

RESOLUTION NO. 2009-3

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN GORGONIO PASS WATER AGENCY ESTABLISHING WHOLESALE WATER RATES

WHEREAS, the SAN GORGONIO PASS WATER AGENCY (Agency) is a State Water Project (SWP) Contractor authorized to acquire or contract to acquire waterworks, waters, and/or water rights, including, but not limited to, water from the State of California from the SWP, and to provide, sell, and deliver that water under the control of the Agency to cities and other territory, persons, corporations or private agencies within the Agency for use within the service area of said Agency. (Agency Law, Water Code Appendix §101-15, hereinafter referred to as the "Agency Act".)

WHEREAS, The San Gorgonio Pass Water Agency's mission is "to import supplemental water and to protect and enhance local water supplies for use by present and future water users and to sell imported water to local water districts within the service area of the San Gorgonio Pass Water Agency. The San Gorgonio Pass Water Agency promotes water conservation, education and efficient use of our water resources. The Agency's goal is to maximize the quality, quantity and reliability of available water in the most financially responsible and environmentally sensitive manner."

WHEREAS, the Board of Directors (Board) is authorized to fix the rates at which water should be sold and to establish different rates for different classes or conditions of service. (Agency Act, §101-16.) So far as practicable, the Board shall fix a rate or rates for the Agency's water that will result in revenues, which will pay the operating expenses of the agency, provide for repairs and depreciation of works, provide a reasonable surplus for improvements, extensions, and enlargements, pay the interest on any bonded debt, and provide a sinking or other fund for the payment of the principal of such debt as it may become due. (Agency Act, §101-25; Draft Water Rate Study, February 2, 2009, (hereinafter, "Study"), p. 2.)

WHEREAS, the Agency entered into a contract with the Department of Water Resources (DWR) in 1962 to bring supplemental water to the Agency service area from the State Water Project ("SWP"). The Agency's current SWP Table A Amount is 17,300 acre-feet per year (AFY). (Study, p. 4.)

WHEREAS, the Legislature allocated water from the SWP to the Agency, intending that highest priority be given to eliminating groundwater overdraft conditions within any agency or district receiving the water. (Agency Act, §101-15.5.)

WHEREAS, in 2004, the Beaumont Storage Unit (BSU), one of the major groundwater basins in the Agency service area, was determined by the Riverside County Superior Court to be in overdraft. (Study, p. 4.)

WHEREAS, despite having a SWP Table A Amount of 17,300 AFY, in 2005, DWR projected the Agency's long-term reliability of water supply delivery from the SWP

to be 77 percent of its 17,300 AFY Table A Amount, which equates to less than 13,500 AFY. Subsequent changes in climate conditions, and shortages in rainfall and snowmelt have combined with cutbacks in SWP water deliveries due to environmental court challenges and the ecological crises in the Delta to further reduce the current long-term delivery reliability of the Agency's SWP water supply to an even greater amount.

WHEREAS, SGPWA Ordinance No. 8 mandates that the Agency, at a minimum, shall establish and charge rates for: "The delivery of SGPWA Water sufficient to cover SGPWA's variable costs (including off-aqueduct costs) for delivery of SGPWA Water, internal SGPWA costs and other amounts as determined by the SGPWA Board of Directors reasonably related to the cost of delivery." Cost of delivery means the costs related to securing water commensurate with the Agency's SWP Table A Amount, currently set at 17,300 AFY, and any other sources of water that the Agency Board deems necessary and prudent. Cost of delivery includes operations, administrative overhead, SBVMWD pass-through, dry year transfer costs, rate stabilization surplus reserves, new water purchase surplus reserve contributions, and DWR imported water purchase.

WHEREAS, the existing revenues from water rates are insufficient to cover all of the related costs of delivery, including, meeting the needs of the Agency to purchase new water, funding Agency operations, and establishing a surplus for repairs, improvements, extensions, and enlargements, which will benefit all existing users within the Agency's service area.

WHEREAS, the Agency has directed the preparation of a water rate study, which sets forth the costs of providing service and delivery and the anticipated sources of revenues available to cover those costs, and the Agency has distributed the draft water rate study to the retail water purveyors within the Agency's service area.

WHEREAS, the California Environmental Quality Act ("CEQA") is set forth in Sections 21000 to 21178 of the Public Resources Code.

WHEREAS, CEQA sets forth certain types of activities that are not subject to review under CEQA.

WHEREAS, Section 21080(b)(8) of the Public Resources Code states that "the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds are for the purpose of (A) meeting operating expenses, including employee wage rates and fringe benefits, (B) purchasing or leasing supplies, equipment, or materials, (C) meeting financial reserve needs and requirements, (D) obtaining funds for capital projects necessary to maintain service within existing service areas, or (E) obtaining funds necessary to maintain those intracity transfers as are authorized by city charter" is not subject to CEQA.

WHEREAS, Section 15273(a) of the CEQA State Guidelines states that "CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds

are for the purpose of: (1) Meeting operating expenses, including employee wage rates and fringe benefits, (2) Purchasing or leasing supplies, equipment, or materials, (3) Meeting financial reserve needs and requirements, (4) Obtaining funds for capital projects, necessary to maintain service within existing service areas, or (5) Obtaining funds necessary to maintain such intra-city transfers as are authorized by city charter."

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the San Geronio Pass Water Agency that it hereby makes the following findings and determinations:

- 1) The Agency's Board has carefully reviewed and considered the Draft Water Rate Study dated February 2, 2009 ("Study"), the Kennedy/Jenks Memorandum dated July 16, 2008, on the probable cost of water transfers ("July 16th Memorandum"), and the Kennedy/Jenks Consultants Memorandum dated January 2, 2009, on water reliability ("January 2nd Memorandum"); and has considered the public and Board comments, and the oral and written presentation by the Agency's staff and consultants made at the February 2, 2009, public Board meeting, as well as any written public comments.
- 2) The Board adopts the Findings, attached as Exhibit "A," determines that the record for the establishment of the wholesale water rates contains substantial evidence to support the Findings; and further finds that the conclusions reached in the Study are supported by substantial evidence.
- 3) The Board further determines that the conclusions contained in the July 16th Memorandum and in the January 2nd Memorandum are supported by substantial evidence, and adopts the conclusions in each memorandum, including the recommendation to utilize 63 percent as the projected average annual SWP Table A delivery reliability. This percentage equates to less than 11,000 AFY of the Agency's current SWP Table A Amount.
- 4) Based upon substantial evidence before the Board, it is determined that the Agency will need to acquire at least 10,000 AFY of additional SWP supplies to repair annual SWP delivery reliability that the agency has already lost to date, and it is further determined that the costs associated with the acquisition of 10,000 AFY of additional water supplies through the current expiration date of the Agency's SWP water supply contract with DWR is approximately \$40 million depending upon a variety of market forces.
- 5) Based upon substantial evidence presented to the Board, it is determined that it is in the best interest of the retail water purveyors and the residents within the Agency's service area to have long term reliability of wholesale water and to maintain a stable water rate. Based upon substantial evidence, it is further determined that the set of water rates the Board is enacting by this Resolution will be sufficient to fund Agency operations, to purchase additional water to repair the lost reliability of SWP water, to replenish groundwater basins within


- the Agency's service area, and to obtain a reasonable surplus for repairs, improvements, extensions, and enlargements of the Agency's existing system.
- 6) The wholesale water rate applicable to all water sold by the Agency to retail water purveyors within the Agency's jurisdiction downstream of Cherry Valley Pump Station (CVPS) shall be a uniform rate of \$277 per acre-foot, as provided in Agency Resolution # 2008-6, adopted April 21, 2008, which shall become effective immediately.
 - 7) In order to offset expected energy cost increases from DWR and low expected sales, the wholesale water rates will increase for Fiscal Year 2009-2010 from \$277 per acre-foot to a uniform rate per acre-foot charged to retail purveyors downstream of CVPS in the amount of \$317 per acre-foot effective July 1, 2009.
 - 8) The wholesale water rate applicable to all water sold by the Agency to retail water purveyors within the Agency's jurisdiction upstream of CVPS will be \$8 less than the rates set for water sold to retail water purveyors downstream of Cherry Valley Pump Station.
 - 9) New water purchased by the Agency using the revenues from water rates paid by areas overlying overdrafted groundwater basins will be given pro-rata priority to purchase new water according to their contribution into the surplus reserve for the purchase of new water. If after all purveyors with new water priorities have been given an opportunity to exercise their priorities, the Agency will offer any remaining new water for sale to any other purveyor within the Agency's service area. The Agency finds that this new water priority policy is consistent with the policy set forth in Agency Ordinance No. 8 (i.e. "SGPWA sale of water and dedication of Return Flows resulting from use of SGPWA water to eliminate overdraft in SGPWA groundwater basins provides the highest priority that is reasonably available to eliminate overdraft conditions.").
 - 10) As more fully set forth in the Findings, attached as Exhibit "A", the Board is adopting the wholesale water rates in order to meet the Agency's operating expenses, purchase materials (water) and meet the Agency's reserve needs. Therefore, the Board finds and determines based upon substantial evidence that the establishment of the wholesale water rates are exempt from CEQA, pursuant to Section 21080(b)(8) of the Public Resources Code and Section 15273(a) of the State CEQA Guidelines because the establishment of the water rates is for the purpose of meeting operating expenses, purchasing materials (water) and meeting the Agency's reserve needs.
 - 11) The Agency only sells water to retail water purveyors and does not sell water to landowners; therefore, the wholesale water rates adopted by this Resolution do not involve a property-related service, and the requirements of Proposition 218 and Government Code section 53750, et. seq., do not apply.

- 12) This Resolution shall become effective immediately ("effective date"), and the wholesale water rates provided herein shall apply to all water delivered from the effective date and thereafter until such time as the rates are changed by action of the Board. It is the intent of the Board that the wholesale water rates established herein shall continue for a minimum of five (5) years from and after the effective date (2008-2009 to 2012-2013).
- 13) If any section, subsection, paragraph, sentence, clause, or phrase of this Resolution or its application to any person or entity is held or decided to be invalid, inoperative or unenforceable for any reason by any court of competent jurisdiction, such reason shall not have the effect of rendering any other provision(s) invalid, inoperative or unenforceable. Provided, however, that if the water rate(s) established by this Resolution is declared invalid, or is otherwise struck down, the water rate in effect prior to the effective date of this Resolution shall be restored, revived, and brought to full force and effect.
- 14) The Secretary of the Agency is hereby directed to mail copies of this Resolution to every retail water purveyor that purchases water from the Agency.

The foregoing resolution was duly passed at a regular meeting of the Board of Directors of the San Gorgonio Pass Water Agency on February 17, 2009 by the following roll call vote:

Ayes: Haring, Voigt, Morris, Workman, Dysart, Dickson and Jeter
Noes: None
Abstain: None
Absent: None

I certify that this is a true, full and correct copy Resolution 2009-03, approved by the Board of Directors of the San Gorgonio Pass Water Agency at its meeting held on February 17, 2009.



Jeffrey W. Davis
Secretary of the Board