,760.10	\$ 20,627.10	10-11/12-13 9/1/2010

		<b>Fed Funds +5%</b>
INTEREST RATES	8/28/2003	6.00%
	6/30/2004	6.25%
	8/11/2004	6.50%
	9/21/2004	6.75%
	11/11/2004	7.00%
	12/14/2004	7.25%
	2/2/2005	7.50%
	3/22/2005	7.75%
	5/3/2005	8.00%
	6/30/2005	8.25%
	8/9/2005	8.50%
	9/20/2005	8.75%
	11/1/2005	9.00%
	12/13/2005	9.25%
	1/31/2006	9.50%
	3/28/2006	9.75%
	5/10/2006	10.00%
	6/29/2006	10.25%
	9/18/2007	9.75%
	10/31/2007	9.50%
	12/11/2007	9.25%
	1/22/2008	8.50%
	1/30/2008	8.00%
	3/18/2008	7.25%
	4/30/2008	7.00%
	10/8/2008	6.50%
	10/29/2008	6.00%
	12/16/2008	5.25%

BEGINNING OF INTEREST	END OF INTEREST RATE	NUMBER OF DAYS	TOTAL	INTEREST	FEES	BALANCE
8/28/2003	8/31/2003	3	4,760.10	\$2.35	\$1,586.70	\$6,349.15
9/1/2003	6/29/2004	298	6,349.15	\$311.02		\$6,660.17
6/30/2004	8/10/2004	40	6,660.17	\$45.62		\$6,705.79
8/11/2004	8/31/2004	20	6,705.79	\$23.88	\$1,586.70	\$8,316.37
9/1/2004	9/20/2004	19	8,316.37	\$28.14		\$8,344.51
9/21/2004	11/10/2004	49	8,344.51	\$75.61		\$8,420.12
11/11/2004	12/13/2004	32	8,420.12	\$51.67		\$8,471.80
12/14/2004	2/1/2005	47	8,471.80	\$79.09		\$8,550.89
2/2/2005	3/21/2005	49	8,550.89	\$86.09		\$8,636.98
3/22/2005	5/2/2005	40	8,636.98	\$73.36		\$8,710.34
5/3/2005	6/29/2005	56	8,710.34	\$106.91		\$8,817.25
6/30/2005	8/8/2005	38	8,817.25	\$75.73		\$8,892.98
8/9/2005	8/31/2005	22	8,892.98	\$45.56	\$1,586.70	\$10,525.24
9/1/2005	9/19/2005	18	10,525.24	\$44.12		\$10,569.36
9/20/2005	10/31/2005	41	10,569.36	\$103.88		\$10,673.24
11/1/2005	12/12/2005	41	10,673.24	\$107.90		\$10,781.15
12/13/2005	1/30/2006	47	10,781.15	\$128.41		\$10,909.56
1/31/2006	3/27/2006	57	10,909.56	\$161.85		\$11,071.41
3/28/2006	5/9/2006	41	11,071.41	\$121.25		\$11,192.66
5/10/2006	6/28/2006	48	11,192.66	\$147.19		\$11,339.86
6/29/2006	8/31/2006	62	11,339.86	\$197.44	\$1,586.70	\$13,123.99
9/1/2006	8/31/2007	360	13,123.99	\$1,326.78	\$1,586.70	\$16,037.48
9/1/2007	9/17/2007	16	16,037.48	\$72.06		\$16,109.53
9/18/2007	10/30/2007	42	16,109.53	\$180.74		\$16,290.27
10/31/2007	12/10/2007	40	16,290.27	\$169.60		\$16,459.87
12/11/2007	1/21/2008	40	16,459.87	\$166.85		\$16,626.72
1/22/2008	1/29/2008	7	16,626.72	\$27.10		\$16,653.82
1/30/2008	3/17/2008	47	16,653.82	\$171.56		\$16,825.38
3/18/2008	4/29/2008	41	16,825.38	\$137.02		\$16,962.40
4/30/2008	8/31/2008	120	16,962.40	\$390.37	\$1,586.70	\$18,939.47
9/1/2008	10/7/2008	36	18,939.47	\$130.76		\$19,070.23
10/8/2008	10/28/2008	20	19,070.23	\$67.92		\$19,138.15
10/29/2008	12/15/2008	46	19,138.15	\$144.72		\$19,282.87
12/16/2008	8/31/2009	255	19,282.87	\$707.26	\$1,586.70	\$21,576.83
9/1/2009	12/8/2009	97	21,576.83	\$301.04		\$21,877.87
12/9/2009	8/28/2013	1339	21,877.87	\$4,213.59	\$4,760.10	\$30,851.56
				<u>\$10,224.46</u>		

12/8/2009

**INTEREST CALCULATION ONLY**

ENVIRONMENTAL TRUST

Termination by Owner

Interest - Availability 10 yr agreement

PARCEL # 580-040-46

**DEFERRAL: ENVIRONMENTAL TRUST INC.  
PARCEL # 580-040-46  
7.3 ACRES @ \$30 RATE**

Deferral Date

8/28/2003

ORIGINAL BALANCE

	\$	657.00	refund availability FY00-01, 01-02, 02-03
\$219.00	\$	876.00	03-04 9/1/2003
\$219.00	\$	1,095.00	04-05 9/1/2004
\$219.00	\$	1,314.00	05-06 9/1/2005
\$219.00	\$	1,533.00	06-07 9/1/2006
\$219.00	\$	1,752.00	07-08 9/1/2007
\$219.00	\$	1,971.00	08-09 9/1/2008
\$219.00	\$	2,190.00	09-10 9/1/2009
\$657.00	\$	2,847.00	10-11/12-13 9/1/2010

INTEREST RATES

**Fed Funds +5%**

8/28/2003	6.00%
6/30/2004	6.25%
8/11/2004	6.50%
9/21/2004	6.75%
11/11/2004	7.00%
12/14/2004	7.25%
2/2/2005	7.50%
3/22/2005	7.75%
5/3/2005	8.00%
6/30/2005	8.25%
8/9/2005	8.50%
9/20/2005	8.75%
11/1/2005	9.00%
12/13/2005	9.25%
1/31/2006	9.50%
3/28/2006	9.75%
5/10/2006	10.00%
6/29/2006	10.25%
9/18/2007	9.75%
10/31/2007	9.50%
12/11/2007	9.25%
1/22/2008	8.50%
1/30/2008	8.00%
3/18/2008	7.25%
4/30/2008	7.00%
10/8/2008	6.50%
10/29/2008	6.00%
12/16/2008	5.25%

BEGINNING OF INTEREST	END OF INTEREST RATE	NUMBER OF DAYS	TOTAL	INTEREST	FEES	BALANCE
8/28/2003	8/31/2003	3	657.00	\$0.32		\$876.32
9/1/2003	6/29/2004	298	876.32	\$42.93	\$219.00	\$919.25
6/30/2004	8/10/2004	40	919.25	\$6.30		\$925.55
8/11/2004	8/31/2004	20	925.55	\$3.30	\$219.00	\$1,147.84
9/1/2004	9/20/2004	19	1,147.84	\$3.88		\$1,151.73
9/21/2004	11/10/2004	49	1,151.73	\$10.44		\$1,162.16
11/11/2004	12/13/2004	32	1,162.16	\$7.13		\$1,169.30
12/14/2004	2/1/2005	47	1,169.30	\$10.92		\$1,180.21
2/2/2005	3/21/2005	49	1,180.21	\$11.88		\$1,192.10
3/22/2005	5/2/2005	40	1,192.10	\$10.12		\$1,202.22
5/3/2005	6/29/2005	56	1,202.22	\$14.76		\$1,216.98
6/30/2005	8/8/2005	38	1,216.98	\$10.45		\$1,227.43
8/9/2005	8/31/2005	22	1,227.43	\$6.29	\$219.00	\$1,452.72
9/1/2005	9/19/2005	18	1,452.72	\$6.09		\$1,458.81
9/20/2005	10/31/2005	41	1,458.81	\$14.34		\$1,473.15
11/1/2005	12/12/2005	41	1,473.15	\$14.89		\$1,488.04
12/13/2005	1/30/2006	47	1,488.04	\$17.72		\$1,505.76
1/31/2006	3/27/2006	57	1,505.76	\$22.34		\$1,528.10
3/28/2006	5/9/2006	41	1,528.10	\$16.74		\$1,544.84
5/10/2006	6/28/2006	48	1,544.84	\$20.32		\$1,565.15
6/29/2006	8/31/2006	62	1,565.15	\$27.25	\$219.00	\$1,811.40
9/1/2006	8/31/2007	360	1,811.40	\$183.13	\$219.00	\$2,213.53
9/1/2007	9/17/2007	16	2,213.53	\$9.95		\$2,223.48
9/18/2007	10/30/2007	42	2,223.48	\$24.95		\$2,248.42
10/31/2007	12/10/2007	40	2,248.42	\$23.41		\$2,271.83
12/11/2007	1/21/2008	40	2,271.83	\$23.03		\$2,294.86
1/22/2008	1/29/2008	7	2,294.86	\$3.74		\$2,298.60
1/30/2008	3/17/2008	47	2,298.60	\$23.68		\$2,322.28
3/18/2008	4/29/2008	41	2,322.28	\$18.91		\$2,341.19
4/30/2008	8/31/2008	120	2,341.19	\$53.88	\$219.00	\$2,614.07
9/1/2008	10/7/2008	36	2,614.07	\$18.05		\$2,632.12
10/8/2008	10/28/2008	20	2,632.12	\$9.37		\$2,641.49
10/29/2008	12/15/2008	46	2,641.49	\$19.97		\$2,661.47
12/16/2008	8/31/2009	255	2,661.47	\$97.62	\$219.00	\$2,978.08
9/1/2009	12/8/2009	97	2,978.08	\$41.55		\$3,019.63
12/9/2009	8/28/2013	1339	3,019.63	\$581.57	\$657.00	\$4,258.20
				<u>\$1,411.20</u>		

12/8/2009

**INTEREST CALCULATION ONLY**

ENVIRONMENTAL TRUST

Termination by Owner

Interest - Availability 10 yr agreement

PARCEL # 580-040-41

**DEFERRAL: ENVIRONMENTAL TRUST INC.  
PARCEL # 580-040-41  
16.79 ACRES @ \$30 RATE**

Deferral Date **8/28/2003**

<b>ORIGINAL BALANCE</b>	\$	1,511.10	refund availability FY00-01, 01-02, 02-03
	\$503.70	\$ 2,014.80	03-04 9/1/2003
	\$503.70	\$ 2,518.50	04-05 9/1/2004
	\$503.70	\$ 3,022.20	05-06 9/1/2005
	\$503.70	\$ 3,525.90	06-07 9/1/2006
	\$503.70	\$ 4,029.60	07-08 9/1/2007
	\$503.70	\$ 4,533.30	08-09 9/1/2008
	\$503.70	\$ 5,037.00	09-10 9/1/2009
	\$1,511.10	\$ 6,548.10	10-11/12-13 9/1/2010

		<b>Fed Funds +5%</b>
<b>INTEREST RATES</b>	<b>8/28/2003</b>	6.00%
	<b>6/30/2004</b>	6.25%
	<b>8/11/2004</b>	6.50%
	<b>9/21/2004</b>	6.75%
	<b>11/11/2004</b>	7.00%
	<b>12/14/2004</b>	7.25%
	<b>2/2/2005</b>	7.50%
	<b>3/22/2005</b>	7.75%
	<b>5/3/2005</b>	8.00%
	<b>6/30/2005</b>	8.25%
	<b>8/9/2005</b>	8.50%
	<b>9/20/2005</b>	8.75%
	<b>11/1/2005</b>	9.00%
	<b>12/13/2005</b>	9.25%
	<b>1/31/2006</b>	9.50%
	<b>3/28/2006</b>	9.75%
	<b>5/10/2006</b>	10.00%
	<b>6/29/2006</b>	10.25%
	<b>9/18/2007</b>	9.75%
	<b>10/31/2007</b>	9.50%
	<b>12/11/2007</b>	9.25%
	<b>1/22/2008</b>	8.50%
	<b>1/30/2008</b>	8.00%
	<b>3/18/2008</b>	7.25%
	<b>4/30/2008</b>	7.00%
	<b>10/8/2008</b>	6.50%
	<b>10/29/2008</b>	6.00%
	<b>12/16/2008</b>	5.25%

BEGINNING OF INTEREST	END OF INTEREST RATE	NUMBER OF DAYS	TOTAL	INTEREST	FEES	BALANCE
8/28/2003	8/31/2003	3	1,511.10	\$0.75		
9/1/2003	6/29/2004	298	2,015.55	\$98.73	\$503.70	\$2,015.55
6/30/2004	8/10/2004	40	2,114.28	\$14.48		\$2,114.28
8/11/2004	8/31/2004	20	2,128.76	\$7.58	\$503.70	\$2,128.76
9/1/2004	9/20/2004	19	2,640.04	\$8.93		\$2,640.04
9/21/2004	11/10/2004	49	2,648.98	\$24.00		\$2,648.98
11/11/2004	12/13/2004	32	2,672.98	\$16.40		\$2,672.98
12/14/2004	2/1/2005	47	2,689.38	\$25.11		\$2,689.38
2/2/2005	3/21/2005	49	2,714.49	\$27.33		\$2,714.49
3/22/2005	5/2/2005	40	2,741.82	\$23.29		\$2,741.82
5/3/2005	6/29/2005	56	2,765.11	\$33.94		\$2,765.11
6/30/2005	8/8/2005	38	2,799.05	\$24.04		\$2,799.05
8/9/2005	8/31/2005	22	2,823.09	\$14.46	\$503.70	\$2,823.09
9/1/2005	9/19/2005	18	3,341.25	\$14.01		\$3,341.25
9/20/2005	10/31/2005	41	3,355.26	\$32.98		\$3,355.26
11/1/2005	12/12/2005	41	3,388.24	\$34.25		\$3,388.24
12/13/2005	1/30/2006	47	3,422.49	\$40.77		\$3,422.49
1/31/2006	3/27/2006	57	3,463.25	\$51.38		\$3,463.25
3/28/2006	5/9/2006	41	3,514.63	\$38.49		\$3,514.63
5/10/2006	6/28/2006	48	3,553.13	\$46.73		\$3,553.13
6/29/2006	8/31/2006	62	3,599.85	\$62.68	\$503.70	\$3,599.85
9/1/2006	8/31/2007	360	4,166.23	\$421.19	\$503.70	\$4,166.23
9/1/2007	9/17/2007	16	5,091.12	\$22.88		\$5,091.12
9/18/2007	10/30/2007	42	5,113.99	\$57.37		\$5,113.99
10/31/2007	12/10/2007	40	5,171.37	\$53.84		\$5,171.37
12/11/2007	1/21/2008	40	5,225.21	\$52.97		\$5,225.21
1/22/2008	1/29/2008	7	5,278.17	\$8.60		\$5,278.17
1/30/2008	3/17/2008	47	5,286.78	\$54.46		\$5,286.78
3/18/2008	4/29/2008	41	5,341.24	\$43.50		\$5,341.24
4/30/2008	8/31/2008	120	5,384.74	\$123.92	\$503.70	\$5,384.74
9/1/2008	10/7/2008	36	6,012.36	\$41.51		\$6,012.36
10/8/2008	10/28/2008	20	6,053.87	\$21.56		\$6,053.87
10/29/2008	12/15/2008	46	6,075.43	\$45.94		\$6,075.43
12/16/2008	8/31/2009	255	6,121.37	\$224.52	\$503.70	\$6,121.37
9/1/2009	12/8/2009	97	6,849.59	\$95.57		\$6,849.59
12/9/2009	8/28/2013	1339	6,945.16	\$1,337.61	\$1,511.10	\$6,945.16
				<u>\$3,245.77</u>		\$9,793.87

12/8/2009

**INTEREST CALCULATION ONLY**

ENVIRONMENTAL TRUST

Termination by Owner

Interest - Availability 10 yr agreement

PARCEL # 580-040-44

**DEFERRAL: ENVIRONMENTAL TRUST INC.  
PARCEL # 580-040-44  
63.79 ACRES @ \$30 RATE**

Deferral Date 8/28/2003

ORIGINAL BALANCE	\$	5,741.10	refund availability FY00-01, 01-02, 02-03
	\$1,913.70	\$ 7,654.80	03-04 9/1/2003
	\$1,913.70	\$ 9,568.50	04-05 9/1/2004
	\$1,913.70	\$ 11,482.20	05-06 9/1/2005
	\$1,913.70	\$ 13,395.90	06-07 9/1/2006
	\$1,913.70	\$ 15,309.60	07-08 9/1/2007
	\$1,913.70	\$ 17,223.30	08-09 9/1/2008
	\$1,913.70	\$ 19,137.00	09-10 9/1/2009
	\$5,741.10	\$ 24,878.10	10-11/12-13 9/1/2010

		<b>Fed Funds +5%</b>
INTEREST RATES	8/28/2003	6.00%
	6/30/2004	6.25%
	8/11/2004	6.50%
	9/21/2004	6.75%
	11/11/2004	7.00%
	12/14/2004	7.25%
	2/2/2005	7.50%
	3/22/2005	7.75%
	5/3/2005	8.00%
	6/30/2005	8.25%
	8/9/2005	8.50%
	9/20/2005	8.75%
	11/1/2005	9.00%
	12/13/2005	9.25%
	1/31/2006	9.50%
	3/28/2006	9.75%
	5/10/2006	10.00%
	6/29/2006	10.25%
	9/18/2007	9.75%
	10/31/2007	9.50%
	12/11/2007	9.25%
	1/22/2008	8.50%
	1/30/2008	8.00%
	3/18/2008	7.25%
	4/30/2008	7.00%
	10/8/2008	6.50%
	10/29/2008	6.00%
	12/16/2008	5.25%

BEGINNING OF INTEREST	END OF INTEREST RATE	NUMBER OF DAYS	TOTAL	INTEREST	FEES	BALANCE
8/28/2003	8/31/2003	3	5,741.10	\$2.83	\$1,913.70	\$7,657.63
9/1/2003	6/29/2004	298	7,657.63	\$375.12		\$8,032.75
6/30/2004	8/10/2004	40	8,032.75	\$55.02		\$8,087.77
8/11/2004	8/31/2004	20	8,087.77	\$28.81	\$1,913.70	\$10,030.27
9/1/2004	9/20/2004	19	10,030.27	\$33.94		\$10,064.21
9/21/2004	11/10/2004	49	10,064.21	\$91.20		\$10,155.41
11/11/2004	12/13/2004	32	10,155.41	\$62.32		\$10,217.73
12/14/2004	2/1/2005	47	10,217.73	\$95.39		\$10,313.12
2/2/2005	3/21/2005	49	10,313.12	\$103.84		\$10,416.96
3/22/2005	5/2/2005	40	10,416.96	\$88.47		\$10,505.43
5/3/2005	6/29/2005	56	10,505.43	\$128.94		\$10,634.38
6/30/2005	8/8/2005	38	10,634.38	\$91.34		\$10,725.72
8/9/2005	8/31/2005	22	10,725.72	\$54.95	\$1,913.70	\$12,694.37
9/1/2005	9/19/2005	18	12,694.37	\$53.21		\$12,747.58
9/20/2005	10/31/2005	41	12,747.58	\$125.29		\$12,872.87
11/1/2005	12/12/2005	41	12,872.87	\$130.14		\$13,003.01
12/13/2005	1/30/2006	47	13,003.01	\$154.88		\$13,157.89
1/31/2006	3/27/2006	57	13,157.89	\$195.21		\$13,353.10
3/28/2006	5/9/2006	41	13,353.10	\$146.24		\$13,499.34
5/10/2006	6/28/2006	48	13,499.34	\$177.53		\$13,676.87
6/29/2006	8/31/2006	62	13,676.87	\$238.13	\$1,913.70	\$15,828.69
9/1/2006	8/31/2007	360	15,828.69	\$1,600.22	\$1,913.70	\$19,342.61
9/1/2007	9/17/2007	16	19,342.61	\$86.91		\$19,429.52
9/18/2007	10/30/2007	42	19,429.52	\$217.98		\$19,647.50
10/31/2007	12/10/2007	40	19,647.50	\$204.55		\$19,852.05
12/11/2007	1/21/2008	40	19,852.05	\$201.24		\$20,053.29
1/22/2008	1/29/2008	7	20,053.29	\$32.69		\$20,085.98
1/30/2008	3/17/2008	47	20,085.98	\$206.91		\$20,292.89
3/18/2008	4/29/2008	41	20,292.89	\$165.26		\$20,458.15
4/30/2008	8/31/2008	120	20,458.15	\$470.82	\$1,913.70	\$22,842.67
9/1/2008	10/7/2008	36	22,842.67	\$157.71		\$23,000.38
10/8/2008	10/28/2008	20	23,000.38	\$81.92		\$23,082.30
10/29/2008	12/15/2008	46	23,082.30	\$174.54		\$23,256.84
12/16/2008	8/31/2009	255	23,256.84	\$853.02	\$1,913.70	\$26,023.56
9/1/2009	12/8/2009	97	26,023.56	\$363.08		\$26,386.64
12/9/2009	8/28/2013	1339	26,386.64	\$5,081.96	\$5,741.10	\$37,209.70
				<u>\$12,331.60</u>		



STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	February 3, 2010
SUBMITTED BY:	James Cudlip, Finance Manager	W.O./G.F. NO:	DIV. NO. All
APPROVED BY:	Joseph R. Beachem, Chief Financial Officer (Chief)		
APPROVED BY:	German Alvarez, Assistant General Manager, Administration and (Asst. GM): Finance		
SUBJECT:	Banking Services Review		

**GENERAL MANAGER'S RECOMMENDATION:**

That the Committee approve staff's recommendation to continue the current level of banking services with Union Bank at this time. Staff will initiate a full industry Request For Proposals (RFP) for banking services as a part of their next banking review, in approximately 2 years.

**COMMITTEE ACTION:** \_\_\_\_\_

See Attachment A.

**BACKGROUND:**

On March 5, 2008, staff completed a banking services review and presented it to the Board. At that time it was recommended that Union Bank continue to provide banking services for the District based on their competitive pricing, range of banking services, and overall highly satisfactory performance. The Board requested staff to provide a similar review on a recurring basis, considering the changing economy and business competition within the banking and financial industries. This report presents results of that current review of the District's banking services.

**ANALYSIS:**

**CURRENT FEE COMPARISONS:** Union Bank provided a detailed breakdown of the District's services and fees, with a comparison of the pricing for these services from three other municipal agencies that recently completed bidding for banking services: 1) City of Indio; 2) Coachella Valley Water District; and 3) City of Elk Grove. Each of these agencies are either similar or larger and more complex than the District in terms of overall size, budget, operations, and range of banking services. Each

of the agencies recently completed a full review of their banking services, to include detailed industry pricing proposals, resulting in a full range of comparative pricing for the District's review. The competing banks included Bank of America, US Bank, Wells Fargo, Pacific Western Bank, and FirstBank. An analysis of all services and fees on the District's current monthly billing statement showed that Otay's overall pricing was the most favorable. In addition, staff from each of the three municipal agencies contacted confirmed that their current fees were the lowest offered from all of the competing banks.

While Union Bank's overall current pricing was more favorable than each of the competing banks, a few individual service items were identified where lower fees were available due to changes in web (internet) and image technologies. Union Bank has proposed to implement these fees immediately, providing the District with savings of approximately \$900/month, or 7.76%. Additionally, Union Bank has made a commitment to maintain this pricing for 5 years, similar to their previous pricing commitment made in 2005.

CURRENT STAFF SATISFACTION: Staff who deal with the bank on a repetitive basis were asked if they had any problems or issues with the bank, and if they were satisfied with current banking services. This included Customer Service, Payroll, Accounts Payable, and Investment personnel. Responses were positive. Problems tend to be infrequent, minor in scope, and the bank has been quick to respond to all issues. Staff is very happy with the financial services provided and the personnel contacts involved at Union Bank.

NEW OR ADDITIONAL SERVICES AVAILABLE: Finance staff is active in keeping current and knowledgeable of financial industry services. Actions include: 1) discussions with the District's outside auditors; 2) membership in professional financial organizations (GFOA, CMTA, CSMFO, AICPA); 3) attendance at financial seminars; 4) discussions with peers in the surrounding water districts, other government agencies, and other business entities; and 5) keeping communications with other banks open and positive. Staff is unaware of any additional financial goods or services that are not already available from Union Bank.

ADDITIONAL CONSIDERATIONS: Banking services are interwoven throughout many of the financial processes of the District and require significant effort to change. Any change creates a

disruption for customers and vendors which should not be initiated without ample justification. It typically takes several months and hundreds of hours of staff time to change all banking services.

**Conclusions:**

Staff recommends continuing with Union Bank at this time.

**FISCAL IMPACT:**



Projected savings of approximately \$900/month, as well as a commitment from Union Bank to maintain the current detailed pricing for 5 years.

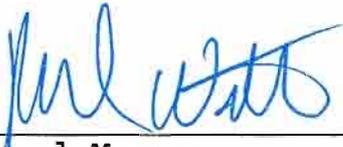
**STRATEGIC OUTLOOK:**

The District ensures its continued financial health through long-term financial planning and debt planning.

**LEGAL IMPACT:**

\_\_\_\_\_

None.



\_\_\_\_\_  
General Manager

Attachments:

- A: Committee Action Form
- B: Inter-Agency Pricing Comparison



## ATTACHMENT A

<b>SUBJECT/PROJECT:</b>	Banking Services Review
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### COMMITTEE ACTION:

The Finance/Administration and Communications Committee reviewed this item at a meeting held on January 19, 2010 and the following comments were made:

- In March 2008 staff completed a banking services review and presented findings to the board. At that time it was agreed that staff would complete a similar review on a periodic basis. Staff has completed another review and recommends that the District continue with its current banking vendor, Union Bank.
- Staff compared the District's services and fees from Union Bank with three other municipal agencies who recently completed a bidding process for banking services; City of Indio, Coachella Valley Water District and City of Elk Grove. Due to the current emphasis for banks to show a profit because of the many bank failures, the comparison found that banks are not cutting fees.
- Union Bank's fees continue to be competitive and the District has been happy with their services. They have also reduced prices on several of their fees which will save the District approximately \$10,000 annually.
- It was also noted that staff found some bill paying advantages through Union Bank. Customers may also pay their water bill at any Walmart around the country.

Upon completion of the discussion, the committee supported staffs' recommendation and presentation to the full board on the consent calendar.

Banking Services Review - All Items									
	Otay			Coachella		Indio		Elk Grove	
Item	Volume	Price	Extended	Price	Extended	Price	Extended	Price	Extended
<b>Account Analysis</b>									
Acct Maintenance	3	5.00	15.00	5.00	15.00	5.00	15.00	5.00	15.00
<b>Account Recon</b>									
Pos Pay	2	75.00	150.00	75.00	150.00	50.00	100.00	75.00	150.00
Check Paid	438	0.06	26.28	0.09	39.42	0.08	35.04	0.06	26.28
Outstanding Only	2	10.00	20.00	10.00	20.00	10.00	20.00	10.00	20.00
Recon Stop	1	8.00	8.00	5.00	5.00	1.00	1.00	8.00	8.00
Image CD	1.00	20.00	20.00	15.00	15.00	20.00	20.00	20.00	20.00
Image Checks	425	0.02	8.50	0.02	8.50	0.02	8.50	0.02	8.50
Express Mail	2	10.00	20.00	10.00	20.00	5.00	10.00	10.00	20.00
Web Pos Pay-E	1	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20
Web Pos Pay-I	1	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50
Web Pos Pay-II	521	0.18	93.78	0.18	93.78	0.18	93.78	0.18	93.78
<b>Bill Concentration</b>									
BCS Base	1	75.00	75.00	125.00	125.00	125.00	125.00	75.00	75.00
Transmission	22	4.00	88.00	2.00	44.00	3.00	66.00	5.00	110.00
BCS Item	9,157	0.03	274.71	0.05	457.85	0.05	457.85	0.05	457.85
<b>Armored Car</b>									
Services	1	542.00	542.00	542.00	542.00	542.00	542.00	542.00	542.00
<b>Business Checking</b>									
Branch Deposit	17	2.00	34.00	1.00	17.00	2.00	34.00	2.00	34.00
Electronic Credit	100	0.12	12.00	0.12	12.00	0.12	12.00	0.05	5.00
Night Drop	8	2.00	16.00	2.00	16.00	2.00	16.00	2.00	16.00
Electronic Debit	10	0.12	1.20	0.12	1.20	0.12	1.20	0.05	0.50
Bank Stmt Web	2	2.00	4.00	2.00	4.00	2.50	5.00	2.00	4.00
FDIC Insurance	2,217.3	0.1013	224.61	0.1013	224.61	0.1013	224.61	0.1013	224.61
FDIC Insurance	1,661.6	0.015	24.92	0.015	24.92	0.015	24.92	0.015	24.92
<b>Check Processing</b>									
Uncoded	1	0.95	0.95	1.00	1.00	1.60	1.60	1.60	1.60
UB Checks-B	20	0.0755	1.51	0.0755	1.51	0.080	1.60	0.0755	1.51
Local Clr	93	0.078	7.25	0.078	7.25	0.080	7.44	0.078	7.25

Banking Services Review - All Items									
		Otay		Coachella		Indio		Elk Grove	
Item	Volume	Price	Extended	Price	Extended	Price	Extended	Price	Extended
Local Fed	160	0.087	13.92	0.087	13.92	0.090	14.40	0.087	13.92
Other Fed	22	0.12	2.64	0.12	2.64	0.13	2.86	0.12	2.64
UB Checks-S	2,044	0.02	40.88	0.04	87.89	0.04	87.89	0.02	40.88
Local Clr	5,621	0.03	168.63	0.05	269.81	0.05	269.81	0.04	196.74
Local Fed	10,346	0.03	310.38	0.06	589.72	0.06	620.76	0.04	362.11
Encoding	1,363	0.02	27.26	0.02	27.26	0.02	27.26	0.02	27.26
Other Fed	2,350	0.03	70.50	0.09	211.50	0.10	235.00	0.03	70.50
Canadian	1	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00
Debit Error	1	3.00	3.00	6.00	6.00	3.00	3.00	7.00	7.00
Credit Error	1	3.00	3.00	6.00	6.00	3.00	3.00	7.00	7.00
<b>Clearpay</b>									
Monthly Base	2	25.00	50.00	50.00	100.00	50.00	100.00	25.00	50.00
Credit Trans-1	100	0.00	0.00	0.04	4.00	0.10	10.00	0.03	3.00
Credit Trans-2	340	0.10	34.00	0.04	13.60	0.10	34.00	0.03	10.20
Debit Trans-1	100	0.00	0.00	0.04	4.00	0.10	10.00	0.03	3.00
Debit Trans-2	4,191	0.10	419.10	0.04	167.64	0.10	419.10	0.03	125.73
Returns	10	3.00	30.00	3.00	30.00	1.00	10.00	5.00	50.00
NOC/FAX	4	2.00	8.00	3.00	12.00	1.00	4.00	3.00	12.00
Batch Release	7	2.00	14.00	2.00	14.00	1.00	7.00	5.00	35.00
ACK Report	7	2.00	14.00	2.00	14.00	2.00	14.00	2.00	14.00
<b>Cash Vault</b>									
Currency Strap	2	0.95	1.90	1.40	2.80	1.40	2.80	0.95	1.90
Deposit	18	1.00	18.00	1.00	18.00	2.50	45.00	1.00	18.00
Currency Unstrap	58.8	0.90	52.92	1.40	82.32	0.75	44.10	0.90	52.92
<b>Commercial Cust</b>									
LAIF Redem	2	5.00	10.00	50.00	100.00	0.00	0.00	5.00	10.00
LAIF Invest	5	5.00	25.00	20.00	100.00	0.00	0.00	5.00	25.00
<b>Electronic Tax</b>									
Instatax	1	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00
<b>Info Reporting</b>									
Web Prior Day	3	20.00	60.00	25.00	75.00	25.00	75.00	25.00	75.00



Banking Services Review - All Items									
		Otay		Coachella		Indio		Elk Grove	
Item	Volume	Price	Extended	Price	Extended	Price	Extended	Price	Extended
Items Processed	18,032	0.14	2,524.48	0.14	2524.48	0.15	2704.80	0.17	3065.44
OCR Scan	2,907	0.02	58.14	0.02	58.14	0.02	58.14	0.02	58.14
Data Entry	228	0.02	4.56	0.02	4.56	0.01	2.28	0.02	4.56
Non-Matched	2,579	0.35	902.65	0.35	902.65	0.20	515.80	0.35	902.65
Data Trans	1	75.00	75.00	75.00	75.00	100.00	100.00	100.00	100.00
Data Trans/Media	18,032	0.005	90.16	0.005	90.16	0.005	90.16	0.005	90.16
Facsimile	56	5.00	280.00	5.00	280.00	2.00	112.00	7.00	392.00
Stop List-Monthly	1	35.00	35.00	35.00	35.00	150.00	150.00	150.00	150.00
Stop List-per item	18,032	0.005	90.16	0.005	90.16	0.005	90.16	0.005	90.16
PO Box Rental	1	107.00	107.00	107.00	107.00	107.00	107.00	107.00	107.00
Lockbox Deposit	19	0.95	18.05	0.95	18.05	1.60	30.40	1.00	19.00
Image Delivery	1	75.00	75.00	75.00	75.00	75.00	75.00	100.00	100.00
CD-Rom	1	25.00	25.00	25.00	25.00	10.00	10.00	25.00	25.00
Check Image	18,032	0.04	721.28	0.04	721.28	0.05	901.60	0.03	540.96
CD Doc Image	19,714	0.04	788.56	0.04	788.56	0.05	985.70	0.03	591.42
Web Access	22	0.02	0.44	0.02	0.44	0.03	0.66	0.03	0.66
<b>Elec Wire Tsfr</b>									
Acct Transfer	3	2.00	6.00	2.00	6.00	2.00	6.00	2.00	6.00
Wire Transfer	1	20.00	20.00	25.00	25.00	25.00	25.00	25.00	25.00
Outgoing Wire	7	6.00	42.00	6.00	42.00	8.50	59.50	4.00	28.00
Internal Transfer	1	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00
<b>TOTAL:</b>			<b>10,608.75</b>		<b>11,534.50</b>		<b>11,700.59</b>		<b>11,219.15</b>



## AGENDA ITEM 8h

### EXECUTIVE SUMMARY

TYPE MEETING:	Regular Board	MEETING DATE:	February 3, 2010
SUBMITTED BY:	Mark Watton, General Manager	W.O./G.F. NO:	DIV. NO. N/A
APPROVED BY:			
SUBJECT:	Consideration to Approve the Proposed Bylaws and Articles of Association of the Council of Water Utilities		

#### GENERAL MANAGER'S RECOMMENDATION:

That the Board approve the proposed Bylaws and Articles of Association of the Council of Water Utilities.

#### COMMITTEE ACTION: \_\_\_\_\_

Please see Attachment A.

#### PURPOSE:

To present the proposed Bylaws and Articles of Association for consideration by the Board of Directors.

#### ANALYSIS:

The Council of Water Utilities (COWU) and the Water Agencies Association San Diego Chapter (WAASDC) have been in discussions to merge their two organizations. As the purpose of the two organizations are very similar – to provide a forum for sharing information and promoting the interests of the water agencies or cities that provide water services in San Diego County on water related issues of local, state or national origin – it is felt that it would be beneficial to merge as it would allow collaboration on a larger scale. In addition, members would save the bi-annual membership fee to WAASDC.

It has been agreed that the WAASDC would be merged into the COWU and meetings would still continue to be open to all public and private water agencies, cities that provide water services in San Diego County, and adjacent water agencies which would provide and receive benefit from membership in the COWU. The meetings would also continue to be held as a breakfast meeting once a month with one annual dinner.

The WAASDC and COWU are requesting that its membership review and approve the attached proposed Bylaws and Articles of Association for the new organization. The newly formed COWU will become a 501(c)(6) entity. The District's legal counsel has reviewed the Bylaws and the Articles of Association and indicates that there are adequate.

The COWU will be presenting the Bylaws and Articles of Association at their meeting in February 2010 for formal adoption by its members.

**FISCAL IMPACT:** \_\_\_\_\_

The District would save the bi-annual membership fee of \$100 to the WAASDC.

**STRATEGIC GOAL:**

Participating would support the strategic goal of maintaining effective communications with other cities, special districts, State and Federal governments, community organizations and Mexico.

**LEGAL IMPACT:** \_\_\_\_\_

None.



\_\_\_\_\_  
General Manager

Attachments:

- Council of Water Utilities Proposed Bylaws
- Council of Water Utilities Proposed Articles of Association



## ATTACHMENT A

**SUBJECT/PROJECT:**

Consideration to Approve the Proposed Bylaws and Articles of Association of the Council of Water Utilities

**COMMITTEE ACTION:**

The Finance/Administration and Communications Committee reviewed this item at a meeting held on January 19, 2010 and the following comments were made:

- The Council of Water Utilities and the Water Agencies Association are in discussions to merge the two organizations as it is felt that the union of both organizations would better serve their members.
- The merged organization will become a 501(c)(6) entity and the Bylaws and Articles of Association are being presented for its members for comment and approval.
- The Council of Water Utilities will be presenting the Bylaws and Articles of Association at their meeting in February 2010 for formal adoption by its members.

Upon completion of the discussion, the committee supported staffs' recommendation and presentation to the full board on the consent calendar.

**BYLAWS  
OF  
COUNCIL OF WATER UTILITIES**

**A California Nonprofit Unincorporated Association**

**January \_\_, 2010**

**DRAFT**

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to be inserted on final

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**BYLAWS  
OF  
COUNCIL OF WATER UTILITIES  
A California Nonprofit Unincorporated Association**

**ARTICLE I  
NAME**

The name of this unincorporated association is COUNCIL OF WATER UTILITIES (the "Association").

**ARTICLE II  
OFFICES**

**Section 2.01. Principal Office.** The principal office for the transaction of the activities and affairs of the Association is located at \_\_\_\_\_ County, California. The Board of Directors (the "Board") may change the principal office from one location to another. It is the intent of the Association that the Principal Office shall transfer to the address of the agency of whomever is the presiding Secretary with each term of office.

**Section 2.02. Other Offices.** The Board may at any time establish branch or subordinate offices at any place or places where the Association is qualified to conduct its activities.

**ARTICLE III  
PURPOSES AND LIMITATIONS**

**Section 3.01. Purposes.** This Association is organized under the California Unincorporated Associations Laws. The purpose of this Association is to engage in any lawful act or activity for which a unincorporated association may be organized under such law. The principal purpose for which this Association is formed is to provide a forum for water agencies to be informed and to share information of importance to the water, recycled water, wastewater and related agencies. Additionally, the Association is intended to provide annual training seminars for water agency employees in areas of interest such as customer service or first line supervisors. Further, the Association shall hold at least one annual dinner for its members. This Association is organized exclusively for such purposes within the meaning of Section 501(c)(6) of the Internal Revenue Code of 1986, as amended from time to time. Notwithstanding any other provision of these Bylaws, this Association shall not, except to an insubstantial degree, carry on or engage in any activities or exercise any powers that are not in furtherance of the purposes of this Association, and the Association shall not carry on any other activities not permitted to be carried on by an organization exempt from Federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986 (as amended).

**Section 3.02. Limitations.**

a. **Property.** The property, assets, profits and net income are dedicated to the purposes set forth in Section 3.01 above.

b. **Dissolution.** Upon the winding up and dissolution of this Association, after paying or adequately providing for the payment of the debts, obligations and liabilities of the Association, the remaining assets of this Association shall be distributed pro rata in proportion to the money contributed by each member to the then-current members of the Association.

**ARTICLE IV  
MEMBERSHIP**

**Section 4.01. Qualifications and Rights of Membership**

a. **Classes and Qualifications.** This Association shall have two classes of members, consisting of persons dedicated to the purposes of this Association, who meet other qualifications for membership, as the Board may determine shall be eligible for membership on approval of the membership application by the Board and on timely payment of such dues and fees as the Board may fix from time to time. Notwithstanding the foregoing, the Association may refer to persons of certain nonvoting classes or other persons or entities associated with it as "members," even though those persons or entities are not voting members as set forth in Section 4.01.b. of these Bylaws, but no such reference shall constitute anyone a member within the meaning of the California Unincorporated Associations Laws unless that person or entity shall have qualified for a voting membership under Section 4.01.b. of these Bylaws. Unless the context requires otherwise, references in these Bylaws to "members" shall mean such voting members only. By resolution of the Board, the Association may grant some or all the rights of a member to any class, as set forth in these Bylaws, to any person or entity that does not have the right to vote, but no such person or entity shall be a "member" within the meaning of the California Unincorporated Associations Laws.

(1) **Industry Members.** Public or Private water, wastewater, and recycled water agencies, including cities in San Diego County or adjacent water agencies which would provide and receive benefit from such membership shall be eligible for Industry Membership, subject to satisfying other qualifications for membership as determined by the Board.

(2) **Associate Members.** Persons or entities interested in the purposes of this Association but who are not public water, wastewater, or recycled water suppliers shall be eligible for Associate Membership, subject to satisfying other qualifications for membership as determined by the Board.

b. **Voting Members.** Only Industry Members shall be entitled to vote, as set forth in these Bylaws.

**Section 4.02. Dues, Fees and Assessments.** Each voting and nonvoting member must pay, within the time and on the conditions set by the Board, the dues, fees, and assessments in amounts to be fixed from time to time by the Board. The Board may, in its discretion, set different dues, fees, and assessments for each class and within each class. For purposes of incorporation, the initial dues are set in an annual amount of \$50 per industry member and \$100 per associate member, payable on June 30<sup>th</sup> of each year.

**Section 4.03. Good Standing.** Those voting and nonvoting members who have paid the required dues, fees, and assessments in accordance with these Bylaws and who are not suspended shall be members in good standing.

**Section 4.04. Termination and Suspension of Membership.**

**a. Causes of Termination.** Any membership (voting or otherwise) shall terminate on occurrence of any of the following events:

- (1) Resignation of the member, on reasonable notice to the Association;
- (2) Expiration of the period of membership, unless the membership is renewed on the renewal terms fixed by the Board;
- (3) Failure of the member to pay dues, fees, or assessments as set by the Board within the period of time set by the Board after they become due and payable;
- (4) Occurrence of any event that renders the member ineligible for membership, or failure to satisfy membership qualifications;
- (5) Expulsion or suspension of the member pursuant to Section 4.04.b. of these Bylaws; or
- (6) Termination of the legal existence of a member who is not a natural person.

**b. Suspension of Membership.** A member (voting or otherwise) may be suspended based on the good faith determination by the Board, or a committee authorized by the Board to make such a determination, that the member has failed in a material and serious degree to observe the rules of conduct of the Association or has engaged in conduct materially and seriously prejudicial to the purposes and interests of the Association. A person whose membership is suspended shall not be a "member" during the period of suspension.

**Section 4.05. Prohibition on Transfer of Memberships.** A membership or any right arising from membership (voting or otherwise) may not be transferred to any other person or entity without the prior approval of the Board. The Board may by resolution impose transfer fees or other conditions on the transferring party as it deems fit, provided those fees and conditions are the same for similarly situated members.

#### **Section 4.06. Meetings of Members.**

a. **Place of Meeting.** Meetings of the members shall be held generally at a breakfast meeting on the 3<sup>rd</sup> Tuesday of the month from 7:15 AM to 8:45 AM in any place designated by the Board. In the absence of any such designation, members' meetings shall be held at the principal office of the Association.

b. **Annual Meeting.** An annual meeting of members shall be held at the Annual Dinner, unless the Board fixes another date or time and so notifies members as provided for herein. If the scheduled date falls on a legal holiday, the meeting shall be held the next full business day. At this meeting, Directors shall be elected and any other proper business may be transacted. Only voting members shall be entitled to vote on any action permitted to be taken by the members.

c. **Special Meetings.** A special meeting of the members may be called for any lawful purpose by a majority vote of the Board or by the President or by five percent (5%) or more of the members. A special meeting called by any person(s) (other than the Board) entitled to call a meeting shall be called by written request, specifying the general nature of the business proposed to be transacted, and submitted to the Chairman/President or the Secretary of the Association. The officer receiving the request shall cause notice to be given promptly to the members entitled to vote, in accordance with these Bylaws, stating that a meeting will be held at a special time and date fixed by the Board, provided, however, that the meeting date shall be least thirty-five (35) but no more than ninety (90) days after receipt of the request. If the notice is not given within twenty (20) days after the request is received, the person requesting the meeting may give the notice. Nothing in this Section shall be construed as limiting, fixing, or affecting the time at which a meeting of members may be held when the meeting is called by the Board. No business, other than the business the general nature of which was set forth in the notice of the meeting, may be transacted at a special meeting.

#### **d. Notice Requirements for Members' Meetings.**

(1) **General Notice Requirements.** Whenever members are required or permitted to take any action at a meeting, a written notice of the meeting shall be given to each member entitled to vote at the meeting. The notice shall specify the place, date, and hour of the meeting and, (i) for a special meeting, the general nature of the business to be transacted, and no other business may be transacted, or (ii) for the annual meeting, those matters that the Board, at the time notice is given, intends to present for action by the members, but any proper matter may be presented at the meeting. The notice of any meeting at which Directors are to be elected or written ballots distributed for the election of Directors shall include the names of all persons who are nominees when the notice or the ballot is given.

(3) **Manner of Giving Notice.** Notice of any meeting of members shall be in writing or electronic communication and shall be given at least five (5) days but no more than sixty (60) days before the meeting date. The notice shall be given either personally or by first-class, registered, or certified mail, or by other means of written or electronic communication, charges prepaid, and shall be addressed to each member entitled to vote, at the address given by the member to the Association for purposes of notice, *provided, however*, that

notice shall not be delivered electronically unless the member has consented to electronic delivery of the notice.

e. **Quorum.** One-third (1/3) of the voting members, present in person or by proxy, shall constitute a quorum for the transaction of business at any meeting of members. The members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjourned, even if enough members have withdrawn to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the members required to constitute a quorum.

f. **Adjournment and Notice of Adjourned Meetings.** Any members' meeting, whether or not a quorum is present, may be adjourned from time to time by the vote of the majority of the members represented at the meeting, either in person or by proxy. No meeting may be adjourned for more than sixty (60) days. When a members' meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which adjournment is taken. If after adjournment a new record date is fixed for notice or voting, a notice of the adjourned meeting shall be given to each member who, on the record date for notice of the meeting, is entitled to vote at the meeting. At the adjourned meeting, the Association may transact any business that might have been transacted at the original meeting.

g. **Voting.** The only persons entitled to vote at any meeting of members shall be Industry Members who are in good standing as of the record date determined pursuant to Section 4.08 of these Bylaws. Voting may be by voice or ballot as determined by the Board of Directors. Each member entitled to vote shall be entitled to cast one vote on each matter submitted to a vote of the members. Cumulative voting shall not be permitted. If a quorum is present, the affirmative vote of a majority of the voting power represented at the meeting, entitled to vote and voting on any matter, shall be the act of the members, unless the vote of a greater number, or voting by classes, is required by the California Unincorporated Associations Laws or by these Bylaws.

**Section 4.07. Action by Written Ballot Without a Meeting.** Any action that may be taken at any meeting of members may be taken without a meeting by written ballot in which the number of votes cast equals or exceeds that number required for a quorum, with approval of a matter so voted requiring an affirmative majority of the votes cast.

a. **Solicitation of Written Ballots.** If the vote of the members is to be conducted by written ballot without a meeting, the notice of the vote shall serve as the ballot. The ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, provide a reasonable time within which to return the ballot to the Association, and with respect to ballots for election of Directors, state the name of each nominee.

b. **Revocation.** A written ballot may not be revoked.

**Section 4.08. Record Date for Notice, Voting, Written Ballots, and Other Actions.** For purposes of determining which members are entitled to receive notice of any meeting, to vote, or to give consent to corporate action without a meeting, the "record date" shall

be the date of the delivery or mailing of the applicable notice. Only members of record on the record date are entitled to notice, to vote, or to give consents, as the case may be, notwithstanding any transfer of any membership on the books of the Association after the record day, except as otherwise provided in the Articles of Association, by agreement, or in the California Unincorporated Associations Laws.

**Section 4.09. Proxies.** Each member entitled to vote shall have the right to do so either in person or by one or more agents authorized by a written proxy, signed by the person and filed with the Secretary of the Association. A proxy shall be deemed signed if the member's name is placed on the proxy (whether by manual signature, typewriting, electronic transmission, or otherwise) by the member or the member's attorney-in-fact. A validly executed proxy shall continue in full force and effect until: (a) revoked by the member in writing delivered to the Association stating that the proxy is revoked, or (b) revoked by a member by a subsequent proxy executed by that member and presented to the meeting, or (c) revoked by a member as to any meeting, by that member's personal attendance and voting at the meeting; or (d) written notice of death or incapacity of the maker of the proxy is received by the Association before the vote under that proxy is counted, provided, however, that no proxy shall be valid after the expiration of eleven (11) months from the date of the proxy, unless otherwise provided in the proxy, except that the maximum term of a proxy shall be three (3) years from the date of execution. A proxy may not be irrevocable.

**Section 4.10. Election of Directors.**

a. **Nominations by Members.** At the November meeting, the President shall appoint a nominating committee of three persons. The nominating committee should usually consist of the present Chairperson and the two previous Chairpersons. Any member may make suggestions for election of directors to the nominating committee. The nominating Committee shall report its recommendations to the membership at the January meeting.

c. **Nominations From the Floor.** At any meeting of members to elect Directors, any Industry Member present at the meeting in person or by proxy may place names in nomination.

**Section 4.11. Records – Members' Inspection Rights**

a. **Membership Records.** Subject to the California Unincorporated Associations Laws and unless the Association provides a reasonable alternative as provided below, any Industry Member may do either or both of the following for a purpose reasonably related to such member's interest as a member:

(1) Inspect and copy the records of members' (voting or otherwise) names, addresses, and voting rights during usual business hours on five (5) days' prior written demand on the Association, which demand must state the purpose for which the inspection rights are requested; or

(2) Obtain from the Secretary of the Association, on written demand and tender of a reasonable charge, a list of names, addresses, and voting rights of members who

are entitled to vote for the election of Directors as of the most recent record date for which that list has been compiled, or as of a date specified by the member, after the date of demand. The demand shall state the purpose for which the list is requested. The Secretary shall make this list available to the member on or before the latter of ten (10) days after (i) the demand is received or (ii) the date specified in the demand as the date as of which the list is to be compiled.

The Association may, within ten (10) business days after receiving a demand under this Section, make a written offer of an alternative method of reasonable and timely achievement of the proper purpose specified in the demand without providing access to or a copy of the membership list. Any rejection of this offer must be in writing and must state the reasons that the proposed alternative does not meet the proper purpose of the demand.

If the Association believes that the information requested will be used for a purpose other than one reasonably related to a person's interest as a member, or if the Association provides a reasonable alternative under this Section 4.11.a., it may deny the member access to the membership list. Any inspection and copying under this section may be made in person or by the member's agent or attorney. The right of inspection includes the right to copy and make extracts.

**b. Accounting Records and Minutes.** On written demand presented to the Association, any Industry Member may inspect, copy, and make extracts of the accounting books and records and the minutes of the proceedings of the members, the Board, and committees of the Board at any reasonable time for a purpose reasonably related to the member's interest as a member. Any such inspection and copying may be made in person or by the member's agent or attorney.

**c. Maintenance and Inspection of Articles and Bylaws.** The Association shall keep at its principal office, or if its principal office is not in California, at its principal business office in this state, the original or a copy of its Articles of Association and Bylaws, as amended to date, which shall be open to inspection by the members (voting or otherwise) at all reasonable times during office hours.

## **ARTICLE V** **DIRECTORS**

### **Section 5.01. Powers.**

**a. General Corporate Powers.** Subject to any limitations of the Articles of Association and of these Bylaws, the activities and affairs of the Association shall be managed, and all corporate powers shall be exercised, by or under the direction of the Board.

**b. Specific Powers.** Without prejudice to these general powers, but subject to the same limitations, the Directors shall have the power to:

(1) Appoint and remove, at the pleasure of the Board, all officers, agents and employees of the Association; prescribe powers and duties for them that are

consistent with law, with the Articles of Association and with these Bylaws; and fix their compensation and require from them security for faithful performance of their duties.

(2) Change the principal office or the principal business office in the State of California from one location to another; and designate any place within or outside the State of California for the holding of any meeting, including annual meetings.

(3) Borrow money and incur indebtedness on behalf of the Association and cause to be executed and delivered for the purposes of the Association, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations and other evidences of debt and securities.

**Section 5.02. Number and Election of Directors.**

a. **Authorized Number.** The authorized number of Directors shall be four, the determination of which shall be made by resolution of the Board. Directors must be residents of the State of California and further must be either an elected official, appointed official or general manager of an Industry Member.

b. **Election of Directors.** Directors shall be elected at each annual meeting of the members to hold office for a period of two years; however, if any annual meeting is not held or the Directors are not elected at any annual meeting, they may be elected at any special member's meeting held for that purpose. Each Director, including a Director elected to fill a vacancy or elected at a special member's meeting, shall hold office until expiration of the term for which elected and until a successor has been elected and qualified. At the November meeting, the President shall appoint a nominating committee of three persons. The nominating committee should usually consist of the present Chairperson and the two previous Chairpersons. The nominating Committee shall report its recommendations to the membership at the January meeting. Election will be held at the February meeting. The Directors shall take office at the March meeting.

**Section 5.03. Term of Office of Directors.** The Directors newly appointed or selected in accordance with section 5.02.b. shall hold office for a term of ~~one~~ <sup>one</sup> (1) years.

**Section 5.04. Vacancies.**

a. **Events Causing Vacancy.** A vacancy or vacancies on the Board shall exist on the occurrence of the following: (i) the death, removal, suspension or resignation of any Director; or (ii) the declaration by resolution of the Board of a vacancy in the office of a Director who has been declared of unsound mind by an order of court or convicted of a felony or has been found by final order or judgment of any court to have breached a duty under California Unincorporated Associations Laws; or if a director of COWU is no longer a director or general manager of the industry member. No reduction of the authorized number of Directors shall have the effect of removing any Director before the Director's term of office expires.

b. **Filling Vacancies.** Any vacancy on the Board shall be filled by vote a quorum consisting of 1/3 of the industry members at the next monthly meeting following the vacancy.

**Section 5.05. Place of Meetings; Meetings by Telephone.** Meetings of the Board shall be held at the principal office of the Association or at such other place as has been designated by the Board. In the absence of any such designation, meetings shall be held at the principal office of the Association. Any meeting may be held by conference telephone or similar communication equipment, so long as all Directors participating in the meeting can hear one another, and all such Directors shall be deemed to be present in person at such meeting.

**Section 5.06. Annual, Regular and Special Meetings.**

a. **Annual Meeting.** The Board shall hold an annual meeting immediately following the annual meeting of the membership, or in conjunction with its regularly scheduled meeting for the month \_\_\_\_\_ of each year for the purpose of organization, election of officers and the transaction of other business; provided, however, that the Board may fix another time for the holding of its annual meeting. Notice of this meeting shall not be required.

b. **Special Meetings.** Special meetings of the Board for any purpose may be called at any time by the Chairman of the Board, if any, the President or any Vice President, or the Secretary or any two Directors. Notice of the time and place of special meetings shall be given to each Director by personal delivery, electronic transmission or first-class mail, postage prepaid or by telephone, either directly to the Director or to a person at the Director's office who would reasonably be expected to communicate that notice promptly to the Director, or by electronic means. All such notices shall be given or sent to the Director's address as shown on the records of the Association. Notices sent by first-class mail shall be deposited in the United States mails at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or electronic transmission shall be delivered, telephoned, or electronically sent at least forty-eight (48) hours before the time set for the meeting. The notice shall state the time of the meeting, and the place if the place is other than the principal office of the Association. It need not specify the purpose of the meeting.

**ARTICLE VI  
COMMITTEES**

**Section 6.01. Committees of the Board.** The Board, by a majority vote of the Directors then in office, may create one or more committees, each consisting of two or more representatives of members, to serve at the pleasure of the Board. Appointments to committees of the Board shall be by majority vote of the Directors then in office. Any such committee, to the extent provided in the resolution of the Board, shall have all of the authority of the Board, except that no committee, regardless of Board resolution, may:

a. Fill vacancies on the Board or in any committee which has the authority of the Board;

c. Amend or repeal Bylaws or adopt new Bylaws;

d. Amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;

e. Appoint any other committees of the Board or the members of these committees; and

f. Approve any contract or transaction to which the Association is a party and in which one or more of its Directors has a material financial interest.

**Section 6.02. Meetings and Actions of the Committees.** Meetings and action of committees of the Board shall be governed by, held and taken in accordance with the provisions of Article V of these Bylaws, concerning meetings and other action of the Board, except that the time for regular meetings of such committees and the calling of special meetings thereof may be determined either by resolution of the Board or, if there is no Board resolution, by resolution of the committee of the Board. Minutes shall be kept of each meeting of any committee of the Board and shall be filed with the corporate records. The Board may adopt rules for the governance of any committee not inconsistent with the provisions of these Bylaws or in the absence of rules adopted by the Board, the committee may adopt such rules.

**ARTICLE VII**  
**OFFICERS**

**Section 7.01. Officers.** The officers of the Association shall include a President, a Vice President, a Secretary, and a Treasurer. No one person shall hold more than one office. Presidents are alternated between South and North County and between Board/Council Members and Managers from March 1 to February 28, as follows:

North/Management	2009-10
South/Management	2010-11
North/Board/Council	2011-12
South/Board/Council	2012-13

Officers of the Board should reflect the membership and for the "Board/Council" may be selected from any public agency Board representatives that are elected or appointed; mayor or council members from cities that provide water, recycled water or wastewater service. "Management" Officers should also reflect the membership and may be selected from General Managers, Water Utility Managers, or executive staff as appropriate.

**Section 7.03. Removal and Resignation of Officers.** Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, with or without cause, by the Board of Directors. Any officer may resign upon written notice to the Association without prejudice to the rights, if any, of the Association under any contract to which the officer is a party.

**Section 7.04. Vacancies in Office.** A vacancy occurring in any office because of death, resignation, removal or other cause, shall be filled in the manner prescribed in these Bylaws for regular appointments to that office.

**Section 7.05. Responsibilities of Officers.**

a. **Chairman of the Board/President.** If a Chairman of the Board is elected, he or she shall preside at meetings of the Board and shall exercise and perform such other powers and duties as the Board may assign from time to time. If there is no President the Chairman of the Board shall also be the Chief Executive Officer and shall have the powers and duties of the President of the Association prescribed by these Bylaws. The Chairman is responsible for the monthly programs at the breakfast meetings. Programs generally consist of speakers, well informed on current issues of interest to the water industry and may include reports on pending legislation, ballot initiatives and relevant court decisions. The Chairman may call a meeting of the Executive Committee when they deem it so necessary.

c. **Vice Presidents/Vice Chair.** In the absence or disability of the President, the Vice President shall perform all of the duties of the President, and, when so acting, shall have all the powers of and be subject to all of the restrictions upon the President. The Vice President shall have such other powers and perform such other duties as from time to time may be prescribed for them by the Board or the Bylaws. The Vice President/Vice Chair shall be responsible for ensuring the customer service seminars are conducted each year in a cost effective and efficient manner, maximizing membership attendance and benefit. Expenses for professional presenters and speakers may be paid from the treasury to reduce seminar expenses to the membership.

d. **Secretary.**

(1) **Book of Minutes.** The Secretary shall keep or cause to be kept, at the principal office or such other place as the Board may direct, a book of minutes of all

meetings and actions of the Board and of committees of the Board. The Secretary shall also keep, or cause to be kept, at the principal office in the State of California, a copy of the Articles of Association and Bylaws, as amended to date. The Secretary shall also maintain a complete and accurate record of the membership of the Association, as well as a record of the proceedings of all meetings of the membership.

(2) **Notices, Seal and Other Duties.** The Secretary shall give, or cause to be given, notice of all meetings of the Board and of committees of the Board required by these Bylaws to be given. The Secretary shall keep the seal of the Association in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

e. **Treasurer.**

(1) **Books of Account.** The Treasurer of the Association shall keep or maintain, or cause to be kept or maintained, adequate and correct books and accounts of the properties and transactions of the Association, and shall send or cause to be sent to the Directors such financial statements and reports as are required by law or these Bylaws to be given. The books of account shall be open to inspection by any Director at all reasonable times.

(2) **Deposit and Disbursement of Money and Valuables.** The Treasurer shall deposit all money and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board, shall disburse the funds of the Association as may be ordered by the Board, shall render to the President or Chairman of the Board, if any, when requested, an account of all transactions as Treasurer and of the financial condition of the Association and shall have other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

(3) **Bond.** If required by the Board, the Treasurer shall give the Association a bond in the amount and with the surety or sureties specified by the Board for faithful performance of the duties of the office and for restoration to the Association of all its books, papers, vouchers, money and other property of every kind in the possession or under the control of the Treasurer upon death, resignation, retirement or removal from office.

**ARTICLE VIII**  
**INDEMNIFICATION AND INSURANCE**

**Section 8.01. Indemnification.**

a. **Right of Indemnity.** To the full extent permitted by law, this Association shall indemnify its Directors, officers, employees and other persons acting on behalf of the Association, including persons formerly occupying any such position, against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any "proceeding," as that term is used in such Section and including an action by or in the right of the Association, by reason of the fact that such person is or was a person described by such Section. "Expenses," as used in this Bylaw, shall have the same meaning as in Section 7237(a) of the California Nonprofit Mutual Benefit Corporations Code.

b. **Approval of Indemnity.** Upon written request to the Board by any person seeking indemnification, the Board shall promptly determine whether the applicable standard of conduct set forth in the California Unincorporated Associations Laws and other applicable laws has been met and, if so, the Board shall determine whether indemnification shall be made.

c. **Advancement of Expenses.** To the full extent permitted by law and except as is otherwise determined by the Board in a specific instance, expenses incurred by a person seeking indemnification under these Bylaws in defending any proceeding covered by these Bylaws shall be advanced by the Association prior to the final disposition of the proceeding upon receipt by the Association of an undertaking by or on behalf of such person that the advance will be repaid unless it is ultimately determined that such person is entitled to be indemnified by the Association therefore.

**Section 8.02. Insurance.** The Association shall have the right to purchase and maintain insurance to the full extent permitted by law on behalf of its officers, Directors, employees and other agents of the Association, against any liability asserted against or incurred by an officer, Director, employee or agent in such capacity or arising out of the officer's, Director's, employee's or agent's status as such.

## **ARTICLE IX RECORDS AND DIRECTOR INSPECTION RIGHTS**

**Section 9.01. Maintenance of Corporate Records.** The Association shall keep adequate and correct books and records of account, minutes in written form of the proceedings of the Board and committees of the Board, and if applicable, a record of its members, giving their names and addresses and the class of membership held.

**Section 9.02. Inspection by Directors.** Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of every kind and the physical properties of the Association. This inspection by a Director may be made in person or by an agent or attorney, and the right of inspection includes the right to copy and make extracts of documents.

## **ARTICLE X CONSTRUCTION AND DEFINITIONS**

Unless the context otherwise requires, the general provisions, rules of construction and definitions in the California Unincorporated Associations Laws shall govern the construction of these Bylaws. Without limiting the generality of the above, the masculine gender includes the feminine and neuter, the singular includes the plural and the plural includes the singular and the term "person" includes both a legal entity and a natural person.

## **ARTICLE XI AMENDMENTS**

**Section 11.01. Adoption or Amendment by Members.** New Bylaws may be adopted or these Bylaws may be amended or repealed by approval of a majority of all members present at a meeting of the membership and entitled to vote.

**Section 11.02. Amendment by Board of Directors.** Subject to the right of members under Section 11.01 hereinabove, Bylaws other than a Bylaw fixing or changing the authorized number of Directors, or the minimum and maximum number of Directors, or a Bylaw materially and adversely affecting the rights of members as to voting or transfer, may be adopted, amended, or repealed by a majority vote of the Board of Directors.

**ARTICLE XII**  
**SCHOLARSHIPS**

**Section 12.01. Scholarships.** The Council may, if funds permit, offer one or more college scholarships each year to deserving students. It shall be the goal of the Council to offer at least one \$1,000 scholarship per year. If more than one scholarship is to be offered, it shall be put to a vote of the membership present at any monthly meeting and approved by a simple majority. The selected of the recipient each year shall be selected by a majority vote of the Executive Committee.

DRAFT

**CERTIFICATE OF SECRETARY**

I, the undersigned, certify that I am the presently elected and acting Secretary of SoCal VOCAL, a California Nonprofit Unincorporated Association, and the above Bylaws, are the Bylaws of this Association as adopted at a meeting of the Board of Directors held on \_\_\_\_\_, 2010.

Executed on \_\_\_\_\_, 2010, at \_\_\_\_\_, California.

\_\_\_\_\_, Secretary

DRAFT

**ARTICLES OF ASSOCIATION  
OF  
COUNCIL OF WATER UTILITIES**

**I**

The name of this unincorporated association is Council of Water Utilities.

**II**

**A.** This unincorporated association is a nonprofit association organized under the Unincorporated Associations Laws of the State of California. The purpose of this association is to engage in any lawful act or activity, other than credit union business, for which an association may be organized under such law.

**B.** The specific purposes of this association are to protect, advocate and promote the common business interests of its members and to protect and improve the business conditions of Southern California's retail water suppliers and the customers they serve. This association is organized exclusively for such purposes within the meaning of Section 501(c)(6) of the Internal Revenue Code of 1986, as amended from time to time. Notwithstanding any other provision of the Bylaws, this association shall not, except to an insubstantial degree, carry on or engage in any activities or exercise any powers that are not in furtherance of the purposes of this association, and the association shall not carry on any other activities not permitted to be carried on by an organization exempt from Federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986 (as amended).

**IV**

The principal place of business address in the State of California of this association is:

\_\_\_\_\_  
\_\_\_\_\_

**III**

The name and address in the State of California of this association's initial agent for service of process is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IV**

This association shall be governed by a Board of Directors consisting of four directors. The following persons are hereby elected and named as the initial directors of the association:

President/Chair: \_\_\_\_\_

Vice President/Vice Chair: \_\_\_\_\_

Secretary: \_\_\_\_\_

Treasurer: \_\_\_\_\_

**V**

This association shall have one or more classes of members, consisting of persons dedicated to the purposes of this association, who meet other qualifications for membership, as the Board of Directors may determine shall be eligible for membership on approval of the membership application by the Board of Directors and on timely payment of such dues and fees as the Board may fix from time to time. The death, removal, or resignation of any member of the association shall not result in the dissolution of the association.

**VI**

The duration of this association shall be perpetual. The fiscal year of the association shall be January 1 through December 31 of each year.

**VII**

In the event of dissolution of the association, after paying or providing for the payment of all debts and liabilities of the association, the assets of the association shall be distributed pro rata in direct proportion to the money contributed to COWU to each of the then-current members of the association.

**VIII**

Notwithstanding any of the above statements of purposes and powers, this association shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purposes of this association.

**IN WITNESS WHEREOF**, the undersigned, who is the organizer of this association, has executed these Articles of Association on January \_\_, 2010.

\_\_\_\_\_  
Kimberly A. Thorner, Organizer

**BYLAWS  
OF  
COUNCIL OF WATER UTILITIES**

**A California Nonprofit Unincorporated Association**

**January \_\_, 2010**

**DRAFT**

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[to be inserted on final]

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**BYLAWS**  
**OF**  
**COUNCIL OF WATER UTILITIES**  
**A California Nonprofit Unincorporated Association**

**ARTICLE I**  
**NAME**

The name of this unincorporated association is COUNCIL OF WATER UTILITIES (the "Association").

**ARTICLE II**  
**OFFICES**

**Section 2.01. Principal Office.** The principal office for the transaction of the activities and affairs of the Association is located at \_\_\_\_\_, \_\_\_\_\_ County, California. The Board of Directors (the "Board") may change the principal office from one location to another. It is the intent of the Association that the Principal Office shall transfer to the address of the agency of whomever is the presiding Secretary with each term of office.

**Section 2.02. Other Offices.** The Board may at any time establish branch or subordinate offices at any place or places where the Association is qualified to conduct its activities.

**ARTICLE III**  
**PURPOSES AND LIMITATIONS**

**Section 3.01. Purposes.** This Association is organized under the California Unincorporated Associations Laws. The purpose of this Association is to engage in any lawful act or activity for which a unincorporated association may be organized under such law. The principal purpose for which this Association is formed is to provide a forum for water agencies to be informed and to share information of importance to the water, recycled water, wastewater and related agencies. Additionally, the Association is intended to provide annual training seminars for water agency employees in areas of interest such as customer service or first line supervisors. Further, the Association shall hold at least one annual dinner for its members. This Association is organized exclusively for such purposes within the meaning of Section 501(c)(6) of the Internal Revenue Code of 1986, as amended from time to time. Notwithstanding any other provision of these Bylaws, this Association shall not, except to an insubstantial degree, carry on or engage in any activities or exercise any powers that are not in furtherance of the purposes of this Association, and the Association shall not carry on any other activities not permitted to be carried on by an organization exempt from Federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986 (as amended).

### **Section 3.02. Limitations.**

a. **Property.** The property, assets, profits and net income are dedicated to the purposes set forth in Section 3.01 above.

b. **Dissolution.** Upon the winding up and dissolution of this Association, after paying or adequately providing for the payment of the debts, obligations and liabilities of the Association, the remaining assets of this Association shall be distributed pro rata in proportion to the money contributed by each member to the then-current members of the Association.

## **ARTICLE IV** **MEMBERSHIP**

### **Section 4.01. Qualifications and Rights of Membership**

a. **Classes and Qualifications.** This Association shall have two classes of members, consisting of persons dedicated to the purposes of this Association, who meet other qualifications for membership, as the Board may determine shall be eligible for membership on approval of the membership application by the Board and on timely payment of such dues and fees as the Board may fix from time to time. Notwithstanding the foregoing, the Association may refer to persons of certain nonvoting classes or other persons or entities associated with it as "members," even though those persons or entities are not voting members as set forth in Section 4.01.b. of these Bylaws, but no such reference shall constitute anyone a member within the meaning of the California Unincorporated Associations Laws unless that person or entity shall have qualified for a voting membership under Section 4.01.b. of these Bylaws. Unless the context requires otherwise, references in these Bylaws to "members" shall mean such voting members only. By resolution of the Board, the Association may grant some or all the rights of a member to any class, as set forth in these Bylaws, to any person or entity that does not have the right to vote, but no such person or entity shall be a "member" within the meaning of the California Unincorporated Associations Laws.

(1) **Industry Members.** Public or Private water, wastewater, and recycled water agencies, including cities in San Diego County or adjacent water agencies which would provide and receive benefit from such membership shall be eligible for Industry Membership, subject to satisfying other qualifications for membership as determined by the Board.

(2) **Associate Members.** Persons or entities interested in the purposes of this Association but who are not public water, wastewater, or recycled water suppliers shall be eligible for Associate Membership, subject to satisfying other qualifications for membership as determined by the Board.

b. **Voting Members.** Only Industry Members shall be entitled to vote, as set forth in these Bylaws.

**Section 4.02. Dues, Fees and Assessments.** Each voting and nonvoting member must pay, within the time and on the conditions set by the Board, the dues, fees, and assessments in amounts to be fixed from time to time by the Board. The Board may, in its discretion, set different dues, fees, and assessments for each class and within each class. For purposes of incorporation, the initial dues are set in an annual amount of \$50 per industry member and \$100 per associate member, payable on June 30<sup>th</sup> of each year.

**Section 4.03. Good Standing.** Those voting and nonvoting members who have paid the required dues, fees, and assessments in accordance with these Bylaws and who are not suspended shall be members in good standing.

**Section 4.04. Termination and Suspension of Membership.**

**a. Causes of Termination.** Any membership (voting or otherwise) shall terminate on occurrence of any of the following events:

- (1) Resignation of the member, on reasonable notice to the Association;
- (2) Expiration of the period of membership, unless the membership is renewed on the renewal terms fixed by the Board;
- (3) Failure of the member to pay dues, fees, or assessments as set by the Board within the period of time set by the Board after they become due and payable;
- (4) Occurrence of any event that renders the member ineligible for membership, or failure to satisfy membership qualifications;
- (5) Expulsion or suspension of the member pursuant to Section 4.04.b. of these Bylaws; or
- (6) Termination of the legal existence of a member who is not a natural person.

**b. Suspension of Membership.** A member (voting or otherwise) may be suspended based on the good faith determination by the Board, or a committee authorized by the Board to make such a determination, that the member has failed in a material and serious degree to observe the rules of conduct of the Association or has engaged in conduct materially and seriously prejudicial to the purposes and interests of the Association. A person whose membership is suspended shall not be a "member" during the period of suspension.

**Section 4.05. Prohibition on Transfer of Memberships.** A membership or any right arising from membership (voting or otherwise) may not be transferred to any other person or entity without the prior approval of the Board. The Board may by resolution impose transfer fees or other conditions on the transferring party as it deems fit, provided those fees and conditions are the same for similarly situated members.

**Section 4.06. Meetings of Members.**

a. **Place of Meeting.** Meetings of the members shall be held generally at a breakfast meeting on the 3<sup>rd</sup> Tuesday of the month from 7:15 AM to 8:45 AM in any place designated by the Board. In the absence of any such designation, members' meetings shall be held at the principal office of the Association.

b. **Annual Meeting.** An annual meeting of members shall be held at the Annual Dinner, unless the Board fixes another date or time and so notifies members as provided for herein. If the scheduled date falls on a legal holiday, the meeting shall be held the next full business day. At this meeting, Directors shall be elected and any other proper business may be transacted. Only voting members shall be entitled to vote on any action permitted to be taken by the members.

c. **Special Meetings.** A special meeting of the members may be called for any lawful purpose by a majority vote of the Board or by the President or by five percent (5%) or more of the members. A special meeting called by any person(s) (other than the Board) entitled to call a meeting shall be called by written request, specifying the general nature of the business proposed to be transacted, and submitted to the Chairman/President or the Secretary of the Association. The officer receiving the request shall cause notice to be given promptly to the members entitled to vote, in accordance with these Bylaws, stating that a meeting will be held at a special time and date fixed by the Board, provided, however, that the meeting date shall be least thirty-five (35) but no more than ninety (90) days after receipt of the request. If the notice is not given within twenty (20) days after the request is received, the person requesting the meeting may give the notice. Nothing in this Section shall be construed as limiting, fixing, or affecting the time at which a meeting of members may be held when the meeting is called by the Board. No business, other than the business the general nature of which was set forth in the notice of the meeting, may be transacted at a special meeting.

d. **Notice Requirements for Members' Meetings.**

(1) **General Notice Requirements.** Whenever members are required or permitted to take any action at a meeting, a written notice of the meeting shall be given to each member entitled to vote at the meeting. The notice shall specify the place, date, and hour of the meeting and, (i) for a special meeting, the general nature of the business to be transacted, and no other business may be transacted, or (ii) for the annual meeting, those matters that the Board, at the time notice is given, intends to present for action by the members, but any proper matter may be presented at the meeting. The notice of any meeting at which Directors are to be elected or written ballots distributed for the election of Directors shall include the names of all persons who are nominees when the notice or the ballot is given.

(3) **Manner of Giving Notice.** Notice of any meeting of members shall be in writing or electronic communication and shall be given at least five (5) days but no more than sixty (60) days before the meeting date. The notice shall be given either personally or by first-class, registered, or certified mail, or by other means of written or electronic communication, charges prepaid, and shall be addressed to each member entitled to vote, at the address given by the member to the Association for purposes of notice, *provided, however*, that

notice shall not be delivered electronically unless the member has consented to electronic delivery of the notice.

e. **Quorum.** One-third (1/3) of the voting members, present in person or by proxy, shall constitute a quorum for the transaction of business at any meeting of members. The members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjourned, even if enough members have withdrawn to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the members required to constitute a quorum.

f. **Adjournment and Notice of Adjourned Meetings.** Any members' meeting, whether or not a quorum is present, may be adjourned from time to time by the vote of the majority of the members represented at the meeting, either in person or by proxy. No meeting may be adjourned for more than sixty (60) days. When a members' meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which adjournment is taken. If after adjournment a new record date is fixed for notice or voting, a notice of the adjourned meeting shall be given to each member who, on the record date for notice of the meeting, is entitled to vote at the meeting. At the adjourned meeting, the Association may transact any business that might have been transacted at the original meeting.

g. **Voting.** The only persons entitled to vote at any meeting of members shall be Industry Members who are in good standing as of the record date determined pursuant to Section 4.08 of these Bylaws. Voting may be by voice or ballot as determined by the Board of Directors. Each member entitled to vote shall be entitled to cast one vote on each matter submitted to a vote of the members. Cumulative voting shall not be permitted. If a quorum is present, the affirmative vote of a majority of the voting power represented at the meeting, entitled to vote and voting on any matter, shall be the act of the members, unless the vote of a greater number, or voting by classes, is required by the California Unincorporated Associations Laws or by these Bylaws.

**Section 4.07. Action by Written Ballot Without a Meeting.** Any action that may be taken at any meeting of members may be taken without a meeting by written ballot in which the number of votes cast equals or exceeds that number required for a quorum, with approval of a matter so voted requiring an affirmative majority of the votes cast.

a. **Solicitation of Written Ballots.** If the vote of the members is to be conducted by written ballot without a meeting, the notice of the vote shall serve as the ballot. The ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, provide a reasonable time within which to return the ballot to the Association, and with respect to ballots for election of Directors, state the name of each nominee.

b. **Revocation.** A written ballot may not be revoked.

**Section 4.08. Record Date for Notice, Voting, Written Ballots, and Other Actions.** For purposes of determining which members are entitled to receive notice of any meeting, to vote, or to give consent to corporate action without a meeting, the "record date" shall

be the date of the delivery or mailing of the applicable notice. Only members of record on the record date are entitled to notice, to vote, or to give consents, as the case may be, notwithstanding any transfer of any membership on the books of the Association after the record day, except as otherwise provided in the Articles of Association, by agreement, or in the California Unincorporated Associations Laws.

**Section 4.09. Proxies.** Each member entitled to vote shall have the right to do so either in person or by one or more agents authorized by a written proxy, signed by the person and filed with the Secretary of the Association. A proxy shall be deemed signed if the member's name is placed on the proxy (whether by manual signature, typewriting, electronic transmission, or otherwise) by the member or the member's attorney-in-fact. A validly executed proxy shall continue in full force and effect until: (a) revoked by the member in writing delivered to the Association stating that the proxy is revoked, or (b) revoked by a member by a subsequent proxy executed by that member and presented to the meeting, or (c) revoked by a member as to any meeting, by that member's personal attendance and voting at the meeting; or (d) written notice of death or incapacity of the maker of the proxy is received by the Association before the vote under that proxy is counted, provided, however, that no proxy shall be valid after the expiration of eleven (11) months from the date of the proxy, unless otherwise provided in the proxy, except that the maximum term of a proxy shall be three (3) years from the date of execution. A proxy may not be irrevocable.

**Section 4.10. Election of Directors.**

**a. Nominations by Members.** At the November meeting, the President shall appoint a nominating committee of three persons. The nominating committee should usually consist of the present Chairperson and the two previous Chairpersons. Any member may make suggestions for election of directors to the nominating committee. The nominating Committee shall report its recommendations to the membership at the January meeting.

**c. Nominations From the Floor.** At any meeting of members to elect Directors, any Industry Member present at the meeting in person or by proxy may place names in nomination.

**Section 4.11. Records – Members' Inspection Rights**

**a. Membership Records.** Subject to the California Unincorporated Associations Laws and unless the Association provides a reasonable alternative as provided below, any Industry Member may do either or both of the following for a purpose reasonably related to such member's interest as a member:

(1) Inspect and copy the records of members' (voting or otherwise) names, addresses, and voting rights during usual business hours on five (5) days' prior written demand on the Association, which demand must state the purpose for which the inspection rights are requested; or

(2) Obtain from the Secretary of the Association, on written demand and tender of a reasonable charge, a list of names, addresses, and voting rights of members who

are entitled to vote for the election of Directors as of the most recent record date for which that list has been compiled, or as of a date specified by the member, after the date of demand. The demand shall state the purpose for which the list is requested. The Secretary shall make this list available to the member on or before the latter of ten (10) days after (i) the demand is received or (ii) the date specified in the demand as the date as of which the list is to be compiled.

The Association may, within ten (10) business days after receiving a demand under this Section, make a written offer of an alternative method of reasonable and timely achievement of the proper purpose specified in the demand without providing access to or a copy of the membership list. Any rejection of this offer must be in writing and must state the reasons that the proposed alternative does not meet the proper purpose of the demand.

If the Association believes that the information requested will be used for a purpose other than one reasonably related to a person's interest as a member, or if the Association provides a reasonable alternative under this Section 4.11.a., it may deny the member access to the membership list. Any inspection and copying under this section may be made in person or by the member's agent or attorney. The right of inspection includes the right to copy and make extracts.

b. **Accounting Records and Minutes.** On written demand presented to the Association, any Industry Member may inspect, copy, and make extracts of the accounting books and records and the minutes of the proceedings of the members, the Board, and committees of the Board at any reasonable time for a purpose reasonably related to the member's interest as a member. Any such inspection and copying may be made in person or by the member's agent or attorney.

c. **Maintenance and Inspection of Articles and Bylaws.** The Association shall keep at its principal office, or if its principal office is not in California, at its principal business office in this state, the original or a copy of its Articles of Association and Bylaws, as amended to date, which shall be open to inspection by the members (voting or otherwise) at all reasonable times during office hours.

## **ARTICLE V** **DIRECTORS**

### **Section 5.01. Powers.**

a. **General Corporate Powers.** Subject to any limitations of the Articles of Association and of these Bylaws, the activities and affairs of the Association shall be managed, and all corporate powers shall be exercised, by or under the direction of the Board.

b. **Specific Powers.** Without prejudice to these general powers, but subject to the same limitations, the Directors shall have the power to:

(1) Appoint and remove, at the pleasure of the Board, all officers, agents and employees of the Association; prescribe powers and duties for them that are

consistent with law, with the Articles of Association and with these Bylaws; and fix their compensation and require from them security for faithful performance of their duties.

(2) Change the principal office or the principal business office in the State of California from one location to another; and designate any place within or outside the State of California for the holding of any meeting, including annual meetings.

(3) Borrow money and incur indebtedness on behalf of the Association and cause to be executed and delivered for the purposes of the Association, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations and other evidences of debt and securities.

**Section 5.02. Number and Election of Directors.**

a. **Authorized Number.** The authorized number of Directors shall be four, the determination of which shall be made by resolution of the Board. Directors must be residents of the State of California and further must be either an elected official, appointed official or general manager of an Industry Member.

b. **Election of Directors.** Directors shall be elected at each annual meeting of the members to hold office for a period of two years; however, if any annual meeting is not held or the Directors are not elected at any annual meeting, they may be elected at any special member's meeting held for that purpose. Each Director, including a Director elected to fill a vacancy or elected at a special member's meeting, shall hold office until expiration of the term for which elected and until a successor has been elected and qualified. At the November meeting, the President shall appoint a nominating committee of three persons. The nominating committee should usually consist of the present Chairperson and the two previous Chairpersons. The nominating Committee shall report its recommendations to the membership at the January meeting. Election will be held at the February meeting. The Directors shall take office at the March meeting.

**Section 5.03. Term of Office of Directors.** The Directors newly appointed or selected in accordance with section 5.02.b shall hold office for a term of one (2) years.

**Section 5.04. Vacancies.**

a. **Events Causing Vacancy.** A vacancy or vacancies on the Board shall exist on the occurrence of the following: (i) the death, removal, suspension or resignation of any Director; or (ii) the declaration by resolution of the Board of a vacancy in the office of a Director who has been declared of unsound mind by an order of court or convicted of a felony or has been found by final order or judgment of any court to have breached a duty under California Unincorporated Associations Laws; or if a director of COWU is no longer a director or general manager of the industry member. No reduction of the authorized number of Directors shall have the effect of removing any Director before the Director's term of office expires.

b. **Filling Vacancies.** Any vacancy on the Board shall be filled by vote a quorum consisting of 1/3 of the industry members at the next monthly meeting following the vacancy.

**Section 5.05. Place of Meetings; Meetings by Telephone.** Meetings of the Board shall be held at the principal office of the Association or at such other place as has been designated by the Board. In the absence of any such designation, meetings shall be held at the principal office of the Association. Any meeting may be held by conference telephone or similar communication equipment, so long as all Directors participating in the meeting can hear one another, and all such Directors shall be deemed to be present in person at such meeting.

**Section 5.06. Annual, Regular and Special Meetings.**

a. **Annual Meeting.** The Board shall hold an annual meeting immediately following the annual meeting of the membership, or in conjunction with its regularly scheduled meeting for the month \_\_\_\_\_ of each year for the purpose of organization, election of officers and the transaction of other business; provided, however, that the Board may fix another time for the holding of its annual meeting. Notice of this meeting shall not be required.

b. **Special Meetings.** Special meetings of the Board for any purpose may be called at any time by the Chairman of the Board, if any, the President or any Vice President, or the Secretary or any two Directors. Notice of the time and place of special meetings shall be given to each Director by personal delivery, electronic transmission or first-class mail, postage prepaid or by telephone, either directly to the Director or to a person at the Director's office who would reasonably be expected to communicate that notice promptly to the Director, or by electronic means. All such notices shall be given or sent to the Director's address as shown on the records of the Association. Notices sent by first-class mail shall be deposited in the United States mails at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or electronic transmission shall be delivered, telephoned, or electronically sent at least forty-eight (48) hours before the time set for the meeting. The notice shall state the time of the meeting, and the place if the place is other than the principal office of the Association. It need not specify the purpose of the meeting.

**ARTICLE VI  
COMMITTEES**

**Section 6.01. Committees of the Board.** The Board, by a majority vote of the Directors then in office, may create one or more committees, each consisting of two or more representatives of members, to serve at the pleasure of the Board. Appointments to committees of the Board shall be by majority vote of the Directors then in office. Any such committee, to the extent provided in the resolution of the Board, shall have all of the authority of the Board, except that no committee, regardless of Board resolution, may:

a. Fill vacancies on the Board or in any committee which has the authority of the Board;

b. Amend or repeal Bylaws or adopt new Bylaws;

c. Amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;

d. Appoint any other committees of the Board or the members of these committees; and

e. Approve any contract or transaction to which the Association is a party and in which one or more of its Directors has a material financial interest.

**Section 6.02. Meetings and Actions of the Committees.** Meetings and action of committees of the Board shall be governed by, held and taken in accordance with the provisions of Article V of these Bylaws, concerning meetings and other action of the Board, except that the time for regular meetings of such committees and the calling of special meetings thereof may be determined either by resolution of the Board or, if there is no Board resolution, by resolution of the committee of the Board. Minutes shall be kept of each meeting of any committee of the Board and shall be filed with the corporate records. The Board may adopt rules for the governance of any committee not inconsistent with the provisions of these Bylaws or in the absence of rules adopted by the Board, the committee may adopt such rules.

## **ARTICLE VII** **OFFICERS**

**Section 7.01. Officers.** The officers of the Association shall include a President, a Vice President, a Secretary, and a Treasurer. No one person shall hold more than one office. Presidents are alternated between South and North County and between Board/Council Members and Managers from March 1 to February 28, as follows:

North/Management	2009-10
South/Management	2010-11
North/Board/Council	2011-12
South/Board/Council	2012-13

Officers of the Board should reflect the membership and for the "Board/Council" may be selected from any public agency Board representatives that are elected or appointed; mayor or council members from cities that provide water, recycled water or wastewater service. "Management" Officers should also reflect the membership and may be selected from General Managers, Water Utility Managers, or executive staff as appropriate.

**Section 7.03. Removal and Resignation of Officers.** Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, with or without cause, by the Board of Directors. Any officer may resign upon written notice to the Association without prejudice to the rights, if any, of the Association under any contract to which the officer is a party.

**Section 7.04. Vacancies in Office.** A vacancy occurring in any office because of death, resignation, removal or other cause, shall be filled in the manner prescribed in these Bylaws for regular appointments to that office.

**Section 7.05. Responsibilities of Officers.**

a. **Chairman of the Board/President.** If a Chairman of the Board is elected, he or she shall preside at meetings of the Board and shall exercise and perform such other powers and duties as the Board may assign from time to time. If there is no President the Chairman of the Board shall also be the Chief Executive Officer and shall have the powers and duties of the President of the Association prescribed by these Bylaws. The Chairman is responsible for the monthly programs at the breakfast meetings. Programs generally consist of speakers, well informed on current issues of interest to the water industry and may include reports on pending legislation, ballot initiatives and relevant court decisions. The Chairman may call a meeting of the Executive Committee when they deem it so necessary.

c. **Vice Presidents/Vice Chair.** In the absence or disability of the President, the Vice President shall perform all of the duties of the President, and, when so acting, shall have all the powers of and be subject to all of the restrictions upon the President. The Vice President shall have such other powers and perform such other duties as from time to time may be prescribed for them by the Board or the Bylaws. The Vice President/Vice Chair shall be responsible for ensuring the customer service seminars are conducted each year in a cost effective and efficient manner, maximizing membership attendance and benefit. Expenses for professional presenters and speakers may be paid from the treasury to reduce seminar expenses to the membership.

d. **Secretary.**

(1) **Book of Minutes.** The Secretary shall keep or cause to be kept, at the principal office or such other place as the Board may direct, a book of minutes of all

meetings and actions of the Board and of committees of the Board. The Secretary shall also keep, or cause to be kept, at the principal office in the State of California, a copy of the Articles of Association and Bylaws, as amended to date. The Secretary shall also maintain a complete and accurate record of the membership of the Association, as well as a record of the proceedings of all meetings of the membership.

(2) **Notices, Seal and Other Duties.** The Secretary shall give, or cause to be given, notice of all meetings of the Board and of committees of the Board required by these Bylaws to be given. The Secretary shall keep the seal of the Association in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

e. **Treasurer.**

(1) **Books of Account.** The Treasurer of the Association shall keep or maintain, or cause to be kept or maintained, adequate and correct books and accounts of the properties and transactions of the Association, and shall send or cause to be sent to the Directors such financial statements and reports as are required by law or these Bylaws to be given. The books of account shall be open to inspection by any Director at all reasonable times.

(2) **Deposit and Disbursement of Money and Valuables.** The Treasurer shall deposit all money and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board, shall disburse the funds of the Association as may be ordered by the Board, shall render to the President or Chairman of the Board, if any, when requested, an account of all transactions as Treasurer and of the financial condition of the Association and shall have other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

(3) **Bond.** If required by the Board, the Treasurer shall give the Association a bond in the amount and with the surety or sureties specified by the Board for faithful performance of the duties of the office and for restoration to the Association of all its books, papers, vouchers, money and other property of every kind in the possession or under the control of the Treasurer upon death, resignation, retirement or removal from office.

## **ARTICLE VIII** **INDEMNIFICATION AND INSURANCE**

### **Section 8.01. Indemnification.**

a. **Right of Indemnity.** To the full extent permitted by law, this Association shall indemnify its Directors, officers, employees and other persons acting on behalf of the Association, including persons formerly occupying any such position, against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any "proceeding," as that term is used in such Section and including an action by or in the right of the Association, by reason of the fact that such person is or was a person described by such Section. "Expenses," as used in this Bylaw, shall have the same meaning as in Section 7237(a) of the California Nonprofit Mutual Benefit Corporations Code.

b. **Approval of Indemnity.** Upon written request to the Board by any person seeking indemnification, the Board shall promptly determine whether the applicable standard of conduct set forth in the California Unincorporated Associations Laws and other applicable laws has been met and, if so, the Board shall determine whether indemnification shall be made.

c. **Advancement of Expenses.** To the full extent permitted by law and except as is otherwise determined by the Board in a specific instance, expenses incurred by a person seeking indemnification under these Bylaws in defending any proceeding covered by these Bylaws shall be advanced by the Association prior to the final disposition of the proceeding upon receipt by the Association of an undertaking by or on behalf of such person that the advance will be repaid unless it is ultimately determined that such person is entitled to be indemnified by the Association therefore.

**Section 8.02. Insurance.** The Association shall have the right to purchase and maintain insurance to the full extent permitted by law on behalf of its officers, Directors, employees and other agents of the Association, against any liability asserted against or incurred by an officer, Director, employee or agent in such capacity or arising out of the officer's, Director's, employee's or agent's status as such.

## **ARTICLE IX**

### **RECORDS AND DIRECTOR INSPECTION RIGHTS**

**Section 9.01. Maintenance of Corporate Records.** The Association shall keep adequate and correct books and records of account, minutes in written form of the proceedings of the Board and committees of the Board, and if applicable, a record of its members, giving their names and addresses and the class of membership held.

**Section 9.02. Inspection by Directors.** Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of every kind and the physical properties of the Association. This inspection by a Director may be made in person or by an agent or attorney, and the right of inspection includes the right to copy and make extracts of documents.

## **ARTICLE X**

### **CONSTRUCTION AND DEFINITIONS**

Unless the context otherwise requires, the general provisions, rules of construction and definitions in the California Unincorporated Associations Laws shall govern the construction of these Bylaws. Without limiting the generality of the above, the masculine gender includes the feminine and neuter, the singular includes the plural and the plural includes the singular and the term "person" includes both a legal entity and a natural person.

## **ARTICLE XI**

### **AMENDMENTS**

**Section 11.01. Adoption or Amendment by Members.** New Bylaws may be adopted or these Bylaws may be amended or repealed by approval of a majority of all members present at a meeting of the membership and entitled to vote.

**Section 11.02. Amendment by Board of Directors.** Subject to the right of members under Section 11.01 hereinabove, Bylaws other than a Bylaw fixing or changing the authorized number of Directors, or the minimum and maximum number of Directors, or a Bylaw materially and adversely affecting the rights of members as to voting or transfer, may be adopted, amended, or repealed by a majority vote of the Board of Directors.

**ARTICLE XII**  
**SCHOLARSHIPS**

**Section 12.01. Scholarships.** The Council may, if funds permit, offer one or more college scholarships each year to deserving students. It shall be the goal of the Council to offer at least one \$1,000 scholarship per year. If more than one scholarship is to be offered, it shall be put to a vote of the membership present at any monthly meeting and approved by a simple majority. The selected of the recipient each year shall be selected by a majority vote of the Executive Committee.

DRAFT

**CERTIFICATE OF SECRETARY**

I, the undersigned, certify that I am the presently elected and acting Secretary of SoCal VOCAL, a California Nonprofit Unincorporated Association, and the above Bylaws, are the Bylaws of this Association as adopted at a meeting of the Board of Directors held on \_\_\_\_\_, 2010.

Executed on \_\_\_\_\_, 2010, at \_\_\_\_\_, California.

\_\_\_\_\_, Secretary

DRAFT

**ARTICLES OF ASSOCIATION  
OF  
COUNCIL OF WATER UTILITIES**

**I**

The name of this unincorporated association is Council of Water Utilities.

**II**

**A.** This unincorporated association is a nonprofit association organized under the Unincorporated Associations Laws of the State of California. The purpose of this association is to engage in any lawful act or activity, other than credit union business, for which an association may be organized under such law.

**B.** The specific purposes of this association are to protect, advocate and promote the common business interests of its members and to protect and improve the business conditions of Southern California's retail water suppliers and the customers they serve. This association is organized exclusively for such purposes within the meaning of Section 501(c)(6) of the Internal Revenue Code of 1986, as amended from time to time. Notwithstanding any other provision of the Bylaws, this association shall not, except to an insubstantial degree, carry on or engage in any activities or exercise any powers that are not in furtherance of the purposes of this association, and the association shall not carry on any other activities not permitted to be carried on by an organization exempt from Federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986 (as amended).

**IV**

The principal place of business address in the State of California of this association is:

\_\_\_\_\_  
\_\_\_\_\_

**III**

The name and address in the State of California of this association's initial agent for service of process is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IV**

This association shall be governed by a Board of Directors consisting of four directors. The following persons are hereby elected and named as the initial directors of the association:

President/Chair: \_\_\_\_\_

Vice President/Vice Chair: \_\_\_\_\_

Secretary: \_\_\_\_\_  
Treasurer: \_\_\_\_\_

V

This association shall have one or more classes of members, consisting of persons dedicated to the purposes of this association, who meet other qualifications for membership, as the Board of Directors may determine shall be eligible for membership on approval of the membership application by the Board of Directors and on timely payment of such dues and fees as the Board may fix from time to time. The death, removal, or resignation of any member of the association shall not result in the dissolution of the association.

VI

The duration of this association shall be perpetual. The fiscal year of the association shall be January 1 through December 31 of each year.

VII

In the event of dissolution of the association, after paying or providing for the payment of all debts and liabilities of the association, the assets of the association shall be distributed pro rata in direct proportion to the money contributed to COWU to each of the then-current members of the association.

VIII

Notwithstanding any of the above statements of purposes and powers, this association shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purposes of this association.

**IN WITNESS WHEREOF**, the undersigned, who is the organizer of this association, has executed these Articles of Association on January \_\_, 2010.

\_\_\_\_\_  
Kimberly A. Thorner, Organizer



STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	February 3, 2010
SUBMITTED BY:	Bob Kennedy <i>BK</i> Associate Civil Engineer	PROJECT/ SUBPROJECT:	P2009-001103 DIV. NO. 5
	Ron Ripperger <i>RR</i> Engineering Manager		
APPROVED BY: (Chief)	Rod Posada <i>R Posada</i> Chief, Engineering		
APPROVED BY: (Asst. GM)	Manny Magaña <i>M Magaña</i> Assistant General Manager of Engineering and Operations		
SUBJECT:	Authorization to Execute a Memorandum of Understanding between the Helix Water District and the Otay Water District Regarding Reimbursement for Costs Incurred with the Relocation of Certain Helix Water District Facilities		

**GENERAL MANAGER'S RECOMMENDATION:**

That the Otay Water District (District) Board of Directors (Board) authorizes the General Manager to execute a Memorandum of Understanding (MOU) between the Helix Water District and the Otay Water District regarding reimbursement for costs incurred with the relocation of certain Helix Water District facilities in an amount not to exceed \$144,700 (see Exhibit A for locations) .

**COMMITTEE ACTION:** \_\_\_\_\_

Please see Attachment A .

**PURPOSE:**

To obtain Board authorization for the General Manager to execute a MOU (see Attachment B) between the HWD and the District to reimburse HWD for costs incurred to relocate its water facilities in connection with construction of the upgrade of the County Water Authority Flow Control Facility No. 14 and construction of the District's Jamacha Road Pipeline project. The MOU provides that the District will reimburse HWD for up to \$144,700.

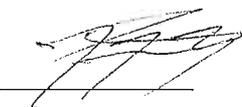
**ANALYSIS:**

The HWD has incurred costs to date related to the work by the San Diego County Water Authority (SDCWA) and the District for the upgrade of Flow Control Facility No. 14. The HWD will also incur additional costs as part of the construction of the Jamacha Road Pipeline Project. The operation, relocation, and inspection of HWD facilities will be made by, or under the supervision and control, of HWD. The MOU will establish terms, conditions, rights, and responsibilities of the District and HWD in connection with certain costs for the required relocation of HWD water facilities within the Helix Water District. The District will reimburse the HWD for reasonable costs estimated as follows:

<b>Helix Water District Relocation Cost Estimate</b>		
<b>Jamacha Road Pipeline</b>		
<b>ITEM</b>	<b>NO.</b>	<b>COST</b>
Fire Hydrant Relocation at Jamacha and Grove	1	\$12,000.00
Fire Hydrant Relocation at Jamacha and Skyline	1	\$12,000.00
Fire Hydrant Relocation at 505 Third Street	1	\$8,000.00
Fire Hydrant Relocation at Third and Lexington	1	\$8,000.00
Water Service cut outs and reconnections necessary for the installation of the Project within Jamacha	67	\$62,000.00
<b>Subtotal</b>		<b>\$102,000.00</b>
15% Contingency		\$15,300.00
<b>Subtotal Relocation Cost Estimate</b>		<b>\$117,300.00</b>
<b>Flow Control Facility No. 14</b>		
Operation, Inspection and Testing of the Upgraded Flow Control Facility No. 14	1	\$27,400.00
<b>TOTAL COST ESTIMATE</b>		<b>\$144,700.00</b>

Neither the HWD nor the District anticipates that the cost will exceed \$144,700. The MOU identifies the duties of each party to use their best efforts to ensure that this amount is not exceeded and also includes provisions for each party to negotiate in good faith to determine who is responsible if the total cost should exceed this amount.

**FISCAL IMPACT:**



Funding for the 36-Inch Pipeline Project will come from CIP project P2009. The total budget for P2009, as approved in the FY 2010 budget, is \$22,200,000. Total expenditures plus outstanding commitments and forecast to date, including the expenses noted in this MOU is approximately \$21,800,000. See Attachment C for budget detail.

The Project Manager has determined, based on the attached financial analysis, that the CIP budget is sufficient to support the project.

The Finance Department has determined that funding will be available for CIP P2009. Funding for CIP P2009 will be split between 60% Betterment and 40% Expansion Fund.

**STRATEGIC GOAL:**

The Jamacha Road Pipeline and the Upgrade to Flow Control Facility No. 14 supports the District's Mission Statement, "To provide the best quality of water and wastewater service to the customers of the Otay Water District in a professional, effective, and efficient manner" and the Otay strategic goal, in planning for infrastructure and supply to meet current and future potable water demands.

**LEGAL IMPACT:**

The District's General Counsel and the Helix Water District General Counsel have reviewed and accepted the MOU as to form and legality.



**General Manager**

P:\WORKING\CIP P2009 36-inch PL - FCF 14 to Reg Site\Staff Reports\BD 02-03-10, CIP P2009 MOU with Helix (BK-RR).doc

BK/RR/RP:jf

- Attachments: Attachment A
- Attachment B
- Attachment C
- Exhibit A

QA/QC Approved:

Name: Lisa Colman Boyd

Date: 1-14-10



## ATTACHMENT A

<b>SUBJECT/PROJECT:</b> P2009-001103	Authorization to Execute a Memorandum of Understanding between the Helix Water District and the Otay Water District Regarding Reimbursement for Costs Incurred with the Relocation of Certain Helix Water District Facilities
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### COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee reviewed this item at a meeting held on January 21, 2010 and the following comments were made:

- Staff is requesting that the Board authorize the General Manager to execute a Memorandum of Understanding (MOU) between the Helix Water District and the Otay Water District for costs incurred for the relocation of certain Helix WD facilities in an amount not to exceed \$144,700.
- Staff indicated that the Helix WD has incurred costs related to work by CWA and MWD for the the Flow Control Facility No. 14 upgrade.
- Staff stated that the Helix WD will be the responsible party to supervise and control its operation, relocation, and inspection of their facilities. Staff indicated that Otay WD's staff inspectors will also be involved with the monitoring of this project.
- Staff indicated that both Districts (Helix and Otay) have reviewed the MOU and is in agreement with its contents and that neither District anticipates that the cost will exceed \$144,700. The MOU identifies each party's responsibility to exercise their best efforts to assure that the costs do not exceed \$144,700 and also includes provisions to negotiate in good faith to determine who is responsible if costs should exceed \$144,700.
- The Project Manager has determined that the CIP budget is sufficient to support the project.
- The Committee inquired who would be the responsible party to ensure that the MOU amount (\$144,700) is not exceeded. Staff indicated that Otay Water District's staff will

monitor and document the expenditures to ensure that the amount billed is accurate and costs do not exceed \$144,700.

- The Committee inquired who would perform the relocations of hydrants, water service cut outs and reconnections. Staff stated that the Helix WD is responsible for the relocations.

Following the discussion, the Committee supported staffs' recommendation and presentation to the full Board as a consent item.

## ATTACHMENT B

### MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE OTAY WATER DISTRICT AND THE HELIX WATER DISTRICT REGARDING THE RELOCATION OF CERTAIN HELIX WATER DISTRICT WATER FACILITIES

This Memorandum of Understanding (the "MOU"), is made and entered into by and between the Otay Water District, a municipal water District organized under the Municipal Water Act of 1911 of the State of California ("OWD"), and the Helix Water District, an irrigation district organized under Irrigation District Law, Water Code §20500 et seq ("HWD"), to establish terms, conditions, rights and responsibilities of the OWD and HWD (hereinafter referred to jointly as the "Parties") in connection with certain costs and the required relocation of certain water facilities owned by the HWD due to the construction and installation of the PROJECT (defined below.)

A. OWD is currently installing and constructing a 36-inch Potable Water Pipeline from Flow Control Facility No. 14 ("FCF 14") to the Regulatory Site ("PROJECT").

B. The Parties have determined that the PROJECT necessitates the relocation of approximately four (4) fire hydrants and sixty-seven (67) water service cut outs and reconnections, more specifically identified in Attachment 1, attached hereto and incorporated as if fully set forth herein (collectively, the "RELOCATIONS").

C. The Parties have agreed that the RELOCATIONS will be made by, or under the supervision and control of, the HWD. The Parties also agree that OWD will pay reasonable costs for the RELOCATIONS, based on the estimates set forth in paragraph 1.A below.

D. The Parties agree that OWD will pay reasonable costs for certain work previously conducted by the HWD relating to the FCF 14 connection, as set forth in paragraph 1.B. below.

E. The Parties agree that, except for the specific commitments made by OWD herein, OWD shall have no responsibility for any other HWD work or costs relating any HWD facility or service, or portion thereof; unless otherwise agreed upon by both parties.

NOW, THEREFORE, in view of the foregoing, and in consideration of the mutual covenants and agreements contained herein, OWD and the HWD do hereby agree as follows:

## 1. OWD'S DUTIES AND RESPONSIBILITIES

A. OWD will reimburse the HWD for the reasonable costs of the RELOCATIONS, which are currently estimated as follows:

<u>ITEM</u>	<u>NO.</u>	<u>COST</u>
Fire Hydrant Relocation at Jamacha and Grove	1	\$12,000.00
Fire Hydrant Relocation at Jamacha and Skyline	1	\$12,000.00
Fire Hydrant Relocation at 505 Third Street	1	\$8,000.00
Fire Hydrant Relocation at Third and Lexington	1	\$8,000.00
Water Service cut outs and reconnections necessary for the installation of the Project within Jamacha	67	\$62,000.00
<b>Subtotal</b>		<b>\$102,000.00</b>
15% Contingency		\$15,300.00
<b>TOTAL COST OF RELOCATIONS:</b>		<b>\$117,300.00</b>

As reflected above, OWD has budgeted a 15% contingency based on the estimated costs provided by Helix to ensure that sufficient funds are available in the event of changes to the project.

Neither HWD nor OWD currently anticipate that the costs of the RELOCATIONS will exceed \$102,000. If HWD determines that additional work will be required or if it encounters any unforeseen conditions during the work that could cause the aggregate costs of the RELOCATIONS to exceed \$117,300, HWD will immediately notify OWD and the parties will promptly meet to discuss the additional work or unforeseen conditions, their effect on the cost and schedule for the RELOCATIONS, and possible solutions satisfactory to both parties.

B. OWD agrees to pay the HWD up to \$27,400 for work performed by HWD on FCF 14 as it relates to the PROJECT. Any cost increases due to additional work or unforeseen conditions will be addressed in the same manner as additional work or unforeseen conditions for the RELOCATIONS.

C. OWD agrees to pay approved invoices, not exceeding in the aggregate \$144,700, within thirty (30) days of OWD approval of invoices submitted by HWD, as set forth on Paragraph 2.A.ii, below. Any amounts in excess of \$144,700 will have to be approved in a separate written document signed by both parties.

## **2. HWD'S DUTIES AND RESPONSIBILITIES; REPRESENTATIONS.**

A. The HWD agrees to perform all RELOCATIONS identified in Attachment 1 in a prompt and reasonable manner and to use best efforts to ensure that the amounts set forth in paragraph I.A are not exceeded.

i. If, at any time during the RELOCATIONS, the HWD estimates that actual costs directly related to the RELOCATIONS will exceed the amount stated in paragraph I.A., the HWD agrees to immediately notify OWD. OWD shall be immediately allowed to inspect the work, and all documentation and information concerning the estimated increases and the Parties agree to negotiate in good faith to determine who shall be responsible.

ii. HWD agrees to submit quarterly invoices detailing the work completed, including back-up documentation, to the satisfaction of OWD, evidencing and certifying all costs, excess costs, change orders and expenses.

B. The HWD represents that it has performed work relating to FCF 14, as it relates to the PROJECT, and that it has incurred costs relating thereto, as identified in paragraph 1.B. The HWD agrees to submit invoices and evidence of such costs to OWD upon request.

## **3. TERM; TERMINATION**

This MOU shall be effective commencing on the date indicated on the signature page hereof and, unless earlier terminated, shall remain in effect until the earlier of (i) the date OWD accepts the PROJECT in the manner contemplated under OWD's construction agreement for the PROJECT; or (ii) the date it is terminated by mutual agreement of the Parties following OWD's final payment to HWD for the final portion of the RELOCATIONS.

This Agreement may be terminated by HWD for cause prior to the time contemplated in the paragraph above, upon thirty (30) days written notice of termination, if OWD fails to pay any invoice that has been approved by OWD in the manner contemplated in Section 1 and such failure to pay has not been cured by the 30th day following the notice of termination; provided that failure to pay any disapproved amounts shall not constitute a basis for termination.

This Agreement may be terminated by OWD for cause prior to the time contemplated above if HWD fails to complete any RELOCATION contemplated herein prior to the time required for the PROJECT to proceed as contemplated under the project schedule. The Parties agree that OWD will keep HWD apprised of the status of the PROJECT.

#### **4. HOLD HARMLESS AND LIABILITY**

Each, OWD and the HWD, agrees to defend, indemnify, protect, and hold harmless the other party and its board, agents, officers, and employees from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to employees, agents or officers, which arise from or are connected with or are caused by the negligent acts or omissions or willful misconduct of the indemnitor's agents, officers or employees, in performing the work or services herein and all expenses of investigation and defending against same; provided, however, that each party's duty to defend, indemnify and hold harmless the other shall not include any claims or liability arising from the negligent acts or omissions or willful misconduct of the other party, its agents, officers or employees. The Parties agree that in the event of any joint or concurrent negligence, they will apportion any established or agreed upon liability proportionate to their respective degree of fault.

#### **5. GOVERNING LAW; DISPUTE RESOLUTION**

This MOU is deemed a contract under the laws of the State of California. The Parties hereby consent to the exclusive jurisdiction of the courts of the State of California in San Diego County. If a dispute arises out of or relates to this MOU, or the breach thereof, the parties agree to engage in good faith negotiations to attempt to resolve the matter. In any action at law or in equity, including an action for declaratory relief, between the parties arising out of or relating to this MOU, the prevailing party in such action will be entitled to recover from the other party a reasonable sum as attorneys' fees and costs.

The prevailing party will be determined in accordance with Civil Code Section 1717(b)(1) or any successor statute. The prevailing party will also be entitled to its reasonable attorneys' fees and costs in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and will survive the merger of this MOU into any judgment on this MOU.

#### **6. INTEGRATION; WAIVER; AMENDMENTS**

This MOU represent the entire understanding by and between the Parties as to those matters contained herein. No prior oral or written understanding will be of any force or effect with respect to the matters covered herein. This MOU may not be modified or altered except in writing signed by both parties hereto. Any waiver by either party of any provision of this MOU must be in writing. Any written waiver will affect only the provision specified and only for the time and in the manner stated in the writing. No waiver by a party of any provision in this MOU will be considered a waiver of any other provision.

**7. ASSIGNMENT**

HWD shall not assign, sublet, or transfer this MOU or any rights, duties or obligations under this MOU without written consent of OWD.

**8. SEVERABILITY**

The partial or total invalidity of one or more parts of this MOU will not affect the intent or validity of the MOU.

**IN WITNESS HEREOF**, the District and the City have executed this Reimbursement Agreement to be effective as of \_\_\_\_\_, 2010.

**Otay Water District**

By: \_\_\_\_\_

Mark Watton

Its: General Manager

Date: \_\_\_\_\_

**Helix Water District**

By: \_\_\_\_\_

Mark Weston

Its: General Manager

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
General Counsel

Approved as to form:

\_\_\_\_\_  
General Counsel



## ATTACHMENT C

**SUBJECT/PROJECT:** P2009-001103 Authorization to Execute a Memorandum of Understanding between the Helix Water District and the Otay Water District Regarding Reimbursement for Costs Incurred with the Relocation of Certain Helix Water District Facilities

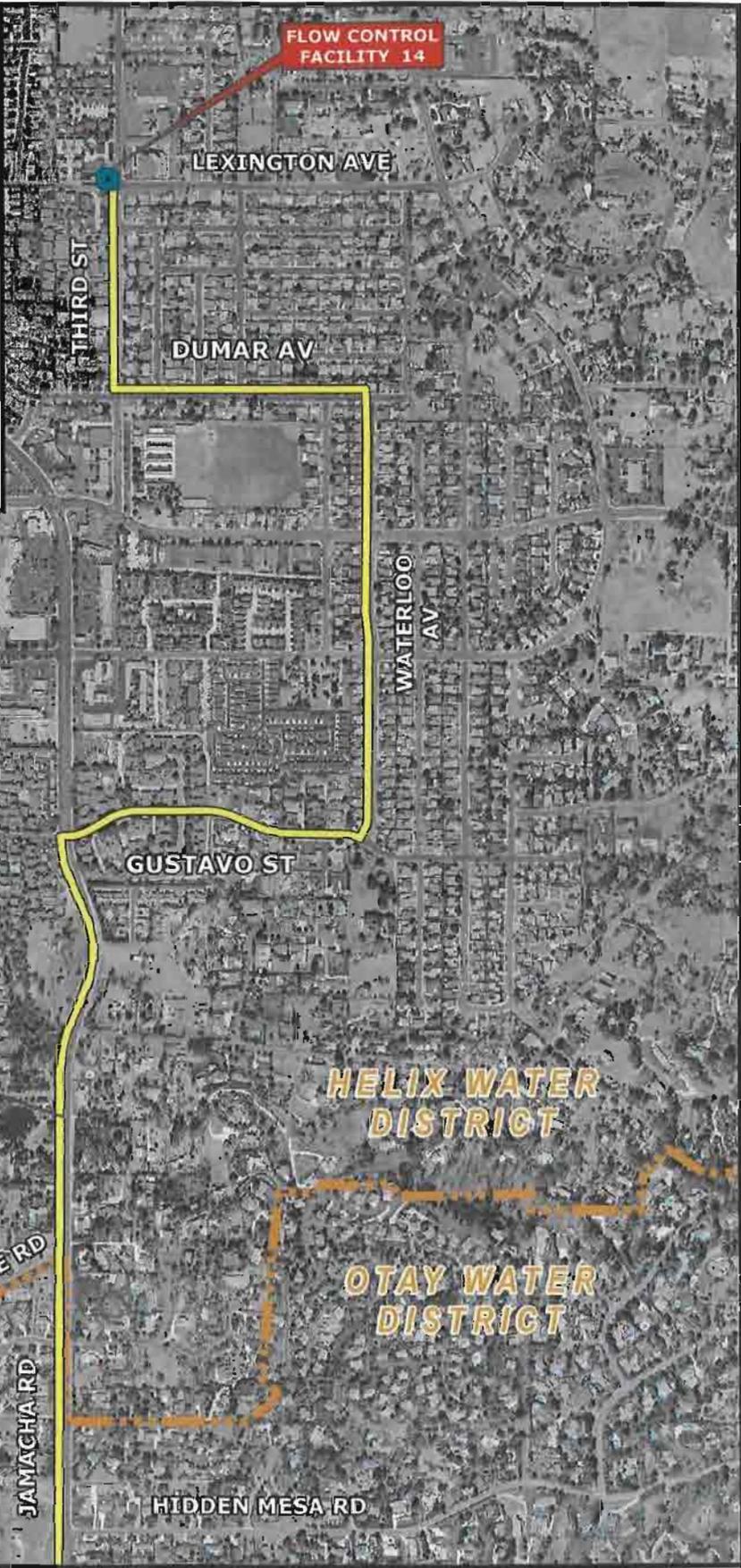
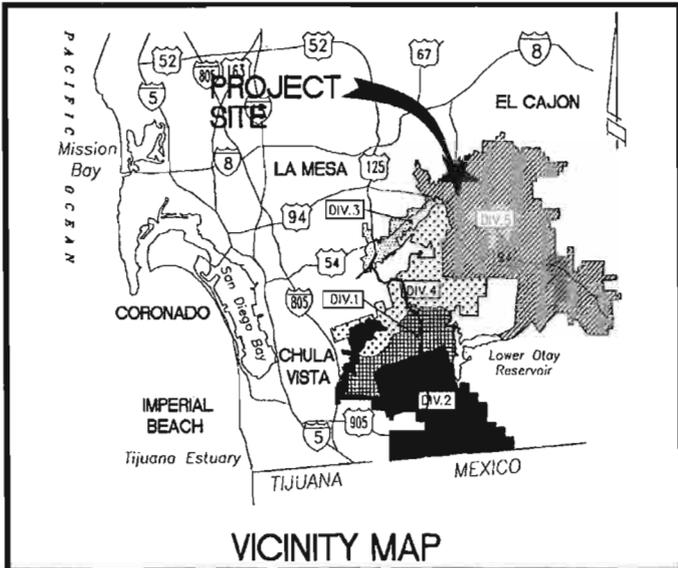
**Otay Water District**

Date Updated: December 14, 2009

**P2009 36-Inch Pipeline from SDCWA Otay FCF No. 14 to the Regulatory Site**

Budget	Committed	Expenditures	Outstanding Commitment & Forecast	Projected Final Cost	Vendor / Comments
22,200,000					
<b>Planning</b>					
Labor	\$ 271,784	\$ 271,784		\$ 271,784	
Printing	993	993		993	OCB REPROGRAPHICS
Business Meetings	110	110		110	PETTY CASH
Professional Legal Fees	49	49		49	US BANK CORPORATE PAYMENT
	5,595	5,595		5,595	BURKE WILLIAMS & SORENSEN
	366,878	366,878	198,390	366,878	GARCIA CALDERON & RUIZ LLP
Other Legal Fees	4,923	4,923		4,923	GARCIA CALDERON & RUIZ LLP
	(10,290)	(10,290)		(10,290)	WOODRUFF, SPRADLIN & SMART
Regulatory Agency Fee	1,927	1,927		1,927	COUNTY OF SAN DIEGO
	100	100		100	US FISH & WILDLIFE SERVICES
Consultant Contracts	1,338,108	1,080,288	267,820	1,338,108	INFRASTRUCTURE ENGINEERING
	42,080	25,684	16,396	42,080	JONES & STOKES
	1,100	1,100		1,100	SOUTHWESTERN COLLEGE
Service Contracts	398	398		398	UNION TRIBUNE
	957	957		957	SD DAILY TRANSCRIPT
	350	350		350	RYAN BETHKE
	705	705		705	OLLI BROS
<b>Total Planning</b>	<b>2,025,764</b>	<b>1,553,152</b>	<b>472,612</b>	<b>2,025,764</b>	
<b>Design</b>					
In House/Labor	644,035	644,035		644,035	
Mileage	69	69		69	PETTY CASH
Meals and Incidentals	63	63		63	PETTY CASH
Business Meetings	46	46		46	PETTY CASH
	215	215		215	US BANK CORPORATE PAYMENT
Regulatory Agency Fee	271	271		271	COUNTY OF SAN DIEGO-DPW
Other Agency Fees	12,830	12,830		12,830	CITY OF EL CAJON
	55	55		55	COUNTY OF SAN DIEGO
Consultant Contracts	99	99		99	PETTY CASH
	1,050	1,050		1,050	SOUTHLAND TITLE
	1,040	1,040		1,040	CALTRANS
	641,812	543,024	98,788	641,812	LEE & RO INC
	13,440	13,440		13,440	SWINERTON MANAGEMENT
	4,744	4,744		4,744	WRA & ASSOCIATES INC
	48,000	41,813	6,187	48,000	SOUTHERN CA SOIL
	28,525	28,525		28,525	MWH CONSULTING SERVICES INC
	4,900	4,900		4,900	KEN DARGatz
Construction Contracts	87	87		87	SAN DIEGO DAILY TRANSCRIPT
	93,000	93,000		93,000	SAN DIEGO COUNTY WATER
	107,138	101,801	5,337	107,138	HARRIS & ASSOCIATES INC
	28	28		28	SAN DIEGO COUNTY
	5,700	5,700		5,700	BELLA TERRA HOA
	700	700		700	SUZETTE C SWANGER
	3,000	3,000		3,000	RAYMOND KEITH HANNA
	228,800	228,800		228,800	GROSSMONT-CUYAMACA COMMUNITY
Service Contracts	7,500	7,500		7,500	KEAGY REAL ESTATE
	81	81		81	SAN DIEGO DAILY TRANSCRIPT
	244	244		244	UNION TRIBUNE
	349	349		349	MCGRAW-HILL COMPANIES
	6,812	6,812		6,812	REPROHAUS CORP
	90	90		90	COUNTY OF SAN DIEGO
Special Projects	48	48		48	BEDONA STAFFING
<b>Total Design</b>	<b>1,856,480</b>	<b>1,745,888</b>	<b>110,612</b>	<b>1,856,480</b>	
<b>Construction</b>					
In House/Labor	338,143	185,730	172,419	338,143	
Mileage Reimbursement	119	119		119	PETTY CASH CUSTODIAN
Meals & Incidentals	83	83		83	PETTY CASH CUSTODIAN
Postage	238	238		238	US POSTMASTER
Regulatory Agency Fees	9,400	9,400		9,400	SAN DIEGO COUNTY WATER
	10,000	8,788	4,244	10,000	CITY OF EL CAJON
Consultant Contracts	1,082,441	613,880	576,771	1,082,441	RBF CONSULTING
	8,700	7,287	1,433	8,700	SOUTHERN CA SOIL
	21,000	19,088	1,992	21,000	MARSTON & MARSTON INC
	67,918	67,918		67,918	LEE & RO INC
Construction Contracts	527,000	527,000		527,000	SAN DIEGO COUNTY WATER
	11,648	11,648		11,648	SOUTHERN CA SOIL
	144,700	25,237	119,483	144,700	HELIX WATER DISTRICT
Construction Contracts	13,743,332	2,010,322	11,724,010	13,743,332	CCL CONTRACTING
Contingency (6% of CCL Bid)	757,323	-	757,323	757,323	CCL CONTRACTING
Construction Change Order	(243,847)	-	-	(243,847)	CCL CONTRACTING C.O. No. 1
	1,403,324	69,978	1,334,646	1,403,324	CALIFORNIA BANK & TRUST
	1,327	-	-	1,327	COUNTY OF SAN DIEGO - DPW
Service Contracts	818	818		818	UNION TRIBUNE PUBLISHING CO
	266	266		266	MCGRAW-HILL CONSTRUCTION
	450	450		450	REEL 'EM IN INC
	252	252		252	SAN DIEGO NEIGHBORHOOD NEWS
	2,240	682	1,387	2,240	MAIL MANAGEMENT GROUP INC
Construction Contract	14,000	14,000		14,000	TG CONSTRUCTION
Inline Valve	1,609	1,609		1,609	FERGUSON WATERWORKS #1082
Accept/Close-out	20,000	-	20,000	20,000	
<b>Total Construction</b>	<b>17,922,496</b>	<b>3,450,768</b>	<b>14,471,728</b>	<b>17,922,496</b>	
<b>Grand Total</b>	<b>\$ 21,804,739</b>	<b>\$ 6,749,787</b>	<b>\$ 15,054,952</b>	<b>\$ 21,804,739</b>	

QA/QC BY: *Lisa Colman-Boyd*



P:\WORKING\CIP P2009 36-inch PL - FCF 14 to Reg Site\Graphics\Exhibits\Figures\F2009 Exhibit A, SDCWA FCF 14 & 36in JamachaPL-12-9-09.mxd



# OTAY WATER DISTRICT

SDCWA FCF NO. 14 AND  
36-INCH JAMACHA PIPELINE



CIP P2009

## EXHIBIT A



STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	February 3, 2010	
SUBMITTED BY:	Daniel Kay <i>OK</i> Associate Civil Engineer	PROJECT/ SUBPROJECT	P2490/ P2492- 001103	DIV. NO. 5
	Ron Ripperger <i>[Signature]</i> Engineering Manager			
APPROVED BY: (Chief)	Rod Posada <i>[Signature]</i> Chief, Engineering			
APPROVED BY: (Asst. GM):	Manny Magaña <i>[Signature]</i> Assistant General Manager, Engineering and Operations			
SUBJECT:	Award of a Construction Contract for the 1296-1 & 1296-2 Reservoir Exterior/Interior Coating and Upgrades Project			

**GENERAL MANAGER'S RECOMMENDATION:**

That the Otay Water District (District) Board of Directors (Board) awards a construction contract to West Coast Industrial Coating Inc. (West Coast) for the 1296-1 & 1296-2 Reservoir Exterior/Interior Coating and Upgrades Project and authorizes the General Manager to execute an agreement with West Coast in an amount not to exceed \$690,000 (see Exhibit A for project location).

**COMMITTEE ACTION:**

Please see Attachment A.

**PURPOSE:**

To obtain Board approval authorizing the General Manager to enter into a construction contract with West Coast in an amount not to exceed \$690,000 for the 1296-1 & 1296-2 Reservoir Exterior/Interior Coating and Upgrades Project.

**ANALYSIS:**

The District's corrosion consultant Schiff Associates (Schiff) completed a Corrosion Control Program (CCP) in June 2009 that addresses the installation, maintenance, and monitoring of corrosion protection systems for the District's steel reservoirs and buried

metallic piping. The CCP includes a reservoir maintenance schedule that shows the 1296-1 and 1296-2 Reservoirs to be re-coated and updated to current code. The maintenance includes replacing anodes for the cathodic protection system, removing the existing exterior and interior coatings, and applying a new coating to the exterior and interior of each reservoir.

In addition to replacing the anodes and re-coating the reservoirs, structural upgrades are necessary to comply with the American Water Works Association (AWWA) and the Occupational Safety and Health Administration (OSHA). An internal and external inspection of each reservoir was completed in August of 2008 by Utility Services Company. The recommended structural upgrades, with input from engineering and operations staff, are as follows: A new exterior ladder, new level indicators, new fall prevention devices on the interior ladders, provide additional manways for access, new anode access ports, new roof vents, new lanyard cables, and miscellaneous tank penetrations for chlorination and sampling. These upgrades will ensure compliance with AWWA and OSHA as well as provide better access and maintenance for Operations staff.

Currently, Natgun Corporation is constructing a new AWWA Type III concrete reservoir at the same site as the 1296 reservoirs. This project is scheduled to be completed in early March and the award of the construction contract to West Coast will provide a smooth transition of construction contracts at the site.

Staff developed the contract documents and the project was advertised for bid on the District's website and several other publications including the San Diego Tribune and San Diego Daily Transcript.

Subsequently one (1) addendum was sent out to all bidders and planhouses to address questions and clarifications to the contract documents during the bidding period. Bids were publicly opened on January 7, 2010, with the following results:

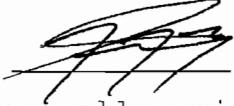
	<u>CONTRACTOR</u>	<u>TOTAL BID AMOUNT</u>	<u>Corrected Bid Amount</u>
1	West Coast Industrial Coating	\$690,000	-
2	A.J. Fistes	\$699,900	-
3	RPI Coating	\$793,000	-
4	Olympus & Associates, Inc.	\$808,807	-
5	Blastco, Inc.	\$812,360	-
6	State Painting Company	\$841,550	-
7	ABHE Svoboda	\$923,200	-
8	Techno Coatings, Inc.	\$1,038,000	-

The Engineer's Estimate is \$875,000.

Staff reviewed the bids submitted for conformance with the contract requirements and determined that West Coast was the lowest responsive and responsible bidder. West Coast holds a Class C-33 Contractor's License which expires on January 31, 2011. Reference checks indicated an excellent performance record on similar projects and that all agencies contacted would hire West Coast for future projects.

However, on January 13, 2010, a bid protest was received from RPI (Exhibit B) claiming that West Coast and the second apparent low bidder, A.J. Fistes, submitted non-responsive bids. The District requested that West Coast respond to RPI's bid protest. Their response is attached as Exhibit C. Staff and general counsel have reviewed West Coast's response and have determined that their bid has met the intent of the contract documents. Staff did not contact A.J. Fistes because they are the second low bidder and staff is recommending award to West Coast. Per the public competitive bidding process, Staff recommends award of the contract to West Coast in the amount of \$690,000.

**FISCAL IMPACT:**

  
Funding for the overall project comes from two CIP projects, P2490, the 1296-1 Reservoir Exterior/Interior Coating and Upgrades, and P2492, the 1296-2 Reservoir Exterior/Interior Coating and Upgrades.

The total budget for CIP P2490, as approved in the FY 2010 budget is \$350,000. Total expenditures, plus outstanding commitments and forecast is \$347,615. See Attachment B-1 for budget detail.

The total budget for CIP P2492, as approved in the FY 2010 budget is \$600,000. Total expenditures, plus outstanding commitments and forecast, is \$501,399. See Attachment B-2 for budget detail.

Based on a review of the financial budgets, the Project Manager has determined that each budget is sufficient to support the project.

Finance has determined that funding will be available for CIP P2490 and P2492. Funding for both CIPs will be 100% Replacement.

**STRATEGIC GOAL:**

This project supports the Operations Division's Mission Statement, "To provide all operations and maintenance services in the highest possible professional, efficient, safe, and cost effective manner to all internal and external customers, and to strive to continually improve the level of services this Department provides."

LEGAL IMPACT: \_\_\_\_\_

None.



\_\_\_\_\_  
General Manager

P:\WORKING\CIP P2490 1296-1 & -2 Reservoir Coating\Staff Reports\BD 02-03-10, Staff Report, 1296 Coatings Bid Award.doc

DK/RR/RP:jf

- Attachments: Attachment A  
Attachment B-1  
Attachment B-2  
Exhibit A  
Exhibit B  
Exhibit C

QA/QC Approved:

Name: Bul [Signature]

Date: 1/14/10



## ATTACHMENT A

<b>SUBJECT/PROJECT:</b>	Award of a Construction Contract for the 1296-1 & 1296-2 Reservoir Exterior/Interior Coating and Upgrades Project
P2490-001103	
P2492-001103	

### COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee reviewed this item at a meeting held on January 21, 2010 and the following comments were made:

- Staff is requesting that the Board authorize the General Manager to enter into a construction contract with West Coast Industrial Coating Inc. in an amount not-to-exceed \$690,000 for the 1296-1 and 1296-2 Reservoir Exterior/Interior Coating and Upgrades.
- Staff indicated that consultant, Schiff Associates, completed the District's Corrosion Control Program (CCP) in June 2009. The program shows the 1296-1 and 1296-2 Reservoirs in need of a new coating system as well as structural upgrades to bring the reservoirs up to AWWA and OSHA standards.
- Staff stated that Natgun Corporation is constructing the District's 1296-3 Reservoir at the same site which is expected to be completed in March 2010. By approving the West Coast Industrial contract, the recoating of the 1296-1 and 1296-2 Reservoirs can start following the completion of the construction of the 1296-3 Reservoir. This will allow all work at the site to be continuous and appear as one project.
- A request for bids was advertised on December 10, 2009, and a pre-bid meeting was held on December 17, 2009. Four contractors were in attendance. An addendum was sent to all bidders and planhouses to address questions and provide clarification to the contract documents during the bidding period. Eight bids were received and were opened on January 7, 2010. Staff indicated that a table on page 2 of the staff report indicates the results.

- All bids were received and staff determined that West Coast Industrial Coating Inc. had submitted the lowest responsive bid at \$690,000. However, the third lowest contractor, RPI Coating, submitted a bid protest on January 13, 2010, claiming that West Coast Industrial Coating Inc. and the second lowest bidder, A.J. Fistes, submitted unresponsive bids. The District requested that West Coast Industrial Coating Inc. respond to the bid protest. Staff and the District's General Counsel reviewed the response and determined that their bid has met the intent of the contract documents.
- Staff indicated that the funds for this contract will be expended toward their respected CIP projects, P2490 and P2492.
- The Committee inquired how many scheduled coatings are planned each year. Staff stated that about 2 reservoirs are recoated each year. When possible, recoatings are grouped together for efficiency and cost reduction.

Following the discussion, the Committee supported staffs' recommendation and presentation to the full Board as a consent item.



## ATTACHMENT B-1

<b>SUBJECT/PROJECT:</b>	Award of a Construction Contract for the 1296-1 & 1296-2 Reservoir Exterior/Interior Coating and Upgrades Project
P2490-001103	
P2492-001103	

Otay Water District

Date Updated: December 29, 2009

P2490 - 1296-2 Reservoir Int/Ext Coating & Upgrade

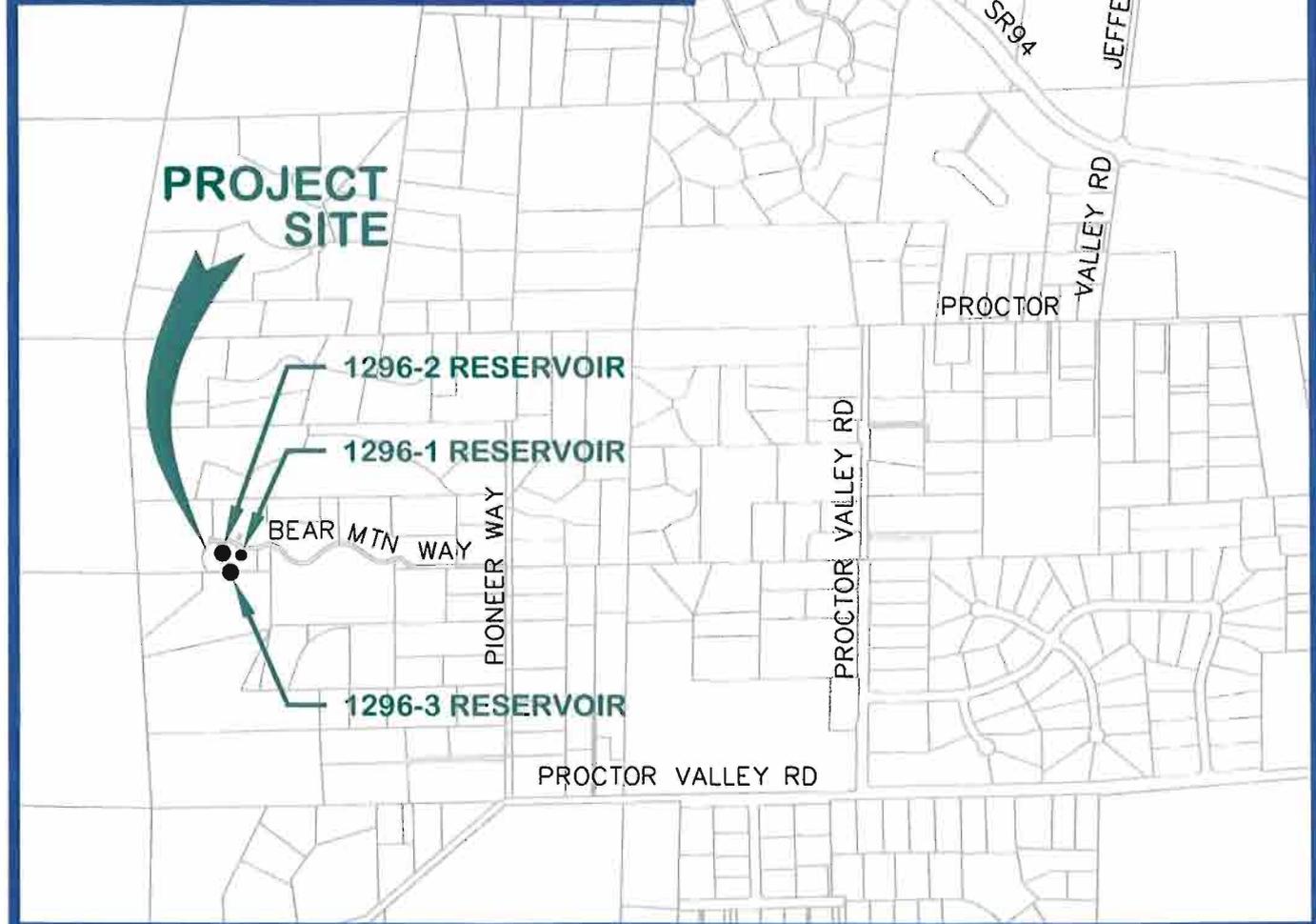
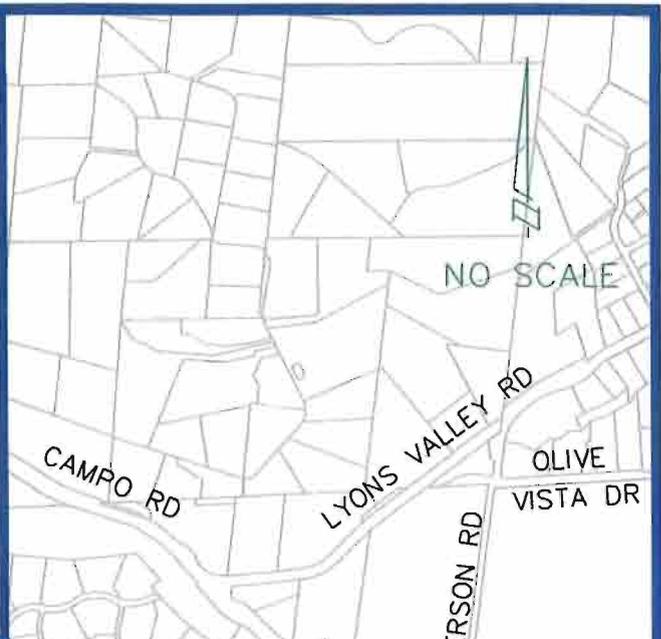
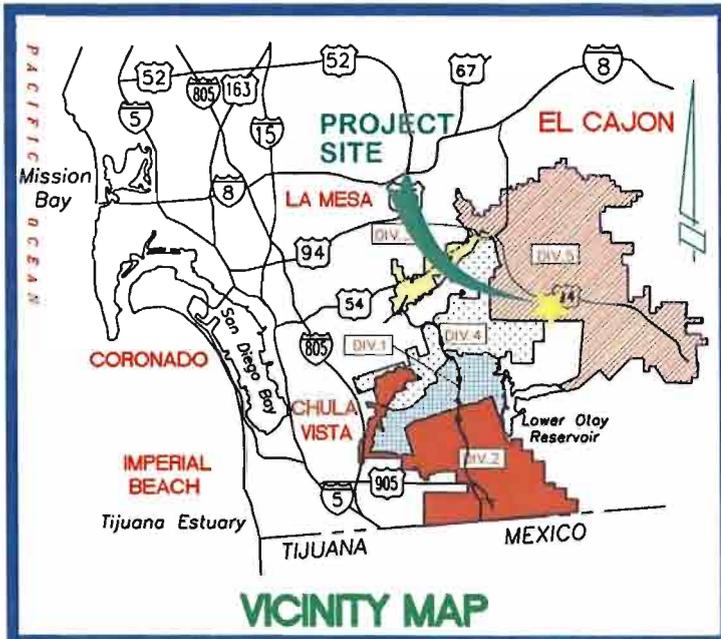
<i>Budget</i>	<i>Committed</i>	<i>Expenditures</i>	<i>Outstanding Commitment &amp; Forecast</i>	<i>Projected Final Cost</i>	<i>Vendor/Comments</i>
\$ 350,000					
<b>Planning</b>					
Labor	2,630	2,630	-	2,630	
			-		
<b>Total Planning</b>	2,630	2,630	-	2,630	
<b>Design</b>					
In House/Labor	18,785	18,785	-	18,785	
			-		
<b>Total Design</b>	18,785	18,785	-	18,785	
<b>Construction</b>					
In House/Labor	20,000	298	19,702	20,000	
Construction Contract	296,200		296,200	296,200	WEST COAST INDUSTRIAL COATING
Acceptance/Closeout	10,000		10,000	10,000	
<b>Total Construction</b>	326,200	298	325,902	326,200	
<b>Grand Total</b>	347,615	21,713	325,902	347,615	

QA/QC Approved:

Name: Basil King

Date: 1/14/10





**OTAY WATER DISTRICT**  
 1296-1 & 1296-2 RESERVOIR  
 EXTERIOR/INTERIOR COATING AND UPGRADES  
 CIP P2490 & CIP P2492

**EXHIBIT A**



Painting. Sandblasting. Fireproofing. Special Coatings

January 13, 2010

Otay Water District  
Attn: Daniel Kay, PE  
2554 Sweetwater Springs Blvd  
Spring Valley, Ca 91678-2096

Reference: 1291-1 & 1296-2 Reservoir Exterior/Interior Coating and  
Upgrades, CIP P2490 & P2492

Subject: Formal Bid Protest.

RPI COATING, INC (RPI) respectfully protests and challenges the award of the above subject project. The apparent low bidder West Coast Industrial Coatings, Inc. and the second apparent low bidder AJ Fistas submitted non responsive bids. Please consider the following:

West Coast Industrial Coatings Inc (WCICI)

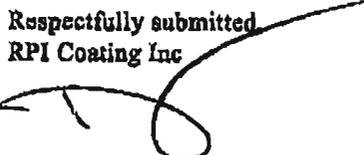
1. WCICI did not list the required sub-contractors or sub consultants. This is pursuant to The Public Contract Code, Chapter 4 "Subletting and Subcontracting" Statue 4100-4114 and the specifications.
  - o The scaffolding and shrink wrap subcontractor was omitted from WCICI's bid documents.\*Note: 09865-4 paragraph 4, requires a complete containment system. This statement is in line with SSPC Guide 6 for containing debris during paint removal operations. Guide 6 has four (4) classes of containment all of witch utilize ridged or flexible framing and plastic to contain hazardous and lead base emissions and materials
  - o The third party inspection firm was omitted from WCICI's bid. See 09865-10 paragraph A of the specifications. They can not self perform the inspection as this would be a conflict of interest.

AJ Fistas

2. AJ Fistas has not the required QPI certificate pursuant to specification section 09905-4 paragraph 2.

In summery, RPI's bid was complete and in accordance with the intent of the specifications therefore entitled to award... As an interested party I encourage you to research the intent of the apparent low bidders prior to the recommendation to award. Please contact me at 562-447-1937 should questions remain.

Respectfully submitted,  
RPI Coating Inc

  
Bob Kelley,

**EXHIBIT C**

**From:** [Larry Wombles](#)  
**To:** [Daniel Kay](#);  
**cc:** [Ronald Ripperger](#); "[Desiree Brumley](#)";  
["Ron Hogeland"](#);  
**Subject:** RE: Bid Protest - RESPONSE  
**Date:** Wednesday, January 13, 2010 6:12:59 PM

---

Mr. Kay,

This e-mail is in response to the formal protest as filed by RPI Coating on January 13, 2010. I will only address the two bullet points as filed against WCIC.

1. Scaffolding: Specification section 09865-4, paragraph 4 is for SUBMITTALS after award of project. This paragraph does not stipulate complete shrink wrap containment as stated by RPI. Guide 6 is not listed in this paragraph, thus there inclusion is incorrect. This paragraph simply states that WCIC is to provide written documentation "...for complete abrasive blasting containment system, which will contain all the abrasive blast media, monitoring of the containment, and corrective procedures when containment may be breached." This paragraph does not dictate means and/or methods as a condition of contract. WCIC fully intends to satisfy the complete project specifications, OSHA, AQMD, and SSPC in which we are proud members.
  
2. Third Party Inspection – Specification section 09865-10, paragraph A states, "Inspection and testing shall be performed by the Contractor's hired certified and approved by the District..." This specification section does not state that the certified inspector must be "third" party. WCIC has two on-staff NACE level III and five SSPC Level II coating inspectors. One of our Level III (highest level of Inspector per NACE) also is a independent third party consultant as he only work part time at WCIC. WCIC has hired all the inspectors on our staff and this meets the specification. Also, as a SSPC QP-1 Contractor, WCIC is responsible for Quality Control. Quality Assurance can also be accomplished by WCIC with your approval. WCIC bid this project knowing we were responsible for Quality Control (QC) and Quality Assurance (QA). As added QA, WCIC intends to have the coating manufacturer representative fro TNEMEC

on regular basis to inspect and report for our QC and QA reports.

There is no conflict of interest as SSPC QP-1 requires their certified members to perform all QC and QA as part of our certification. I believe this is why your district required QP-1 only certified contractor to bid this work. As a QP-1 contractor, we will have fully trained and certified NACE level III coating inspector with his own individual License inspecting the work; it will be the coating manufacturer who provides additional verification; and it is WCIC performance bond that guarantees workmanship. In addition to the Nace Level III coating inspector, WCIC field foreman is also a SSPC Level II Coating inspector.

OTAY Water District will get a first class and best coating project via award to WCIC where our company motto is "SAFETY + QUALITY = PRODUCTION." Should you have any other questions or need any other verification, please do not hesitate to call me at 951-956-9943.

## **Larry Wombles**

Paso Robles Tank Inc.

West Coast Industrial Coatings  
SSPC QP-1 Contractor

3883 Wentworth Drive  
Hemet, CA 92545  
Phone: 951-925-2288 / Fax: 951-925-1288  
e-mail: LWombles@pasoroblestank.com  
Company E-mail: www.Pasoroblestank.com

ONE NATION UNDER GOD & IN GOD WE TRUST!



Please consider the environment before printing my e-mail

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**From:** Daniel Kay [mailto:Daniel.Kay@otaywater.gov]  
**Sent:** Wednesday, January 13, 2010 1:28 PM  
**To:** Larry Womble  
**Cc:** Ronald Ripperger; Desiree Brumley; Ron Hogeland  
**Subject:** Bid Protest

Hi Larry,

We have received an official bid protest from RPI coating. Please see their attached letter. Could you please respond to the District (Attention to Daniel Kay) regarding their concerns on the letter. A prompt response would be greatly appreciated as we are trying to complete the staff report for this contract for the January Committee Meeting/February Board.

Thank You.

**DANIEL KAY, P.E.**

ASSOCIATE ENGINEER | OTAY WATER DISTRICT |

TEL: 619-670-2247 | FAX: 619-670-8920 |

[WWW.OTAYWATER.GOV](http://WWW.OTAYWATER.GOV)



STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	February 3, 2010
SUBMITTED BY:	Daniel Kay <i>DK</i> Associate Civil Engineer	PROJECT/ SUBPROJECT:	S2021- DIV. 5 001103 NO.
	Ron Ripperger <i>[Signature]</i> Engineering Manager		
APPROVED BY: (Chief):	Rod Posada <i>[Signature]</i> Chief, Engineering		
APPROVED BY: (Asst. GM):	Manny Magaña <i>[Signature]</i> Assistant General Manager, Engineering and Operations		
SUBJECT:	Award of a Construction Contract for the Jamacha Road 8-Inch Sanitary Sewer Replacement Project		

**GENERAL MANAGER'S RECOMMENDATION:**

That the Otay Water District (District) Board consent to withdrawal of the bid submitted by Empire Pipeline (Empire), award a construction contract to A.B. Hashmi Inc. (A.B. Hashmi) in the amount of \$91,320 for the construction of the Jamacha Road 8-Inch Sanitary Sewer Replacement Project and authorize the General Manager to execute an agreement with A.B. Hashmi in an amount not to exceed \$91,320 (see Exhibit A for project location).

**COMMITTEE ACTION:** \_\_\_\_\_

Please see Attachment A.

**PURPOSE:**

To obtain Board approval consenting to the withdrawal of the bid submitted by Empire and authorizing the General Manager to enter into a construction agreement with A.B. Hashmi in an amount not to exceed \$91,320 for the Jamacha Road 8-Inch Sanitary Sewer Replacement Project.

**ANALYSIS:**

This project consists of constructing a total of 335 linear feet of new 8-inch PVC sanitary sewer pipe in Jamacha Road between Hidden Mesa Road and Falda Del Cerro in Rancho San Diego.

The District recently completed a closed circuit televising (CCTV) report for the North District sewer system in various areas of Rancho San Diego and Spring Valley. The report found that the section of sewer pipe between Hidden Mesa Road and Falda Del Cerro in Jamacha Road has partially collapsed. This construction contract will replace that portion of collapsed pipe.

This project is one out of five sewer projects that were added to the FY 2010 CIP due to the results found in the CCTV report. This project was advertised as a separate project in order to expedite construction to coincide with the current construction occurring on Jamacha Road for the 36-inch pipeline installation by CCL Contracting (CCL). This sewer project must be completed before CCL re-paves Jamacha Road in order to avoid a duplication of work in that area. The current schedule for the 36-inch pipeline project shows paving to be completed in May, 2010. The completion of this sewer project is scheduled for April, 2010.

The design for this project was performed by a consultant, Lee & Ro, Inc., as part of their current as-needed design contract with the District.

The project was advertised for bid on the District's website and several other publications including the Union Tribune and San Diego Daily Transcript.

A non-mandatory Pre-Bid Meeting was held on December 17, 2009. A presentation was given by staff to explain the project and discuss any questions or concerns from the contractors. There were two (2) contractors that attended the meeting and meeting minutes were published.

Subsequently, one (1) addendum was sent out to all bidders and planhouses to address questions and provide clarifications to the contract documents during the bidding period. Bids were publicly opened on January 7, 2010 with the following results:

	<u>CONTRACTOR</u>	<u>TOTAL BID AMOUNT</u>	<u>CORRECTED BID AMOUNT</u>
1	Empire Pipeline	\$79,350	-
2	A.B. Hashmi Inc.	\$91,320	-
3	Palm Engineering Construction Co. Inc.	\$91,575	-
4	Burtech Pipeline, Inc.	\$97,000	-
5	Arrieta Construction, Inc.	\$101,247	-
6	SC Valley Engineering, Inc.	\$113,575	-
7	American Industrial Services	\$126,311	\$126,310
8	Sim Engineering Inc.	\$127,750	\$147,750
9	Zondiros Corporation	\$136,625	-
10	CCL Contracting	\$167,820	-
11	Schilling Paradise Corporation	\$178,120	-

The Engineer's Estimate is \$117,000.

The evaluation process included reviewing all bids submitted for conformance to the contract documents. American Industrial Services had an error in their bid reducing their cost by \$1. Sim Engineering did not acknowledge Addendum No. 1 in their bid, which included an additional \$20,000 allowance item to cover any changes from Caltrans when their permit is finally received.

On January 8, 2010, the lowest bidder, Empire, submitted a timely request to the District to withdraw their bid due to a 'clerical error' (see Exhibit B). Staff requested that Empire provide the District with more information detailing their 'clerical error' (see Exhibit C) and Empire responded with an explanation stating they unintentionally left out \$14,865 on Bid Item No. 2 for removing and replacing the 8-Inch PVC (see Exhibit D & Exhibit E). District staff is satisfied that Empire made a mistake in their bid due to a clerical error, and has met the requirements stipulated in Public Contract Code Section 5103, regarding withdrawal of a bid. Therefore, the District will not secure Empire's bid bond and staff is recommending that the Board grant Empire's request to withdraw their bid and approve award of the contract to the second lowest bidder, A.B. Hashmi.

Staff reviewed the second low bid by A.B. Hashmi and found they submitted a responsible bid and hold a Class A Contractors License which expires on March 31, 2011. References were checked and A.B. Hashmi was found to be a qualified company. Staff also verified that it can comply with the bonding requirements for this project.

Per the public competitive bidding process, Staff is recommending the award of a construction contract to A.B. Hashmi in the bid amount of \$91,320.

**FISCAL IMPACT:**



The total budget for CIP S2021, as approved in the FY 2010 budget, is \$150,000. Total expenditures, plus outstanding commitments and forecast, are \$146,916. Based on a review of the financial budget, the Project Manager has determined that the budget is sufficient to support the project (see Attachment B for budget detail).

The Finance Department has determined that 100% of the funding is available from the Replacement Fund.

**STRATEGIC GOAL:**

This project supports the District's Mission Statement, "To provide the best quality of water and wastewater service to the customers of the Otay Water District in a professional, effective, and efficient manner" as well as the General Manager's vision, "...prepared for the future..." by guaranteeing the District will always be able to meet

future water supply obligations and plan, design, and construct new facilities.

**LEGAL IMPACT:** \_\_\_\_\_

None.



\_\_\_\_\_  
**General Manager**

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DK/RR/RP:jf

- Attachments:      Attachment A  
                         Attachment B  
                         Exhibit A  
                         Exhibit B  
                         Exhibit C  
                         Exhibit D  
                         Exhibit E

QA/QC:

Name: Lisa Colleen Boyd

Date: 01-14-10



## ATTACHMENT A

<b>SUBJECT/PROJECT:</b> S2021/001103	Award of a Construction Contract for the Jamacha Road 8-Inch Sanitary Sewer Replacement Project
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### COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee reviewed this item at a meeting held on January 21, 2010 and the following comments were made:

- Staff is requesting that the Board authorize the General Manager to execute a construction contract to A.B. Hashmi Inc. (A.B. Hashmi) in an amount not-to-exceed \$91,320 for the construction of the Jamacha Road 8-Inch Sanitary Sewer Replacement Project, and consent to the withdrawal of the bid submitted by Empire Pipeline (Empire).
- Staff stated that a CCTV report showed a partially collapsed sewer pipe in Jamacha Road between the intersections of Hidden Mesa Road and Falda Del Cerro in Rancho San Diego.
- Staff indicated that the Sanitary Sewer Replacement Project will replace 335 linear feet of sewer and is in the same alignment as the 36-Inch Pipeline Project currently being constructed by CCL contracting. The sewer must be replaced before CCL re-paves Jamacha Road. It was indicated that the schedule shows paving to be completed in May 2010 and that the Sanitary Sewer Replacement Project is scheduled for completion in April 2010.
- Staff indicated that the District advertised for bids on December 10, 2009 and that a pre-bid meeting was held on December 17, 2009 where two contractors were in attendance. One addendum was sent out to address contractors' questions and provide clarification to the contract documents. Eleven bids were received and opened on January 7, 2010 (the table on page 2 of the staff report shows the results).

- Staff reviewed the bids and determined that Empire submitted the lowest responsive bid at \$79,350. However, Empire Pipeline submitted a request to withdraw their bid due to "clerical" error. District staff requested that Empire provide an explanation with back-up documentation (see Exhibits B, C, D & E). District staff and General Counsel reviewed the information and determined that Empire's withdrawal satisfied the Public Contract Code.
- The Committee thanked District staff for their efforts of fast-tracking and aligning the projects. It was stated that the aligning of the projects will minimize impact to the community. The Committee inquired where CCL ranked in the bids for the Sanitary Sewer Replacement Project. Staff indicated that CCL was the second highest bidder for the Project.

Following the discussion, the Committee supported staffs' recommendation and presentation to the full Board as a consent item.



## ATTACHMENT B

Otay Water District  
S2021 - Jamacha Road 8-inch Sewer Main Replacement

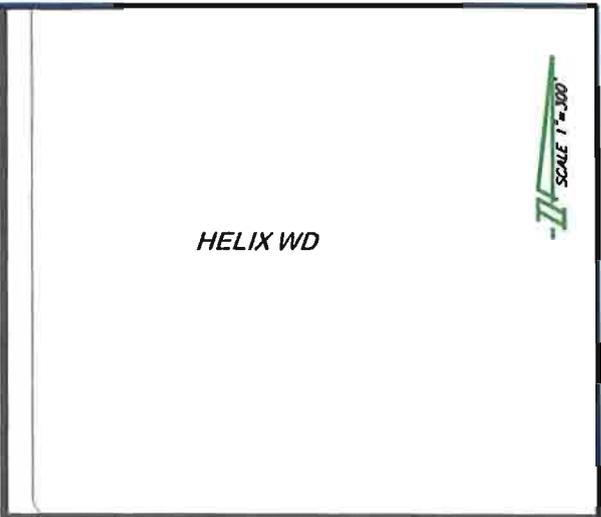
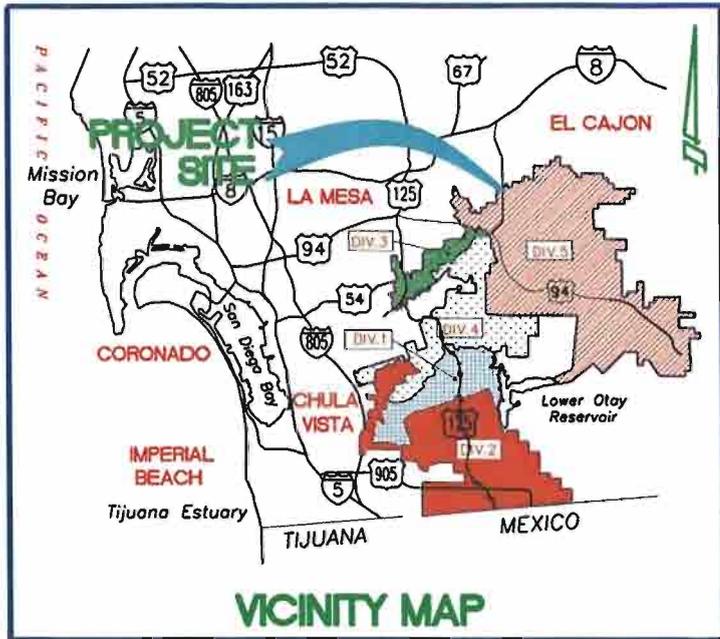
Date Updated: December 29, 2009

<i>Budget</i>	<i>Committed</i>	<i>Expenditures</i>	<i>Outstanding Commitment &amp; Forecast</i>	<i>Projected Final Cost</i>	<i>Vendor/Comments</i>
\$ 150,000					
<b>Planning</b>					
Labor	3,587	3,587		3,587	
<b>Total Planning</b>	3,587	3,587	-	3,587	
<b>Design</b>					
Labor	7,275	7,275		7,275	
Consultant Contracts	9,474	4,684	4,790	9,474	LEE & RO INC
<b>Total Design</b>	16,749	11,959	4,790	16,749	
<b>Construction</b>					
Labor	30,210	149	30,061	30,210	
Regulatory Agency Fees	50	50	-	50	PETTY CASH CUSTODIAN
Construction Contract	91,320		91,320	91,320	A.B. HASHMI
Accpt/close-out	5,000		5,000	5,000	
<b>Total Construction</b>	126,580	199	126,381	126,580	
<b>Grand Total</b>	146,916	15,746	131,171	146,916	

QA/QC:

Name: Lisa Colburn-Boyd

Date: 01-13-10



P:\WORKING\CIP S2019 Avocado Sewer\Graphics\Exhibits-Figures\Sewer-Exhibit-Jonachauderg 1/5/2010



# OTAY WATER DISTRICT

JAMACHA ROAD  
 8" SANITARY SEWER  
 REPLACEMENT PROJECT

CIP# S2021

## EXHIBIT A

**EXHIBIT B**

# EMPIRE PIPELINE

Plumbing & Underground Utilities



January 8, 2010

Otay Water District  
2554 Sweetwater Springs Blvd.  
Spring Valley, CA 91978-2004

Attention: Daniel Kay

Re: Jamacha Rd 8-Inch Sanitary Sewer Replacement – CIP S2019

Dear Sir:

We would like to formally withdraw our bid for the Jamacha Rd 8-Inch Sanitary Sewer Replacement- CIP S2019, which we submitted January 7, 2010.

Due to a clerical error we are requesting that our proposal be withdrawn from this project.

If you have any questions, please do not hesitate to contact us. Thank you for your attention to this matter.

Sincerely,

Anita Davidson  
Empire Pipeline

A Subsidiary of Phil Rado, Inc. Lic.#760566  
1945 Camino Vida Roble, Suite 'E' Carlsbad, CA 92008  
Phone: (760) 603-0217 Fax: (760) 603-9733

**EXHIBIT C**



*...Dedicated to Community Service*

2554 SWEETWATER SPRINGS BOULEVARD, SPRING VALLEY, CALIFORNIA 91978-2004  
TELEPHONE: 670-2222, AREA CODE 619

[www.otaywater.gov](http://www.otaywater.gov)

January 11, 2010

Sent Via E-mail and US mail  
Project No.: S2019-001103

Phil Rado  
President  
Empire Pipeline  
1945 Camino Vida Roble, Suite E  
Carlsbad, CA 92008

Subject: Jamacha Road 8-Inch Sanitary Sewer Replacement

Dear Mr. Rado:

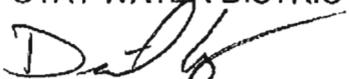
We are in receipt of Anita Davidson's January 8, 2010, letter requesting withdrawal of your bid for the subject project.

Although we received your request within the statutory time limit according to PCC Section 5103(b), the statute requires that you specify in detail how the clerical error occurred. Please provide relevant actual bid information and paperwork to substantiate your error.

At this time, pursuant to PCC Section 5103 you have not established viable cause for the Otay Water District (District) to allow withdrawal of your bid without consequence. Section 00100, Articles 19 and 20, of the contract documents specifically address the District's right to hold the bid bond for a period of 60 days after the bid opening. In addition, if the District's Board of Directors awards a contract to Empire Pipeline (Empire) for this project and Empire fails to execute the contract, Empire's bid bond will be forfeited. As such, the District is proceeding with award of the project to your firm.

Should you have any questions or comments, please do not hesitate to contact me at 619-670-2247.

Sincerely,  
OTAY WATER DISTRICT

  
Daniel Kay, P.E.  
Associate Engineer

DK:mlc

cc: Rod Posada  
Ron Ripperger  
Aerobel Banuelos, General Counsel

**EXHIBIT D**

**EMPIRE PIPELINE**  
Lic. #760566, SBE Cert. #30025  
Plumbing & Underground Utilities



January 11, 2010

Otay Water District  
2554 Sweetwater Springs Blvd.  
Spring Valley, CA 91978-2004

Attention: Daniel Kay

Re: Jamacha Rd 8-Inch Sanitary Sewer Replacement – CIP S2019

Dear Sir:

After reviewing our bid proposal and spreadsheets for the above referenced project we have discovered an error in the cost for line item #2 (Remove and Replace 8" Sewer). There was a cost of \$14,865.00 left out unintentionally. When the unit prices were written on the bid schedule we did not realize the cost of \$14,865.00 was not accounted for in the formula on our spreadsheet for line item #2 (Remove and Replace 8" Sewer).

The \$14,865.00 included the costs to saw-cut, remove, handle, and dispose of existing asphalt. It also included the cost of the new Class 2 Base. For your information below is the cost breakdown of the \$14,865.00.

1. Labor & Equipment \$487.68 x 20 hrs. = \$9753.00
2. Class 2 Base \$17.60 x 120 ton = \$2112.00
3. Outside Trucking \$125.00 x 16 hrs = \$2000.00
4. Landfill / Disposal = \$1000.00

Empire Pipeline is a small business enterprise and cannot afford to incur the cost of \$14,865.00 and accept this project. By taking this project Empire Pipeline can suffer financial hardship and possibly end up out of business. For these reasons Empire Pipeline is requesting that the Otay Water District allow Empire Pipeline to withdraw our bid for the Jamacha Rd 8-Inch Sanitary Sewer Replacement- CIP S2019, which we submitted January 7, 2010.

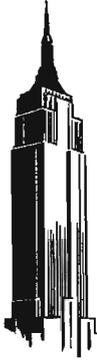
I await your prompt response. If you have any questions, please do not hesitate to contact us. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anita Davidson', written over a horizontal line.

Anita Davidson  
Empire Pipeline

A Subsidiary of Phil Rado, Inc.  
1945 Camino Vida Roble, Suite 'J' Carlsbad, CA 92008  
Phone: (760) 603-0217 Fax: (760) 603-9733



# EMPIRE PIPELINE

Plumbing & Underground Utilities

A subsidiary of Phil Rado Inc. Lic #760566

**EXHIBIT E**

1945 Camino Vida Roble, Suite 'J'

Carlsbad, CA 92008

P:(760) 603-0217 F:(760) 603-9733

## BID PROPOSAL

Date: 01/07/10

Bid # 1004

Project: Jamacha Rd Sewer Replacement

Location: Jamacha Blvd

City: Spring Valley

Plan Title:

Plan Date:

### Description of Work

Item	Description	Qty	Unit	Unit Price	Amount
<b>Item 1</b>	<b>Mobilization, demob, insurance, bonds</b>				
1	Mobilization, demob,	1	Ls	1,200.00	1,200.00
3	bonds	1	Ls	1,400.00	1,400.00
4	survey	1	Ls	800.00	800.00
5	SWPPP	1	Ls	500.00	500.00
6	Porta-john	1	Ls	300.00	300.00
7	misc	1	Ls	500.00	500.00
	<b>Total</b>				<b>4,700.00</b>
<b>Item 2</b>	<b>Remove &amp; replace 8" Sewer</b>				
1	Labor	40	hrs	332.00	13,280.00
2	Equipment	40	hrs	125.00	5,000.00
3	Trench Shoring & plates	1	Ls	1,400.00	1,400.00
4	Traffic Control	1	Ls	2,500.00	2,500.00
5	Pipe & Fittings	340	Lf	3.25	1,105.00
6	Bedding Materials - 3/4" rock	90	ton	19.60	1,764.00
7	Import DG for backfill	150	ton	10.00	1,500.00
8	Remove and dispose of spoils	240	ton	15.00	3,600.00
9	Remove and dispose of AC	1	Ls	14,865.00	14,865.00
	<b>Total</b>				<b>30,149.00</b>
<b>Item 3</b>	<b>Concrete Encasement</b>				
1	Labor	8	hrs	162.50	1,300.00
3	Equipment	8	hrs	50.00	400.00
4	Concrete	15	yd	120.00	1,800.00
5	Misc.	1	Ls	-	-
	<b>Total</b>				<b>3,500.00</b>
<b>Item 4</b>	<b>Temporary Sewer Bypass</b>				
1	Bypass	1	Ls	3,500.00	3,500.00
2	Misc.	1	Ls	500.00	500.00
	<b>Total</b>				<b>4,000.00</b>
<b>Item 5</b>	<b>Paving</b>				
1	Labor	16	hrs	330.00	5,280.00
2	Equipment	16	hrs	180.00	2,880.00
3	Asphalt	35	ton	120.00	4,200.00
4	Misc.	1	Ls	540.00	540.00
5	Remove and dispose temp ac	1	Ls	1,100.00	1,100.00
5	Traffic Control	1	Ls	1,000.00	1,000.00
	<b>Total</b>				<b>15,000.00</b>



# EMPIRE PIPELINE

Plumbing & Underground Utilities

A subsidiary of Phil Rado Inc. Lic #760566

1945 Camino Vida Roble, Suite 'J'

Carlsbad, CA 92008

P:(760) 603-0217 F:(760) 603-9733

## BID PROPOSAL

Date: 01/07/10

Bid # 1004

Project: Jamacha Rd Sewer Replacement

Location: Jamacha Blvd

City: Spring Valley

Plan Title:

Plan Date:

### Description of Work

Item	Description	Qty	Unit	Unit Price	Amount
Item 6	Unknown utility /service lateral	1	Ls	2,000.00	2,000.00
	Unknown utility /service lateral				
				<b>Total</b>	<b>2,000.00</b>
Item 7	Permit Allowance	1	Ls	20,000.00	20,000.00
	Permit Allowance				
				<b>Total</b>	<b>20,000.00</b>
				<b>Total for this project</b>	<b>79,349.00</b>



STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	February 3, 2010	
SUBMITTED BY:	Ron Ripperger <i>WR</i> Engineering Manager	PROJECT/ SUBPROJECTS:	R2094- 001103 P2496- 001103	DIV. 1,4 NO.
APPROVED BY: (Chief):	Rod Posada <i>R. Posada</i> Chief, Engineering			
APPROVED BY: (Asst. GM):	Manny Magaña <i>M. Magaña</i> Assistant General Manager, Engineering and Operations			
SUBJECT:	Authorization to Execute a Reimbursement Agreement Between the City of Chula Vista and Otay Water District for the Otay Lakes Road 12-Inch Recycled Water Pipeline and Potable Utility Relocation Project			

GENERAL MANAGER'S RECOMMENDATION:

That the Otay Water District (District) Board of Directors (Board) authorizes the General Manager to execute an Agreement between the City of Chula Vista (City) and the District for reimbursement to the City for construction costs associated with the Otay Lakes Road 12-Inch Recycled Water Pipeline and Potable Utility Relocation Project (Recycled Pipeline) in an amount not to exceed \$1,100,000 (see Exhibit A for project location).

COMMITTEE ACTION:

Please see Attachment A.

PURPOSE:

To obtain Board authorization for the General Manager to execute an Agreement (Attachment B) with the City for costs associated with construction of the Recycled Pipeline and Potable Utility Relocations. The Agreement provides that the District will reimburse the City for up to \$1,100,000.

**ANALYSIS:**

The City plans to complete road improvements on portions of Otay Lakes Road and "H" Street, near Southwestern College in Chula Vista, as part of its goal to maintain and improve City streets. Currently, City staff envisions this work occurring over the next few years in three separate phases. Phase I will focus on improving the intersection of Otay Lakes Road and "H" Street and widening Otay Lakes Road down to Southwestern College's main entrances. The later phases, as Exhibit A shows, will focus on improving Otay Lakes Road southerly to Telegraph Canyon Road. However, information provided by the City indicates that Phase III may not be required.

In order to minimize impacts to the Chula Vista community, District staff and City staff are coordinating their efforts to combine the contract documents for the Recycled Pipeline, Potable Utility Relocations, and the Road Improvement work into one bid package. The City will incorporate the District's project plans into their bid package and bid their project and the District's as one project. The City will advertise the "Project" in mid-February and provide bid support during the bid period. District staff will assist the City where needed. The City anticipates awarding the Project in April 2010.

Currently, recycled water is available in Telegraph Canyon Road. By including the Recycled Pipeline in the City's road improvement work, installation of the Recycled Pipeline can be accomplished earlier than anticipated and thereby make available recycled water to nearby customers including Southwestern College, Bonita Vista High School, and the Apache Drive Condos.

Lee & Ro is designing the pipeline for the District. The contract documents for the Recycled Pipeline will be completed in early February in order to be able to incorporate them into the overall Project. The construction cost for the Recycled Pipeline project is estimated at \$1,040,000. The utility relocation costs for the City's road improvement work is estimated at 60,000 for a total estimated cost of \$1,100,000. The attached agreement (Attachment B) provides for reimbursement to the City to cover the actual "as-bid" construction cost plus a 10% contingency for the purpose of reimbursing the City for progress payments made to the contractor.

**FISCAL IMPACT:** \_\_\_\_\_

Funding for the overall project comes from two CIP projects, R2094-Potable Irrigation to Recycled, and P2496-Otay Lakes Road Utility Relocations.

The total budget for CIP R2094 for the next six years is \$2,000,000. Expenditures to date are \$72,730. Total expenditures, plus outstanding commitments and forecast to date, are \$1,213,318. See Attachment C for budget detail.

The total budget for CIP P2496, as approved in the FY 2010 budget is \$100,000. Expenditures to date are \$15,931. Total expenditures, plus outstanding commitments and forecast, is \$99,887. See Attachment D for budget detail.

Based on a review of the financial budgets, the Project Manager has determined that each budget is sufficient to support the project.

The Finance Department has determined that 100% of the funding is available from the Expansion Fund for CIP R2094 and that 100% of the funding is available from the Replacement Fund for CIP P2496.

**STRATEGIC GOAL:** \_\_\_\_\_

This project supports the District's Mission Statement, "To provide the best quality of water and wastewater service to the customers of the Otay Water District, in a professional, effective, and efficient manner" and the Otay strategic goal, in planning for infrastructure and supply to meet current and future potable water demands.

**LEGAL IMPACT:** \_\_\_\_\_

The District's General Counsel and the City's City Attorney have reviewed and accepted the Agreement as to form and legality.

  
\_\_\_\_\_  
**General Manager**

Attachments: Attachment A  
Attachment B  
Attachment C  
Attachment D  
Exhibit A

QA/QC Approved:

Name: Lisa Colburn-Boyd

Date: 1-14-12



## ATTACHMENT A

<b>SUBJECT/PROJECT:</b> R2094-001103 P2496-001103	Authorization to Execute a Reimbursement Agreement Between the City of Chula Vista and Otay Water District for the Otay Lakes Road 12-Inch Recycled Water Pipeline and Potable Utility Relocation Project
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### COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee reviewed this item at a meeting held on January 21, 2010 and the following comments were made:

- Staff is requesting that the Board authorize the General Manager to execute an Agreement between the City of Chula Vista (City) and the District in an amount not-to-exceed \$1,100,000 for reimbursement to the City for construction costs associated with the Otay Lakes Road 12-Inch Recycled Water Pipeline and Potable Utility Relocations Project (Recycled Pipeline).
- Staff indicated that the City plans to complete road improvements on portions of Otay Lakes Road and "H" Street in Chula Vista. Staff stated that in order to minimize impacts to the Chula Vista community, District and City staff are coordinating their efforts to combine the contract documents for the Recycled Pipeline, Potable Utility Relocations, and the Road Improvement work into one bid package.
- Staff indicated that the City will incorporate the District's project plans into their bid package and bid it as one project. The City will advertise the "Project" in mid-February and provide bid support during the bid period. The City anticipates awarding the Project in April 2010. It was indicated that District staff will collaborate with City staff during the bid phase and during construction to ensure the pipeline is built to District standards.
- It was discussed that the City's Otay Lakes Road improvement project is planned for three phases, wherein the District's pipeline project will be part of Phase I.

- It was discussed that the reimbursement agreement between the City and District provides for the District to submit a deposit to the City for the actual construction costs plus a 10% contingency for the purpose of reimbursing the City for progress payments. The construction cost including the 10% contingency is estimated at \$1,100,000.
- Staff provided a copy of the draft agreement with the staff report sent to the Committee as part of their committee package and stated that it had been reviewed by staff and general counsel. Staff indicated that there were minor changes made to the draft agreement after the committee package was sent out. The District's general counsel reviewed the draft agreement with the inclusion of the minor changes and approved the agreement as to form and legality. The revisions are shown below:

1. Section 3.2: Change "City's contractor" to "City"
2. Section 5.2: Delete space before "collectively"
3. Section 5.2: Change "district" to "District"
4. Section 5.2: Change "their portion" to "its portion"
5. Section 8.2: Revise sentences to read "District agrees to pay its pro rata share costs City incurs enforcing the indemnity and defense provisions set forth in Article V. These costs shall be considered joint costs."
6. Section 8.3: Change "Consultant's" to "The Parties"
7. Section 11.22: The City added a provision requiring Otay to comply with notice requirements under the City's Municipal Code, Section 1.34, before a suit or arbitration procedure can commence. This clause also required the District to meet and confer with the City before the filing of such action against the City. This provision should be modified to provide that the City will meet and confer with the District in good faith before filing a suit or arbitration action against the District.

- Staff indicated that the draft agreement including the revisions constitutes the final agreement and will be submitted to the Directors for consideration at the February 3, 2010 Board Meeting.

Following the discussion, the Committee supported staffs' recommendation and presentation to the full Board as an action item.



## ATTACHMENT B

**SUBJECT/PROJECT:**

R2094-001103

P2496-001103

Authorization to Execute a Reimbursement Agreement Between the City of Chula Vista and Otay Water District for the Otay Lakes Road 12-Inch Recycled Water Pipeline and Potable Utility Relocation Project

**REIMBURSEMENT AGREEMENT FOR PAYMENT OF COSTS OF  
CONSTRUCTION AND INSTALLATION OF DISTRICT FACILITIES  
BY AND BETWEEN THE OTAY WATER DISTRICT  
AND THE CITY OF CHULA VISTA, CALIFORNIA  
(OTAY LAKES ROAD WIDENING, RECLAIMED WATER PIPELINE, AND  
UTILITY RELOCATION PROJECT)**

THIS REIMBURSEMENT AGREEMENT FOR THE PAYMENT OF COSTS OF CONSTRUCTION AND INSTALLATION OF DISTRICT FACILITIES, dated \_\_\_\_\_, 2009, is entered into by and between the Otay Water District ("District") and the City of Chula Vista, a municipal corporation, ("City") to establish terms and conditions pursuant to which City will bid and cause to be constructed certain District Facilities, defined herein below, and District will reimburse City for all expenses related thereto. District and City may be referred to herein individually as "Party" and collectively as the "Parties."

**RECITALS**

WHEREAS, District has approved, within its Capital Improvement Program (CIP), the construction and installation of certain reclaimed water facilities ("District Facilities") within the City of Chula Vista; and

WHEREAS, District is authorized, pursuant to applicable laws, to contract and to pay for all or part of the cost of the installation and construction of any building, facility, structure or other improvements required by District in connection with a District service; and

WHEREAS, City is constructing improvements to Otay Lakes Road between Canyon Drive/Ridgeback Road and Gotham Street and to East H Street, from Otay Lakes Road west to the East H Street signalized entrance to Southwestern College; such improvements include, but are not limited to, roadway widening, construction of curb, gutter, sidewalk, and median islands, construction of retaining walls, relocation of utilities, and reconfiguration and new installation of traffic signals and street lighting ("City Improvements"); and

WHEREAS, the construction of District Facilities concurrently with City Improvements would constitute a substantial benefit to District and the City, which benefits include, but are not limited to, reductions or savings in terms of time, money, construction hazards, and traffic impacts; and

WHEREAS, in order to achieve such benefits, District desires that City incorporate the construction and installation of District Facilities into the construction documents and contract for City Improvements

WHEREAS, City is willing to do so, provided District submits complete plans and specifications for said District Facilities and agrees to reimburse City for all associated costs; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by and between the Parties hereto, as follows:

## **ARTICLE I. DEFINITIONS**

**1.1 Definitions.** Unless the context otherwise requires, the terms defined in this Section 1 shall, for all purposes of this Reimbursement Agreement and of any amendment hereto, and of any certificate, opinion, estimate or other document herein mentioned, have the meanings herein specified.

“District” means the Otay Water District, a municipal water district duly organized and existing under the Municipal Water District Law of 1911, as set forth in the California Water Code.

“City” means the City of Chula Vista, California, a chartered municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California.

“City Improvements” means, collectively, the improvements to East H Street and Otay Lakes Road (Phase 1 of City CIP Project No. STM-355).

“District Costs” means the total dollar amount of costs associated with the construction and installation of the District Facilities, including, but not limited to, costs of materials, labor, oversight, bidding, permits, change orders, and the fair share of Joint Costs.

“District Facilities” means, collectively, the relocation of potable facilities and the installation of a 12-inch recycled water pipeline as shown in Exhibit A hereto, as the same may be amended from time to time.

“Joint Costs” means those costs of construction and installation of the Project, which, due to their nature, cannot be attributed solely to District Facilities or City Improvements, yet from which both derive benefit or those costs that both Parties would have incurred had their respective facilities been constructed independently of each other (e.g. slurry seal would have been necessary to cover the District’s trench and would also have been required for the City’s street).

“Project” means, collectively, District Facilities and City Improvements.

## **ARTICLE II. PRECONSTRUCTION**

**2.1 Design and Specifications - Generally.** Prior to advertisement of a Request for Proposals (“RFP”) for the construction and installation of Project, District shall submit designs and all associated plans and specifications (collectively “Construction Documents”) for the District Facilities to the City.

**2.1.1 Approval.** Prior to submission, an authorized representative of District shall approve the Construction Documents, submittal of which shall indicate such approval and grant to the City permission to include the Construction Documents in the RFP.

- 2.1.2 Costs. All costs associated with the design of a Party's facilities and the preparation of Construction Documents shall be borne solely by such Party.
- 2.1.3 Bidding and Award – Generally,. City shall be responsible for all aspects of bidding and award of a contract for the construction and installation of the Project (“Construction Agreement”).
- 2.1.3.1 Bid Package. City shall be responsible for preparing and circulation the bid package.
- 2.1.3.2 Meetings. City shall organize all pre-bid meetings and shall inform the District of the time and date of such meeting, so that a representative of the District may be present to clarify any issues related to and prepare addenda for the construction of the District Facilities.
- a. Additional Costs. Any additional costs associated with the failure of District to attend meetings, clarify issues, or submit addenda to City for distribution shall be the obligation of the District.
- 2.1.3.3 Selection of Lowest Responsible Bidder. City, at its sole discretion, shall determine the lowest responsible bidder, which determination shall be binding on the District.
- 2.1.3.4 Execution of Construction Agreement. City shall be responsible for executing the Construction Agreement on the behalf of itself and the District and ensure that the District is identified as a third-party beneficiary of such agreement with the same rights and remedies as the City.

### ARTICLE III. CONSTRUCTION

- 3.1 Compliance with Specifications. City will include provisions in the Construction Contract that require that all District Facilities furnished, constructed, and installed by City's contractor shall be in strict compliance with the approved plans and specifications provided by District, that all materials furnished by City's contractor must conform to District's approved material list, and that any and all deviations from said plans and specifications must be approved by District, in writing, prior to being incorporated into the work.
- 3.1.1 Right to Enforce. District shall have the right to enforce the terms of Section 3.1 against the City's contractor in the same manner as the City, and pursuant to Section 11.17 such rights shall be written into the Construction Contract.
- 3.2 Project Completion and Warranty. District and City anticipate that Project will be completed on or about December 31, 2010. Project, however, will not be deemed completed or accepted until both City and District have accepted their respective facilities or improvements. The City's contractor shall warrant all work for a period of no less than one year from the date of acceptance, which shall be deemed to be the latter of the dates District and City accept their facilities. Acceptance will be evidenced by the

filing of a Notice of Completion by the City's contractor with the County of San Diego Recorder. The Construction Contract shall include this definition of project completion and acceptance.

#### ARTICLE IV. REIMBURSEMENT OF COSTS

- 4.1 Deposit Account. Within thirty (30) calendar days of the Construction Agreement award, District shall deposit with the City an amount equal to one hundred (100) percent of the bid amount attributable to the construction and installation of District Facilities, plus a ten (10) percent contingency ("District Deposit") for the purpose of reimbursing the City for progress payments made by City to City's contractor for the installation of District Facilities.
- 4.2 Invoice. City shall invoice the District for District Costs ("City Invoice") following the receipt of an invoice from City's contractor on which such District Costs appear. The City Invoice shall:
  - 4.2.1 Include a copy of the contractor's invoice.
  - 4.2.2 Identify those costs attributable to the District's Facilities.
  - 4.2.3 Show calculations apportioning the District's fair share of Joint Costs.
    - 4.2.3.1 Apportionment of Joint Costs. Joint Costs may be apportioned as follows:
      - a. When a percentage of use can be determined, Joint Costs shall be apportioned based on the respective percentages of use.
      - b. When work is equally necessary for both the installation and construction of City Improvements and the District Facilities, Joint Costs shall be divided equally.
      - c. Based on the respective percentages of Total Project Costs.
      - d. Other methods to which the Parties mutually agree.
  - 4.2.4 Provide a net total charge payable by District.
- 4.3 District Approval. District shall review and approve the City Invoice within thirty (30) calendar days of its receipt ("Review Period"). If District determines that all relevant documents have not been submitted, District shall inform the City of the need for additional information and specify the documents/information necessary to permit review and approval.
  - 4.3.1 Failure to Approve. If District fails to approve the City Invoice or request additional information within the Review Period, the charges on the City Invoice shall be deemed approved.

4.4 Reimbursement. Following District approval of a City Invoice, City shall deduct the invoice amount from the District Deposit for the purpose of reimbursing the City for District Costs invoiced by and paid to City's contractor. District approval of a City Invoice shall be deemed District's authorization for such reimbursement in the amount of the City Invoice.

4.4.1 Withholding/Retention. From each payment to the contractor, City shall withhold a minimum of ten (10) percent of the amount of the contractor's invoice. Payment thereof shall not be made until final approval and acceptance. A similar retention shall be withheld from the reimbursement to the City from District Deposit.

4.5 Use of Project Contingency. The Project Contingency may be used for unforeseen changes in work; however it shall not be used for: (i) work required due to contractor's failure to perform work or services according to the terms of the Construction Agreement and/or in compliance with the Construction Documents; or (ii) uninsured losses resulting from the negligence of contractor.

#### ARTICLE V. CHANGE ORDERS

5.1 Written Approval of Construction Changes and Change Orders. With the exception of Emergencies, prior to the approval of a construction change or change order concerning or affecting District Facilities, including any changes to City Improvements that might affect District Facilities in any way, City shall obtain the written consent of District.

5.1.1 Approval of Change Orders. District shall respond to a change order request within five (5) working days of the date it is received by District.

5.1.2 Additional Costs. District will bear any increased costs due to a delay in approving a properly submitted construction change and/or change order request.

5.2 Changes in Emergencies. City may authorize contractor to proceed with any proposed construction changes and or change orders, without consulting with District or obtaining the District's written approval, if failure to act immediately would pose a danger to the public, as determined in the sole discretion of the City, or result in delays and cost overruns (collectively "Emergency"); however, the City shall use best efforts to immediately, or as soon as reasonably possible, inform the district the changes. The District shall be responsible for any increased costs of construction of their portion of Project due to an Emergency.

5.3 Errors and Omissions. City shall not make payment to contractor or charge District for any costs or expenses of a Change Order resulting from an error or omission for which the contractor is solely responsible.

#### ARTICLE VI. INSPECTION

6.1 Inspection Team. District shall appoint an individual or team responsible for inspections and approving installation of District Facilities.

6.2 Inspection Stages and Obligations. District shall have the right to conduct inspections of the District Facilities and construction methods pertaining thereto as deemed necessary by District. District shall provide copies of all District inspections to City within five (5) working days of an inspection. District shall be responsible for verifying that all work on District Facilities is completed in accordance with the approved plans and specifications. It is specifically understood that District's inspectors shall have the authority to enforce District's plans and specifications for District Facilities, which authority shall include the authority to require that any and all unacceptable materials, workmanship, and/or installation be replaced, repaired, or corrected by City's contractor without cost to District and/or City.

6.3 Inspection Costs. All inspection costs incurred by District will be borne by District.

6.4 Notification. The Parties agree to develop mutually acceptable procedures for notification of inspections required or deemed necessary by either Party.

#### ARTICLE VII. INSURANCE

7.1 Contractor's Insurance. City shall ensure that its contractor provides evidence of insurance coverage, as required by City, for the entire construction and, if applicable, warranty period. Such insurance shall, at a minimum, include a comprehensive general liability policy in an amount sufficient to cover all contractual obligations of the contractor under the construction contract, and no less than \$2,000,000. The policy of insurance shall name District and City, and their respective employees, officers, governing body members, and agents as additional insureds, require a waiver of subrogation, and be primary insurance. Furthermore, City shall obtain evidence that the contractor maintains worker's compensation insurance in accordance with applicable requirements of law.

7.2 Parties' Insurance. District and City shall maintain insurance as customary in connection with their respective facilities.

#### ARTICLE VIII. INDEMNITY

8.1 Indemnity. Each Party hereto agrees to defend, indemnify, protect, and hold harmless ("Indemnitor") the other Party, its agents, officers, and employees ("Indemnitees") from and against any and all claims asserted or liability established for damages or injuries to any property or person, including death or dismemberment, which arise from or are caused by the negligent acts or omissions or willful misconduct of the Indemnitor's agents, officers or employees, in performing the work or services herein and all expenses of investigation and defending against same; provided, however, that each Party's duty to defend, indemnify and hold harmless the other shall not include any claims or liability arising from the sole negligence or willful misconduct of the other Indemnitee, its agents, officers or employees. District and City agree that in the event of any joint or concurrent negligence, they will apportion any established or agreed upon liability proportionate to their respective degree of fault. For the purposes of this provision, the City's contractor shall not be considered an agent of the City or District. Claims related to the actions or omissions of the City's contractor shall be address through provisions in the

Construction Contract, which provisions shall include indemnity, defense, and hold harmless provisions from the City's contractor in favor of both the City and District.

- 8.2. Enforcement Costs. Consultant agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in Article V.
- 8.3. Survival. Consultant's obligations under Article V shall survive the termination of this Agreement.

#### ARTICLE IX. RECORDS

- 9.1 Retention of Records. City shall require contractor to maintain data and records related to this Construction Agreement for a period of not less than three (3) years following receipt of final payment.
- 9.2 Audit of Records. City shall make available and shall require that its contractor make available to District for examination at reasonable locations within the County of San Diego and at any time during normal business hours and as often as the District deems necessary, all of the data and records with respect to all matters covered by this Agreement and the Construction Agreement. City and contractor will permit the District to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this Agreement and the Construction Agreement.

#### ARTICLE X. NOTICES

- 10.1 Writing. Any demand upon or notice required or permitted to be given by one Party to the other Party shall be in writing.
- 10.2 Effective Date. Except as otherwise provided by law, any demand upon or notice required or permitted to be given by one Party to the other Party shall be effective: (i) on personal delivery, (ii) on the second business day after mailing by certified or registered U.S. Mail, return receipt requested, (iii) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express) postage or fee prepaid as appropriate, or (iv) upon successful transmission of facsimile.
- 10.3 Recipients. All demands or notices required or permitted to be given shall be sent to all of the following:

10.3.1 District:

Otay Water District  
2554 Sweetwater Springs Boulevard  
Spring Valley, California 91978  
Fax: 619-670-8920  
Attention: District Project Manager

10.3.2 City:

City of Chula Vista, Public Works – Engineering, 276  
Fourth Avenue  
Chula Vista, California 91910  
Fax: (619) 691-5171  
Attention: City Project Manager and Director of Public Works.

- 10.4 Change of Address(es). Notice of change of address shall be given in the manner set forth in this Article.

#### ARTICLE XI. MISCELLANEOUS

- 11.1 Headings. All article headings are for convenience only and shall not affect the interpretation of this Agreement.
- 11.2 Gender & Number. Whenever the context requires, the use herein of (i) the neuter gender includes the masculine and the feminine genders and (ii) the singular number includes the plural number.
- 11.3 Reference to Paragraphs. Each reference in this Agreement to a section refers, unless otherwise stated, to a section of this Agreement.
- 11.4 Incorporation of Recitals. All recitals herein are incorporated into this Agreement and are made a part hereof.
- 11.5 Covenants and Conditions. All provisions of this Agreement expressed as either covenants or conditions on the part of the City or the District, shall be deemed to be both covenants and conditions.
- 11.6 Integration. This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.
- 11.7 Severability. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.
- 11.8 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision that is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

- 11.9 Conflicts Between Terms. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.
- 11.10 Prompt Performance. Time is of the essence of each covenant and condition set forth in this Agreement.
- 11.11 Good Faith Performance. The parties shall cooperate with each other in good faith, and assist each other in the performance of the provisions of this Agreement.
- 11.12 Further Assurances. City and District each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Agreement.
- 11.13 Exhibits. Each of the following Exhibits is attached hereto and incorporated herein by this reference:
- Exhibit A
- 11.14 Controlling Law. The laws of the State of California shall govern and control the terms and conditions of this Agreement.
- 11.15 Jurisdiction, Venue, and Attorney Fees. The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.
- 11.16 Agency/Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of the District or the City as a chartered city of the State of California.
- 11.17 Third Party Relationships. Nothing in this Agreement shall create a contractual relationship between City or District and any third party; however, the City shall ensure that the District is an intended third party beneficiary of the Construction Agreement and shall share all of the rights and benefits of the City with respect to the contractor.
- 11.18 Limitation on District Remedies and Waiver of Claims. District understands that the sole purpose of this Agreement is to establish a method to reimburse the City for obligations of the District for payment of the costs of the installation and construction of District Facilities, which costs would otherwise be due directly to the City's contractor. In accordance with such purpose, the District agrees that its sole remedy for construction defects, breach by City Contractor, damage to property or persons,

including death, to district personnel or any third parties, or other claims arising out of or related to the work performed to install and/or construct District Facilities shall be against the City's contractor or its subcontractors and agents, and, hereby, waives any and all claims it may hereafter have against the City, arising out of the same, except for those claims arising out of the sole negligence or sole willful misconduct of the City.

District, hereby, expressly waives all claims against the City identified in Section 11.18:

DISTRICT REPRESENTATIVE: \_\_\_\_\_.

DATE: \_\_\_\_\_

- 11.19 Non-Assignment. Except as relates to the Construction Agreement, the City shall not assign the obligations under this Agreement.
- 11.20 Successors in Interest. This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.
- 11.21 No Waiver. No failure of either the City or the District to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.
- 11.22 Administrative Claims Requirements and Procedures. No suit or arbitration shall be brought arising out of this agreement, against the City unless a claim has first been presented in writing and filed with the City and acted upon by the City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by the City in the implementation of same. Upon request by City, District shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.
- 11.23 Dispute Resolution. If a dispute arises out of or relates to this Agreement, or the breach thereof, the Parties, following the procedures required by Section 11.22, agree to engage in good faith negotiations to attempt to resolve the dispute. In the event of any action at law or in equity, including an action for declaratory relief, between the Parties arising out of or relating to this Agreement, then the prevailing party in such action will be entitled to recover from the other party a reasonable sum as attorneys' fees and costs. The prevailing party will be determined in accordance with Civil Code Section 1717(b)(1) or any successor statute. The prevailing party will also be entitled to its reasonable attorneys' fees and costs in any post-judgment proceedings to collect

or enforce the judgment. This provision is separate and will survive the merger of this Agreement into any judgment on this Agreement.

11.24 Administration of Contract. City hereby designates Kirk Ammerman, Principal Civil Engineer, as City Project Manager for the construction of Project and as the primary contact for all matters relating to this Agreement, including the submittal of City invoices for reimbursement.

District hereby designates Ron Ripperger as District Project Manager for District Facilities and as the primary contact for all matters relating to this Agreement, including the processing, documenting, and approval of City invoices.

11.25 Signing Authority. The representative for each Party signing on behalf of such Party hereby declares that authority has been obtained to sign on behalf of the City and/or District, as applicable and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

IN WITNESS WHEREOF, City and District have executed this Agreement thereby indicating that they have read and understood same, and indicate their full and complete consent to its terms:

City of Chula Vista

Otay Water District,

Dated: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Cheryl Cox, Mayor

Attest:

\_\_\_\_\_

Donna Norris, City Clerk

Approved as to form:

Approved as to form:

\_\_\_\_\_

\_\_\_\_\_

Bart Miesfeld, City Attorney

District Counsel

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

IN WITNESS HEREOF, District and City have executed this Reimbursement Agreement to be effective as of the day and year first above written.

CITY OF CHULA VISTA

By: \_\_\_\_\_

Cheryl Cox, Mayor

Attest:

\_\_\_\_\_  
City Clerk

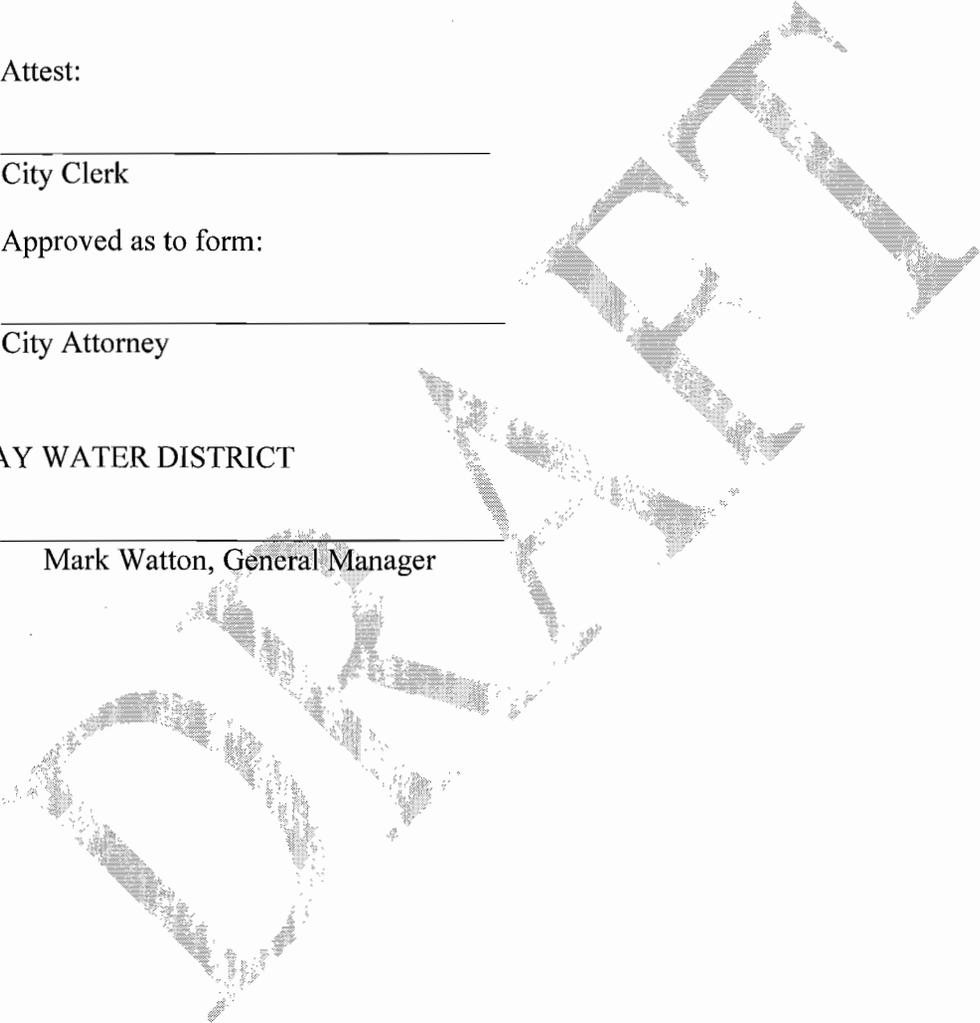
Approved as to form:

\_\_\_\_\_  
City Attorney

OTAY WATER DISTRICT

By: \_\_\_\_\_

Mark Watton, General Manager





## ATTACHMENT C

<b>SUBJECT/PROJECT:</b> R2094-001103 P2496-001103	Authorization to Execute an Agreement Between the City of Chula Vista and Otay Water District for the Otay Lakes Road 12-Inch Recycled Water Pipeline Project
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Otay Water District

Date Updated: January 11, 2010

<i>Budget</i>	<i>Committed</i>	<i>Expenditures</i>	<i>Outstanding Commitment &amp; Forecast</i>	<i>Projected Final Cost</i>	<i>Vendor/Comments</i>
2,000,000					
<b>Planning</b>					
Labor	31,090	31,090		31,090	
Professional Legal Fees	1,560	1,560		1,560	GARCIA CALDERON & RUIZ LLP
<b>Total Planning</b>	32,650	32,650	-	32,650	
<b>Design</b>					
Labor	8,050	8,050		8,050	
Consultant Contracts	11,952	11,952	-	11,952	LEE & RO INC
<b>Total Design</b>	20,002	20,002		20,002	
<b>Construction</b>					
Labor	50,000	92	49,908	50,000	Inspection Costs
Consultant Contracts	62,233	16,554	45,680	62,233	LEE & RO INC
Construction Contracts	1,040,000		1,040,000	1,040,000	City of Chula Vista
Accept/close-out	5,000		5,000	5,000	Staff Labor
<b>Total Construction</b>	1,157,233	16,645	1,140,588	1,157,233	
<b>Aecom-Agave &amp; Seguaro</b>					
Labor	92	92		92	
Consultant Contracts	3,342	3,342	-	3,342	AECOM USA INC
<b>Total Aecom-Agave &amp; Seguaro</b>	3,434	3,434	-	3,434	
<b>Grand Total</b>	1,213,318	72,730	1,140,588	1,213,318	

QA/QC Approved:

Name: Lisa Colburn-Boyd

Date: 01-14-10



## ATTACHMENT D

<b>SUBJECT/PROJECT:</b> R2094-001103 P2496-001103	Authorization to Execute an Agreement Between the City of Chula Vista and Otay Water District for the Otay Lakes Road 12-Inch Recycled Water Pipeline Project
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Otay Water District

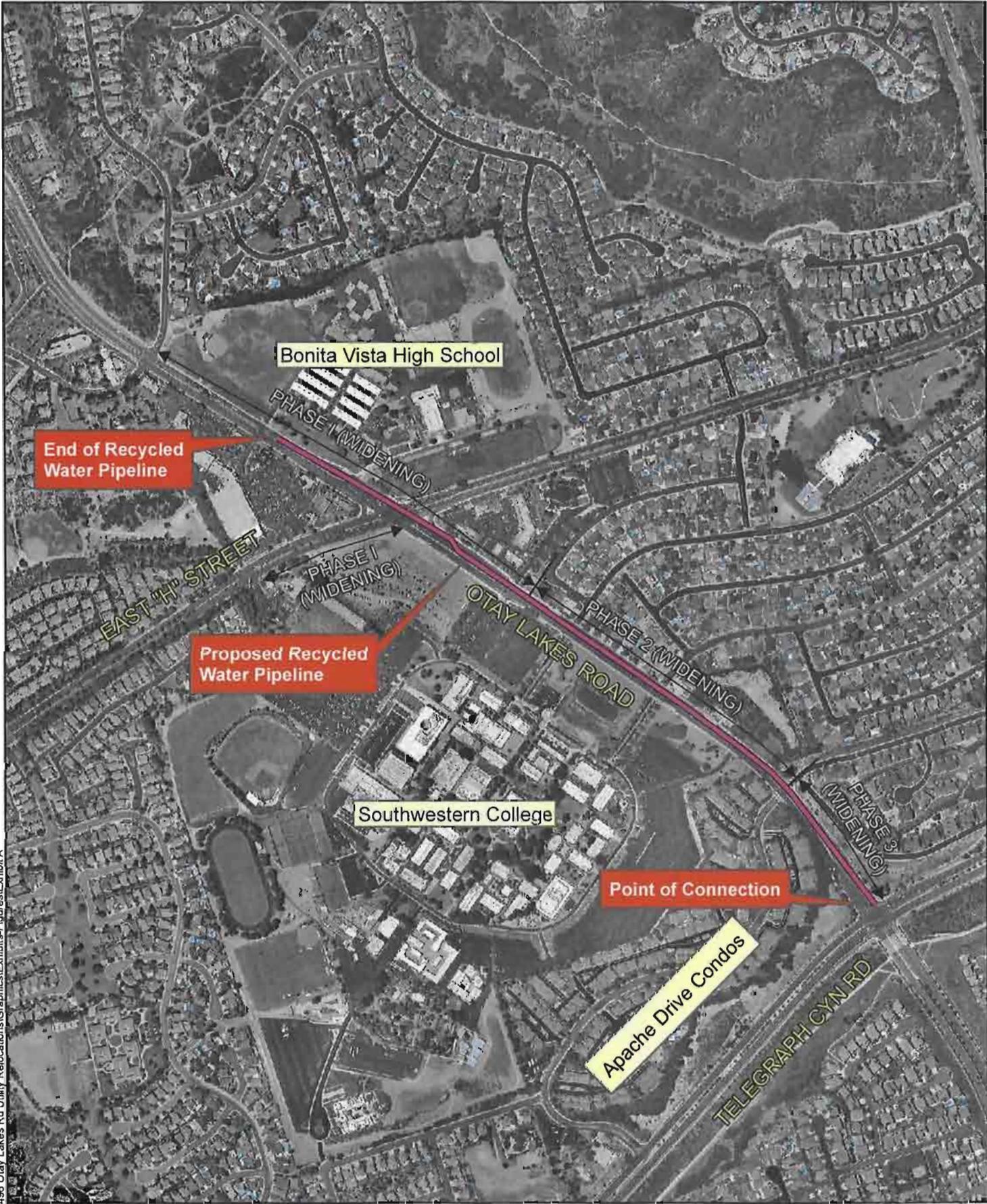
Date Updated: January 14, 2010

<i>Budget</i>	<i>Committed</i>	<i>Expenditures</i>	<i>Outstanding Commitment &amp; Forecast</i>	<i>Projected Final Cost</i>	<i>Vendor/Comments</i>
<b>100,000</b>					
<b>Planning</b>					
Labor	1,560	1,560		1,560	
Professional Legal Fees	229	229	-	229	GARCIA CALDERON & RUIZ LLP
<b>Total Planning</b>	<b>1,789</b>	<b>1,789</b>	<b>-</b>	<b>1,789</b>	
<b>Design</b>					
Labor	11,390	11,390		11,390	
Consultant Contracts	7,009	2,303	4,706	7,009	LEE & RO INC
<b>Total Design</b>	<b>18,399</b>	<b>13,693</b>	<b>4,706</b>	<b>18,399</b>	
<b>Construction</b>					
Labor	19,500	250	19,250	19,500	
Consultant Contracts	200	200	-	200	LEE & RO INC
Construction Contract	60,000		60,000	60,000	CITY OF CHULA VISTA
<b>Total Construction</b>	<b>79,700</b>	<b>450</b>	<b>79,250</b>	<b>79,700</b>	
<b>Grand Total</b>	<b>99,888</b>	<b>15,931</b>	<b>83,956</b>	<b>99,887</b>	

QA/QC Approved:

Name: Lisa Calderon-Boyd

Date: 01-14-10



P:\WORKING\CIP P2496 Otay Lakes Rd Utility Relocations\Graphics\Exhibits-Figures\Exhibit A



CIP P2496  
CIP R2094

**OTAY WATER DISTRICT**  
Otay Lakes Road Recycled Water Pipeline  
and Utility Relocation Project



**EXHIBIT A**