

MINUTES REGULAR BOARD MEETING Wednesday, June 9, 2021, 12:00 P.M.

<u>Board Room, UWCD Headquarters</u> 1701 N. Lombard Street, Oxnard CA 93030 Board of Directors Michael W. Mobley, President Bruce E. Dandy, Vice President Sheldon G. Berger, Secretary/Treasurer Mohammed A. Hasan Lynn E. Maulhardt Edwin T. McFadden III Daniel C. Naumann

General Manager Mauricio E. Guardado, Jr.

Legal Counsel David D. Boyer

Meeting was held in person at UWCD's Boardroom and virtually via WebEx

#### **Board Members Present**

Michael W. Mobley, President Bruce E. Dandy, Vice President Sheldon G. Berger, Secretary/Treasurer Mohammed A. Hasan Lynn E. Maulhardt Edwin T. McFadden, III Daniel C. Naumann

#### **Staff Present**

Mauricio E. Guardado, Jr., general manager David D. Boyer, legal counsel Dr. Maryam Bral, chief engineer John Carman, operations and maintenance program supervisor (virtual participation) Brian Collins, chief operations officer Dan Detmer, supervising hydrogeologist Anthony Emmert, assistant general manager Erin Gorospe, controller Dr. Zachary Hanson, hydrogeologist Joseph Jereb, chief financial officer Kathleen Kuepper, hydrogeologist John Lindquist, senior hydrogeologist Craig Morgan, senior engineer Josh Perez, human resources manager Zachary Plummer, IT administrator Linda Purpus, environmental services manager Robert Richardson, senior engineer Kris Sofley, executive assistant/clerk of the board Dr. Bram Sercu, senior hydrologist Clayton Strahan, chief park ranger Dr. Jason Sun, senior hydrogeologist/modeler Kurt White, park ranger

#### **Public Present**

Frank Bromenschenkel, Frank B & Associates Nancy Broschart, City of Oxnard Jason Canger Sarah Fleury

John Farnkoph, HF&H Autumn Glaser Burt Handy Miles Hogan, City of San Buenavntura Pat Kelley Abraham Maldonado, City of Oxnard Rick Simonson, HF&H Jennifer Tribo, Ventura Water Brian Wheeler, AALRR

#### 1. FIRST OPEN SESSION 12:02 P.M.

President Mobley called the meeting to order at 12:02p.m.

#### 1.1 Public Comments Information Item

President Mobley asked if there were any public comments. None were offered.

President Mobley asked District's Legal Counsel David Boyer to announce what the Board would be discussing in Executive (Closed) Session today.

#### 1.2 EXECUTIVE (CLOSED) SESSION 12:05 P.M.

Mr. Boyer stated that the Board, pursuant to Government Code Section 54956.9(d)(2), would discuss one case of anticipated litigation, and, pursuant to Government Code Section 54956.9(d)(1), would be discussing five cases of existing litigation.

President Mobley adjourned the meeting to Executive (Closed) Session at 12:05p.m.

#### 2. SECOND OPEN SESSION AND CALL TO ORDER 1:00 P.M.

President Mobley called the Second Open Session of the UWCD Board of Directors meeting to order at 1:00p.m. He asked Director Berger to lead the group in reciting the Pledge of Allegiance.

#### 2.1 Pledge of Allegiance

Director Berger led the group in reciting the Pledge of Allegiance.

## 2.2 Public Comment

#### **Information Item**

President Mobley asked if there were any public comments. None were offered.

# 2.3 Approval of Agenda Motion

President Mobley asked if there were any changes to the agenda. General Manager Mauricio Guardado replied that the agenda was unchanged. President Mobley asked for a motion.

Page 3

Motion to approve the agenda, Director Berger; Second, Director Dandy. Voice vote: all in favor (Berger, Dandy, Hasan, Maulhardt, McFadden, Naumann, Mobley); any opposed (none). Motion carries unanimously 7/0.

#### 2.4 Oral Report Regarding Executive (Closed) Session Information Item

Mr. Boyer reported the Board took no action in Executive (Closed) Session that would be reportable under the Brown Act.

#### 2.5 Board Communication Information Item

President Mobley explained that Director Berger has suggested to save time and efficiencies, Board members submit their completed monthly per diem reports for the previous month's activities, which will be included as attachments to item 2.5 which will be renamed Board Activities Report beginning with the July 2021 UWCD Board of Director Meeting. He added that there was a memo from the Clerk of the Board in the Directors' packets explaining the change in greater detail.

President Mobley then asked Director Maulhardt to report on his activities from the previous month. Director Maulhardt stated he had nothing to report.

Director Hasan reported his participation at the AWA Ventura County Board meeting and Water Issues Committee meeting. He also attended a Santa Paula Chamber of Commerce event honoring his friend Santa Paula Times owner, editor and publisher Peggy Kelly as Citizen of the Year. He added that he met Brian Collins, who serves on the Chamber Board, and Brian's wife at the event.

Director Dandy reported his participation in the ACWA Region 5 Update on May 6, the UWCD Finance Committee meeting on May 11, the UWCD Board meeting on May 12, the ACWA Virtual Spring Conference on May 13, AWAVC Water Issues Committee meeting on May 18, CSDA on May 19, and the AWAVC WaterWise event on May 20.

Director McFadden reported his participation in the UWCD Water Resources Committee meeting and added that the Fillmore and Piru Basins GSA is meeting about every two weeks to discuss and advance the Groundwater Sustainability Plans for the GSA.

Director Berger reported his participation in the UWCD Finance Committee on June 8 and added that he has participated in several AWA VC meetings.

Director Naumann reported his participation in the UWCD Engineering and Operations Committee on June 3, numerous Fox Canyon GMA meetings, the ACWA Region 5 update, AWA WaterWise event, and has been doing outreach regarding water supply.

Page 4

President Mobley reported his participation in the UWCD Board prep meeting with Mr. Guardado on June 8, a prep meeting on May 24 with UWCD GM and staff for the Fox Canyon GMA meeting on May 26, which he also attended. He Also attended a Fox Canyon GMA meeting on May 14, and the Fox Canyon Operations Committee meeting and will also be attending the Mound Basin GSA meeting on June 17.

#### 2.6 General Manager's Report Information Item

General Manager Mauricio Guardado stated that he had no additional items to report. President Mobley asked if the Board had any questions or comment for Mr. Guardado. None were offered.

# 2.7 Consider Cancelation of August Board Meeting <u>Motion</u>

President Mobley stated that, as has been the District's tradition, the Board shall consider canceling its regular August 2021 Board meeting, and asked if anyone would like to make a motion.

Motion to cancel the UWCD Board of Directors' August 2021 meeting, Director Maulhardt; Second, Director Hasan. Roll call vote: seven ayes (Berger, Dandy, Hasan, Maulhardt, McFadden, Naumann, Mobley); none opposed. Motion carries unanimously 7.0.

- 3. CONSENT CALENDAR: All matters listed under the Consent Calendar are considered routine by the Board and will be enacted by one motion. There will be no separate discussion of these items unless a Board member pulls an item from the Calendar. Pulled items will be discussed and acted on separately by the Board. Members of the public who want to comment on a Consent Calendar item should do so under Public Comments. (ROLL CALL VOTE REQUIRED)
  - A. Approval of Minutes
     <u>Motion</u>
     Approval of the Minutes for the Regular Board Meeting of May 12, 2021.
  - B. Groundwater Basin Status Reports <u>Information Item</u> Receive and file Monthly Hydrologic Conditions Report for the District.
  - C. Monthly Investment Report Information Item

Receive and file report on the District's investments and the availability or restriction of these funds. All investments are in compliance with the District's investment policy, which is reviewed and approved annually by the Board.

President Mobley asked if anyone had any questions or comments regarding the Consent Calendar items. None were offered. President Mobley asked if he could get a motion.

Motion to approve the Consent Calendar, Director Naumann; Second, Director McFadden. Roll call vote: seven ayes (Berger, Dandy, Hasan, Maulhardt, McFadden, Naumann, Mobley); none opposed. Motion carries unanimously 7.0.

#### 4. MOTION ITEMS (By Department)

#### Water Resources Department – Dr. Maryam Bral

#### PUBLIC HEARING

4.1 Conclusion of Annual Groundwater Hearing, Acceptance of Public Comment and Setting of 2021-22 Zones and Extraction Charges <u>Motion</u>

In accordance with Part 9 of Division 21 of the California Water Code (Section 75500 <u>et</u> seq.), the Board annually conducts a public hearing to consider the conditions of groundwater resources within the District. An "Annual Investigation and Report of Groundwater Conditions" was submitted to the Board on March 30, 2021 and has been available for public review and comment. This hearing was opened on April 14, 2021 and continued until May 12, 2021, at which time it was again continued to June 9, 2021. During the hearing, the Board received information from District staff and consultant(s) HF&H and Stratecon in support of the establishment of zone(s) within the District and levying of groundwater extraction charges within such zone(s). Public comment was also accepted.

The public hearing was transcribed by a certified court reporter and that transcript will be made part of the administrative record for the hearing,

President Mobley officially closed the Public Hearing portion of the meeting.

#### Resolution 2021-11

Making Findings and Determinations from the Evidence Submitted Concerning the Groundwater Conditions of United Water Conservation District.

#### <u>Motion</u>

Motion to adopt Resolution 2021-11 Making Findings and Determinations from the Evidence Submitted Concerning the Groundwater Conditions of United Water Conservation District, Director Naumann; Second, Director Hasan. Roll call vote: seven ayes (Berger, Dandy, Hasan, Maulhardt, McFadden, Naumann, Mobley); none opposed. Motion carries unanimously 7/0.

#### Resolution 2021-12

Making Additional Findings and Determinations from the Evidence Submitted Concerning Groundwater Conditions of United Water Conservation District, Determining and Establishing Groundwater Extraction Charge Zones and Levying, Assessing and Fixing Groundwater Extraction Charges against All Persons Operating Groundwater Producing Facilities within Such Zones for the 2021-22 Water Year

#### <u>Motion</u>

Motion to adopt Resolution 2021-12 Making Additional Finding and Determinations from the Evidence Submitted Concerning Groundwater Conditions of United Water Conservation District, Determining and Establishing Groundwater Extraction Charge Zones and Levying, Assessing and Fixing Groundwater Extraction Charges against All Persons Operating Groundwater Producing Facilities within Such Zones for the 2021-22 Water Year, Director Maulhardt; Second, Director Dandy. Roll call vote: seven ayes (Berger, Dandy, Hasan, Maulhardt, McFadden, Naumann, Mobley); none opposed. Motion carries unanimously 7/0.

#### Administration Services – Joseph Jereb and Josh Perez

## 4.2 <u>Resolution 2021-13</u> Adopting the REVISED Proposed District Budget Plan, Financial Policies, Overhead Allocation Method, Staffing Levels and Salary Schedules for Fiscal Year 2021-22 and Appropriation Carryovers for Fiscal Year 2020-21

#### <u>Motion</u>

President Mobley asked if there were any comments from the public. None were offered. He then asked if there were any questions or comments from the Board regarding Resolution 2021-13. None were offered.

Motion to adopt <u>Resolution 2021-13</u>, adopting the Revised proposed District Budget Plan, Fiscal Policies, Overhead Allocation Method, Staffing Levels and Salary Schedules for Fiscal Year 2021-22 and Appropriation Carryovers for Fiscal Year 2021-22, Director Maulhardt; Second, Director Naumann. Roll call vote: seven ayes (Berger, Dandy, Hasan, Maulhardt, McFadden, Naumann, Mobley); none opposed. Motion carries unanimously 7/0.

#### 4.3 <u>Resolution 2021-14</u> A Resolution of the Board of Directors of UWCD Requesting the Auditor-Controller to Compute and Affix a Tax Rate for the Fiscal Period 2021-22 Sufficient to Satisfy the State Water Project Charges <u>Motion</u>

President Mobley asked if there were any comments from the public. None were offered. He then asked if there were any questions or comments from the Board regarding Resolution 2021-14. None were offered.

Motion to adopt <u>Resolution 2021-14</u>, requesting the County Auditor-Controller to compute and affix a tax rate for FY 2021-22 to provide approximately \$2,041,000 in property tax revenue sufficient to satisfy a portion of the voter approved debt for

State Water Project costs, Director Naumann; Second, Director McFadden. Roll call vote: seven ayes (Berger, Dandy, Hasan, Maulhardt, McFadden, Naumann, Mobley); none opposed. Motion carries unanimously 7/0.

### 4.4 <u>Resolution 2021-01</u> Authorizing the General Manager to Execute a Sub-Grant Agreement with Calleguas Municipal Water District for the State of California Department of Water Resources Integrated Regional Water Management Implementation Grant Awarded to the Watershed Coalition of Ventura County

#### <u>Motion</u>

President Mobley asked if there were any comments from the public. None were offered. He then asked if there were any questions or comments from the Board regarding Resolution 2021-01. Director Berger said the Resolution was reviewed by the Finance Committee, and committee members agreed to recommend the adoption of the Resolution which includes a substantial grant award for the District's Iron and Manganese Treatment project.

Motion to adopt <u>Resolution 2021-01</u>, authorizing the General Manager to execute a Sub-Grant Agreement with the Calleguas Municipal Water District for the State of California Department of Water Resources Integrated Regional Water Management Implementation (IRWMI) grant awarded to the Watersheds Coalition of Ventura County, Director Maulhardt; Second, Director Berger. Roll call vote: seven ayes (Berger, Dandy, Hasan, Maulhardt, McFadden, Naumann, Mobley); none opposed. Motion carries unanimously 7/0.

#### Water Resources Department – Dr. Maryam Bral

#### 4.5 <u>Resolution 2021-05</u> Adopting the 2020 Urban Water Management Plan and the Water Shortage Contingency Plan for the Oxnard Hueneme Pipeline <u>Motion</u>

President Mobley reminded the Board that a Public Hearing regarding the proposed 2020 Urban Water Management Plan and the Water Shortage Contingency Plan for the Oxnard Hueneme (OH) Pipeline System was held during the May 12, 2021 UWCD Board of Directors meeting. Based on public comments received during the review period and Public Hearing, the Board is now considering approval of <u>Resolution 2021-05</u>, formally adopting the 2020 Urban Water Management Plan and the Water Shortage Contingency Plan for the Oxnard Hueneme (OH) Pipeline system.

President Mobley asked if there were any public comments. None were offered. Then he asked if the Board had any questions or comments regarding Resolution 2021-05. None were offered

Motion to adopt Resolution 2021-05, adopting the 2020 Urban Water Management Plan and the Water Shortage Contingency Plan for the Oxnard Hueneme Pipeline, Director Naumann; Second, Director Berger. Roll call vote: seven ayes (Berger, Dandy, Hasan, Maulhardt, McFadden, Naumann, Mobley); none opposed. Motion carries unanimously 7/0.

#### Park and Recreation Department – Clayton Strahan

#### 4.6 <u>Resolution 2021-15</u> Authorizing Workers' Compensation Benefits for Volunteer Workers

#### <u>Motion</u>

Chief Ranger Clayton Strahan addressed the Board regarding its adoption of <u>Resolution 2021-15</u>, explaining that while it is not mandated, the District's insurance coverage provider and requested providing volunteer workers at the Lake Piru Recreation Area or to other volunteer workers for other departments within the District's service area with Workman's Compensation insurance coverage as it reduced the District's liability issues.

Director Maulhardt stated that the Resolution was considered by the Finance Committee and the committee members agreed to recommend the Board adopt the Resolution. President Mobley asked if there were any other comments or if the Board had any questions or comments. None were offered.

Motion to adopt Resolution 2021-15, authorizing Workers' Compensation coverage for all volunteer personnel serving in a non-paid capacity at the Lake Piru Recreation Area and or in other capacities at the District while providing in-kind services to the District, Director Maulhardt; Second, Director McFadden. Roll call vote: seven ayes (Berger, Dandy, Hasan, Maulhardt, McFadden, Naumann, Mobley); none opposed. Motion carries unanimously 7/0.

#### 5. PRESENTATIONS AND MONTHLY STAFF REPORTS (By Department)

#### **Operations and Maintenance Department** – Brian Collins

#### 5.1 Monthly Operation and Maintenance Department Report <u>Information Item</u>

Brian Collins made a presentation to the Board regarding the monthly operations and maintenance of District facilities (see attached slides).

#### Park and Recreation Department – Clayton Strahan

#### 5.2 Monthly Park and Recreation Department Report Information Item

Chief Ranger Strahan made a presentation to the Board regarding updates relative to the Lake Piru Recreation Area (see attached slides). Director Maulhardt asked if the District were tracking the number of hits on the new website and/or bookings. Chief Strahan said that the reservation system tracks all bookings and that the District is working with CV Strategies regarding tracking website data and other social media platforms and will have those numbers for the Board the next time Park and Recreation reports out to the Board. He also reported on the most current revenue totals for visitations, camping, and ancillary revenue from WiFi, the sale of firewood, ice and vending machines, et cetera.

Chief Ranger Strahan also reported that he had participated in a pod cast for Mobile/RV enthusiast with a reach of some 100,000 listeners, which went very

well. He also thanked the O&M team for their support in clearing the overflow area for additional parking and camping, brush clearance and for helping to spread the sand, creating a nice beach along the water's edge.

#### Water Resources Department – Dr. Maryam Bral

#### 5.3 Monthly Water Resources Department Report Information Item

The Water Resources team made a multi-part presentation to the Board (see attached slides) addressing modeling projects to help the Oxnard and PV basins move toward sustainability (Dr. Bram Sercu); then an update on groundwater modeling demonstrating the various impacts on seawater intrusion (John Lindquist), followed by an update on the new model being used for the District's Coastal Brackish Groundwater Extraction project with the U.S. Navy (Dr. Jason Sun). Then an overview of the monthly Water Resources Department activities (Dan Detmer) was presented.

#### 5.4 Update on Groundwater Sustainability Agencies (GSAs) and Sustainable Groundwater Management Act (SGMA) Information Item

Mr. Detmer provided a verbal update on the monthly activities of the three local Groundwater Sustainability Agencies (Mound Basin GSA, Fillmore and Piru Basins GSA, and the Fox Canyon Groundwater Management Agency), for which the District serves as a member director, and Santa Paula basin (adjudicated) Technical Advisory Committee (including formation of groundwater sustainability agencies in the District's basins, stakeholder and basin user groups, joint powers or governance agreements, development of water markets, and potential basin boundary changes).

#### Administrative Services Department – Joseph Jereb and Josh Perez

#### 5.5 Monthly Administrative Services Department Report – Anthony Emmert <u>Information Item</u>

Summary report on Administration Department activities was received by the Board. President Mobley asked if there were any questions or comments. None were offered.

#### Engineering Department – Dr. Maryam Bral

#### 5.6 Monthly Engineering Department Report <u>Information Item</u>

Summary report on various activities of the Engineering Department were received by the Board. President Mobley asked if there were any questions or comments. None were offered.

## **Environmental Planning and Conservation Department** – Linda Purpus

#### 5.7 Monthly Environmental Planning and Conservation Department Report <u>Information Item</u>

Summary report on environmental and regulatory issues of note to the District was received by the Board. President Mobley asked if there were any questions or comments. None were offered.

#### 6. BOARD OF DIRECTORS READING FILE

#### 7. **FUTURE AGENDA ITEMS**

President Mobley asked if any of the Board members had any future agenda items they would like considered. None were offered.

#### 8. ADJOURNMENT 3:53p.m.

President Mobley adjourned the meeting at 3:53p.m. to the Regular Board Meeting scheduled for Wednesday, July 14, 2021, or call of the President.

I certify that the above is a true and correct copy of the minutes of the UWCD Board of Directors meeting of June 9, 2021.

**ATTEST:** 

Sheldon G. Berger, Secretary/Treasurer

ATTEST:

Kris Sofley, Clerk of the Board





June 9, 2021

#### VIA E-MAIL AND U.S. MAIL

United Water Conservation District Attention: Joseph Jereb, Chief Financial Officer 1701 N. Lombard Street Oxnard, CA 93030

#### Re: Opposition to Proposed Zone A and Zone B Groundwater Extraction Charges on the City of San Buenaventura for Fiscal Year 2021–2022

Dear Mr. Jereb:

On behalf of the City of San Buenaventura (City) and the 113,500 people and 32,000 water customers it serves, I write to oppose the United Water Conservation District's proposed groundwater extraction charges for fiscal year 2021–2022. The City opposes the proposed charges in Zones A and B.

This letter constitutes an objection to the proposed charges in Zones A and B for the wells which the City operates, shown below:

	Well Name	<u>Well No.</u>	<u>Zone(s)</u>
1.	Victoria Well #2	02N22W08F01S	A
2.	Mound Well #1	02N22W08G01S	А
3.	Saticoy #2	02N22W02K09S	А
4.	Saticoy #3	02N22W02H02S	А
5.	Saticoy CC #1	02N21W08L01S	A & B
6.	Saticoy CC #2	02N21W08L02S	A & B
7.	Saticoy CC #3	02N21W08L03S	A & B
8.	Olivas Park	02N23W24G01S	А
9.	Golf Course #6	02N22W20K01S	A & B
10.	Golf Course #3	02N22W20L02S	A & B
11.	Golf Course #5	02N22W20L03S	A & B
12.	Golf Course #2	02N22W20Q01S	A & B
13.	Golf Course #7	02N22W20J02S	A & B

501 Poli Street • P.O. Box 99 • Ventura, California 93002-0099 • 805.667.6500

The rates are not meaningfully different from those for fiscal years 2011–2012 and 2012–2013, which Judge Anderle found violated Proposition 218. Thereafter, the California Supreme Court determined that Proposition 218 does not apply to the charges at issue, but that Proposition 26 does. The California Supreme Court then remanded the case back to the Court of Appeal to consider whether the charges violate the requirement

Joseph Jereb, Chief Financial Officer United Water Conservation District June 9, 2021 Page 2

that "the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity." (Cal. Const., art. XIII C, § 1, subd. (e).) The City maintains that the rates violate Proposition 26.

The rates are also not meaningfully different from those for fiscal year 2019-2020, which Judge Anderle found violated Proposition 26 in his ruling on December 15, 2020 in Case No. 19CV06168, which UWCD has a copy of.

As in past years, the City objects to UWCD's proposed FY 2021-2022 charges because UWCD requires M&I groundwater users to pay three times what agricultural groundwater users pay in violation of the requirements of Proposition 26. In addition, the City does not benefit from UWCD's programs to the same extent as other groundwater users, who are charged less than the City. Finally, UWCD misallocates its costs in its General/Water Conservation Fund and other funds. These reasons were outlined in the City's opposition letters from last year's rate hearing dated June 8, 2020, which are attached for reference. The City further outlined the reasons for its opposition to the FY 2021–2022 charges in the City's opposition letters of the prior ten years. (Exhs. U158 [FY 2011-2012, see Exh. E], U165 [FY 2012-2013], U236 [FY 2013-2014], U350 [FY 2014-2015], U446 [FY 2015-2016], U492 [FY 2016-2017], U541 & U542 [FY 2017-2018], U577 [FY 2018-2019], & U619 [FY 2019-2020] from May 13, 2020 Groundwater Hearing, & U [FY 2020-2021] City's opposition letters from the June 2020 Groundwater Hearing.) Since UWCD's expert materials were not provided with the agenda packet for today's Board Meeting, and it appears UWCD's experts are presenting at the Board Meeting, the City reserves the right to respond to those expert materials later this month, if warranted.

The City respectfully requests the District not impose the proposed rates and instead impose rates without respect to the invalid 3:1 ratio and only with regard to the proportional cost of serving the City and other groundwater users. As the City has suggested in prior years, UWCD should address the issues the City has outlined in earlier objection letters and continues to outline here, and direct its staff to prepare a rate study that provides the basis for revised groundwater extraction charges that comply with Proposition 26.

As always, the City remains committed to cooperative management of Ventura County's surface and groundwater resources and we value the District's efforts to do so. However, the City owes a fiduciary duty to its water customers to ensure that the District's groundwater charges are both lawful and commensurate with the costs and benefits properly attributable to the City. We look forward to further discussions so that the City may help the District achieve its mission while complying with the law and treating the City and its customers fairly.

Joseph Jereb, Chief Financial Officer United Water Conservation District June 9, 2021 Page 3

I appreciate your consideration of this letter. If we can provide any additional information to assist your review of this request, please contact me.

Sincerely, Setas Course

FOR Susan Rungren General Manager Ventura Water

cc: Mauricio E. Guardado, UWCD General Manager David Boyer, UWCD General Counsel Alex D. McIntyre, City Manager Gregory G. Diaz, City Attorney Miles P. Hogan, Assistant City Attorney II – Water

Attachment: City's Opposition Letters to FY 2020-21 Rates dated June 8, 2020



June 8, 2020

#### VIA E-MAIL AND U.S. MAIL

United Water Conservation District Attention: Joseph Jereb, Chief Financial Officer 1701 N. Lombard Street Oxnard, CA 93030

#### Re: Opposition to Proposed Zone A and Zone B Groundwater Extraction Charges on the City of San Buenaventura for Fiscal Year 2020–2021

Dear Mr. Jereb:

On behalf of the City of San Buenaventura (City) and the 113,500 people and 32,000 water customers it serves, I write to oppose the United Water Conservation District's proposed groundwater extraction charges for fiscal year 2020–2021. The City opposes the proposed charges in Zones A and B.

This letter constitutes an objection to and protest of the proposed charges in Zones A and B for the wells which the City operates, shown below with their associated assessor's parcel numbers, if any:

	Well Name	Well No.	APN	Zone(s)
1.	Victoria Well #2	02N22W08F01S	Not assigned	A
2.	Mound Well #1	02N22W08G01S	Not assigned	A
3.	Saticoy #2	02N22W02K09S	089-033-050	A
4.	Saticoy #3	02N22W02H02S	090-090-050	A
5.	Saticoy CC #1	02N21W08L01S	109-311-080	A & B
6.	Saticoy CC #2	02N21W08L02S	109-020-290	A & B
7.	Saticoy CC #3	02N21W08L03S	109-020-290	A & B
8.	Olivas Park	02N23W24G01S	138-060-010	A
9.	Golf Course #6	02N22W20K01S	138-212-105	A & B
10.	Golf Course #3	02N22W20L02S	138-212-105	A & B
11.	Golf Course #5	02N22W20L03S	138-212-105	A & B
12.	Golf Course #2	02N22W20Q01S	138-212-105	A & B
13.	Golf Course #7	02N22W20J02S	138-212-105	A & B

The rates are not meaningfully different from those for fiscal years 2011–2012 and 2012–2013, which Judge Anderle found violated Proposition 218. Thereafter, the

Opposition to Proposed Zone A and Zone B Groundwater Extraction Charges on the City of San Buenaventura for Fiscal Year 2020–2021 June 8, 2020 Page 2 of 3

California Supreme Court determined that Proposition 218 does not apply to the charges at issue, but that Proposition 26 does. The California Supreme Court then remanded the case back to the Court of Appeal to consider whether the charges violate the requirement that "the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity." (Cal. Const., art. XIII C, § 1, subd. (e).) The City maintains that the rates violate Proposition 26.

The District's continued subsidy of its agricultural customers at the expense of the City and other M&I users and their customers and voters, is contrary to UWCD's eighth guiding principle:

Most importantly, per UWCD's statutory responsibility and authority, protect and augment groundwater supplies necessary for the public health, welfare and safety of the people of the State of California.

As in past years, the City protests UWCD's proposed FY 2020–2021 charges because UWCD requires M&I groundwater users to pay three times what agricultural groundwater users pay in violation of the requirements of Proposition 26. In addition, the City does not benefit from UWCD's programs to the same extent as other groundwater users, who are charged less than the City. Finally, UWCD misallocates its costs in its General/Water Conservation Fund and other funds. These reasons are detailed in the attached letter reports from Hopkins Groundwater Consultants, Inc. and Raftelis Financial Services, Inc., as well as the accompanying letter from the City Attorney, Gregory G. Diaz, and Assistant City Attorney II – Water, Miles P. Hogan. The City further outlined the reasons for its protest of the FY 2020–2021 charges in the City's protest letters of the prior nine years. (Exhs. U158 [FY 2011-2012, *see* Exh. E], U165 [FY 2012-2013], U236 [FY 2013-2014], U350 [FY 2014-2015], U446 [FY 2015-2016], U492 [FY 2016-2017], U541 & U542 [FY 2017-2018], U577 [FY 2018-2019], & U619 [FY 2019-2020] from May 13, 2020 Groundwater Hearing.)

The City respectfully requests the District not impose the proposed rates and instead impose rates without respect to the invalid 3:1 ratio and only with regard to the proportional cost of serving the City and other groundwater users. As the City has suggested in prior years, UWCD should address the issues the City has outlined in earlier protest letters and continues to outline here, and direct its staff to prepare a rate study that provides the basis for revised groundwater extraction charges that comply with Proposition 26.

As always, the City remains committed to cooperative management of Ventura County's surface and groundwater resources and we value the District's efforts to do so. However, the City owes a fiduciary duty to its water customers to ensure that the District's groundwater charges are both lawful and commensurate with the costs and benefits properly attributable to the City. We look forward to further discussions so that the City may help the District achieve its mission while complying with the law and treating the City and its customers fairly.

Opposition to Proposed Zone A and Zone B Groundwater Extraction Charges on the City of San Buenaventura for Fiscal Year 2020–2021 June 8, 2020 Page 3 of 3

I appreciate your consideration of this letter. If we can provide any additional information to assist your review of this request, please contact me.

Sincerely,

Susan Rungren General Manager

General Manage Ventura Water

- cc: Mauricio E. Guardado, UWCD General Manager David Boyer, UWCD General Counsel Alex D. McIntyre, City Manager Gregory G. Diaz, City Attorney Miles P. Hogan, Assistant City Attorney II – Water
- Attachments: A June 8, 2020 letter from Curtis J. Hopkins, Hopkins Groundwater Consultants, Inc., to Ms. Rungren, re: United Water Conservation District, Proposed Budget Plan, Fiscal Year 2020-21, Dated May 1, 2020, HF&H Consultants, LLC, FY 2020-21 Cost-of-Service Analysis Final Report Dated May 26, 2020, and Stratecon Inc., Stratecon Analysis of the structure of United Water Conservation District's Water Conservation Extraction Charges for FY 2020-21 Letter Dated May 26, 2020
  - B June 8, 2020 letter from Steve Gagnon, Raftelis Financial Consultants, Inc., to Ms. Rungren, re: Review of United Water Conservation District FY 2020-2021 Cost of Service Analyses



June 8, 2020 Project No. 01-009-10D

City of San Buenaventura Post Office Box 99 Ventura, California 93002-0099

Attention: Ms. Susan Rungren General Manager, Ventura Water

Subject: United Water Conservation District, Proposed Budget, Fiscal Year 2020-21, Dated May 1, 2020, HF&H Consultants, LLC, FY 2020-21 Cost-of-Service Analysis Final Report Dated May 26, 2020, and Stratecon Inc., Stratecon Analysis of the structure of United Water Conservation District's Water Conservation Extraction Charges for FY 2020-21 Letter Dated May 26, 2020.

Dear Ms. Rungren:

As requested by the City of San Buenaventura (City), Hopkins Groundwater Consultants, Inc. (Hopkins) has reviewed the subject United Water Conservation District (UWCD) Proposed Budget (UWCD, 2020) dated May 1, 2020, the HF&H Consultants, LLC, FY 2020-21 Cost-of-Service Analysis Final Report dated May 26, 2020, and Stratecon Inc., Stratecon Analysis of the structure of United Water Conservation District's Water Conservation Extraction Charges for FY 2020-21 letter dated May 26, 2020, that were presented at the UWCD Board of Directors meeting on May 27, 2020.

To begin our discussion about the present rate making process, we are compelled to respond to previous comments contained in the HF&H board presentation on June 12, 2019 where it presents that 76% of the regulatory compliance cost is attributed to the M&I users for an arbitrary reason of exacerbating overdraft conditions. This claim is based on the unreasonable assertion that the engineers and accountants at HF&H can assign water rights in a manner that bias the cost of groundwater. This approach clearly discounts M&I rights to water that result from; a) historical use since the early 1900's, b) purchasing mutual water companies, c) conversion of agricultural land to residential or commercial uses, and d) the natural recharge and irrigation return flows that occur on M&I acreage. As a result, the method of financial analysis inappropriately assigns the safe yield portion of groundwater in the UWCD to agricultural pumpers and assigns the overdraft to the M&I pumpers. These upfront factual inaccuracies skew the entire analysis. Instead, we believe the cost to maintain the groundwater system in the UWCD should be proportional to the burden resulting from each class of groundwater pumper and based on the water balance calculated by UWCD. If all M&I demand were removed, the regulatory compliance costs would remain the same for normal operations of the Santa Felicia Dam and the Freeman Diversion facilities. Overdraft is not driving the cost of compliance with regulations. Typical operations in the

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watershed to manage groundwater resources are subject to the regulations and the associated costs which should be shared by all pumpers in a manner that is equal to the amount of the groundwater resource they pump for beneficial uses.

We also note that in the Stratecon Inc. response letter dated June 12, 2019 it boldly states about the City's comments that "none of the comments contained therein are valid", not one. Its response to City comments includes a statement that the City "refuses to acknowledge how land use decisions impact the demand for United's replenishment activities and programs" which is a blatant misdirection away from the whole water balance equation. If a land use allows <sup>1</sup>/<sub>2</sub> the amount of recharge but only uses <sup>1</sup>/<sub>2</sub> the amount of groundwater the impact to the basin is the same as a land use that allows twice the amount of recharge but uses twice the amount of groundwater. Stratecon directs all the attention to the recharge component that is lower for M&I land uses and away from the groundwater extraction which is double for Agricultural uses as shown in the following discussion.

We again observe that the format and method of calculation of the benefits of the rate study analyses are the same as before, so we will not go through them in detail, but rather reference where these points are addressed in previous documents and provide only new illustrations to clarify our views of the rate analyses deficiencies. To direct the discussion about the cost of services, we will focus on the key factors that require the services of water conservation/water replenishment that are provided by the UWCD.

#### Hydrogeological Accounting of Replenishment Requirements

All overlying beneficial uses of groundwater were previously assessed by UWCD studies (UWCD, 2013f) and are still relied upon for the subject rate studies. While the means of assessing rates for the production of groundwater for each of the two classes of water users identified as agricultural (Ag) and municipal and industrial (M&I) may be unconventional for a rate study, we do not question the methodology or its accuracy in this review. *For the purpose of our discussion, we will simply utilize the UWCD detailed water balance assessment for land uses (2010 to 2012) and its conclusions to illustrate our previous findings; that the amount of M&I demand on the groundwater system does not warrant a 3:1 cost burden.* 

The assessment in this memorandum summarizes the water balance findings of the comprehensive and detailed UWCD studies (as presented in UWCD, 2013f) that should be considered by the UWCD's financial consultants in establishing its groundwater pumping rates. These data are listed in Table 1 – Water Budget Deficit 2009 to 2019 for ease of review. Using the water budget deficit, referred to by the UWCD as the adjusted consumptive use (or alternatively as the net extraction), we see that the 11-year average for agriculture is 65,797 acre-feet per year (AFY) and the 11-year average for municipal is 19,184 AFY. Within the UWCD agriculture land uses consume 3.4 times more water than M&I.

*These net volumes of consumed groundwater require annual replenishment by the UWCD* to maintain a water balance in the groundwater basins. Here we see that to achieve a C:\HGC\Lob Files 2020/01-009-10D/2020-21 rate study\Hopkins letter 6-8-20.docx

balance 77.4 percent of the amount of replenishment water is required to replace groundwater consumed by agriculture while only 22.6 percent is from M&I land uses. The total amount of groundwater consumed annually on average within the UWCD is 84,981 acre-feet.

GROUNDWATER USER CLASSIFICATION	AVERAGE <sup>1</sup> GROUNDWATER PRODUCTION (ACRE-FEET)	ESTIMATED GROUNDWATER RECHARGE (ACRE-FEET)	ESTIMATED ADJUSTED CONSUMPTIVE USE (ACRE-FEET)	PERCENT OF TOTAL CONSUMPTIVE USE
AGRICULTURAL	148,168	82,371	65,797	77.4
MUNICIPAL	38,525	19,341	19,184	22.6
TOTAL	186,694	101,712	84,981	100

Table	1_	Water	Rudget	Deficit	2009	to 2019
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<sup>1</sup> – FROM FIGURE 7 (HF&H, 2020)

Figure 1 – Adjusted Consumptive Use of Groundwater 2009 to 2019 provides a graphical summary of these UWCD findings, which evaluated the groundwater replenishment requirements based on land use (groundwater consumption directly related to user class). Here we see the results of the comprehensive comparison of the average annual production to the average annual recharge accredited to each land use for the years 2009 to 2019 by all sources of recharge (rainfall and groundwater return flows) district wide (in both confined and unconfined groundwater basins). The resulting amount of groundwater required to recharge the basins district wide from each land use (contribution to the water budget deficit) is equal to the amount of consumptive use per acrefoot of groundwater pumped (see Figure 1 yellow highlighted amounts).

Table 2 – Consumptive Use Comparison 2009 to 2019 Average shows that the resulting agricultural ratio is 0.444 acre-foot of groundwater consumed per acre-foot produced and the municipal ratio is 0.498 acre-foot of groundwater consumed per acre-foot produced. These consumption values include both recharge from land uses (as emphasized by Stratecon) and groundwater production for the land uses. Dividing the M&I result by the agricultural result (0.498 / 0.444 = 1.12) yields a ratio of required replenishment of 1.12:1 (M&I to agricultural) which should be used as the cost burden ratio for pumping fees. *These data indicate that pumping rates for groundwater recharge district wide would be supported at a 1.12:1 cost ratio (without questioning or removing any bias in the UWCD 2013 study), not 3:1 or greater as presently claimed.* 



Figure 1 – Adjusted Consumptive Use of Groundwater 2009 to 2019

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 Table 2 – Consumptive Use Comparison 2009 to 2019 Average

GROUNDWATER USER CLASSIFICATION	AVERAGE CONSUMPTIVE USE TO GROUNDWATER PRODUCTION RATIO (ACRE-FOOT/ACRE-FOOT)	PERCENT CONSUMPTIVE USE OF GROUNDWATER PRODUCED BY LAND USE
AGRICULTURAL	(65,797 / 148,168) = 0.444	44.4 %
MUNICIPAL	(19,184 / 38,525) = 0.498	49.8 %

The direct use of the UWCD study estimates as applied to the 2009-2019 period for rate calculation provides a method of assigning the actual cost of overdraft mitigation that removes the discriminatory and unauthorized method of allocating groundwater safe yield priority to any single class of groundwater pumper. Correcting this single error in groundwater resource allocation will allow UWCD's financial consultants to better derive a cost of service that is proportional to the C:\HGC\u00ed Files 2020101-009-10D/2020-21 rate study\Hopkins letter 6-8-20.dox

benefits received by the groundwater produced by all pumpers that equally receive the UWCD's services.

#### **Supply Reliability and Overdraft Mitigation**

The UWCD has historically conducted numerous projects to replenish and improve groundwater conditions in its district boundaries that include: impoundment and release of surface water, diversion and spreading of surface water to recharge groundwater, purchase and importation of water, and construction of pumping and pipeline facilities to relocate, redistribute, and offset groundwater production. These efforts have incrementally contributed to the present state of the groundwater basins within the UWCD and ultimately proved inadequate for the groundwater replenishment required to mitigate overdraft.

Historical demands for agricultural and M&I uses have simultaneously grown through the years. Agricultural groundwater use increased as farming practices switched from dry crops (nonirrigated) to irrigated crops, from low water use crops to more water intensive crops, and in some locations from a rotation of 2 crops per year to 3 crops per year. All of these changes along with development of fallow hillsides and expansion of the acreage being farmed increased groundwater demand for agricultural uses. As the municipal areas within the UWCD expanded, a vast majority of the land developed displaced historical agricultural land uses. *The groundwater demand to support the expansion of M&I land conversion from Ag uses increased over time, but because the per acre use was less than the agricultural demand that it replaced, the net groundwater consumption to support the overlying land use decreased.* 

The UWCD 2020-21 rate study indicates that an average of 148,168 AFY of groundwater is produced for 80,078 acres (estimated in 2013) of agricultural uses, results in 1.85 acre-feet of water applied per one acre of land farmed. The average M&I usage is reportedly 38,525 AFY to serve 40,918 acres (estimated in 2013) and results in 0.94 acre-feet per acre. Unfortunately, the rate of reduced groundwater consumption per acre from M&I development has been less than the expansion of agricultural groundwater uses, and overdraft continued. These conditions have made groundwater less reliable for M&I pumpers.

Historical efforts have failed to satisfy the groundwater demand within the UWCD and overdraft documented by the UWCD has persisted since the district's inception. The municipal users have been forward-thinking and have diversified their water supply portfolios, while not getting credit for these efforts.

The effects of the chronic overdraft condition within the UWCD contributed to the formation of the Fox Canyon Groundwater Management Agency (FCGMA) in the early 1980's, which was empowered to restrict groundwater production in a large portion of the UWCD and other groundwater basins that bound the UWCD. The insufficient replenishment activities upstream of the FCGMA boundary within the Santa Clara River valley perpetuated overdraft conditions and led to the UWCD filing a legal suit to adjudicate the Santa Paula Groundwater

Basin and the 1996 stipulated judgment limits groundwater production for all pumpers in that basin.

The result of FCGMA regulatory actions has decreased the availability and reliability of groundwater supplies for M&I pumpers in the coastal areas of the UWCD within the Oxnard Plain, Oxnard Forebay, Pleasant Valley and West Las Posas Basins. The FCGMA initially established a base period (1985 to 1989) and recorded historical production over the 5-year period. The 5-year-production annual average was established as the historical allocation for each well facility in the agency boundary. Subsequently, the historical allocation was reduced by 25 percent to achieve the estimated safe yield of the groundwater basins in the FCGMA. This effectively reduced the availability of groundwater to all pumpers who were restricted to operating under a historical allocation reporting system.

Because a large portion of the agricultural water demands could not be satisfied with the reduced historical allocation, the agency established an irrigation efficiency allocation that would allow an increase in groundwater production for agricultural pumpers as long as the use was efficient for the crop being raised. Effectively, this allocation scheme provided agricultural pumpers with a reliable supply for their land use, while firmly reducing the groundwater availability to M&I land uses. *The increased pumping that was allowed for agricultural uses within this portion of the UWCD made the supply less reliable for M&I uses and overdraft has continued.* 

In 2014, the FCGMA enacted Emergency Ordinance E. The multi-year dry weather cycle produced groundwater conditions along the coast that were similar or worse than those observed during the FCGMA base period which occurred during the late 1980's drought. These conditions developed over an average to wet climatic period while most major M&I pumpers reduced their groundwater production below their allocation and were conserving water and accumulating conservation credits for use during an extreme dry-year or a prolonged drought when surface water supplies are reduced or unavailable. Ordinance E effectively established a new base period (2003 to 2012) and a new annual average groundwater production over the 10-year-period that was designated as the Temporary Extraction Allocation (TEA). The M&I users that were confined to this reporting system had their TEA reduced by 20 percent. The result was a loss in available groundwater allocation for M&I uses. In addition, the conservation credits that were accrued by pumpers during the wetter years were frozen and made unavailable for use under Emergency Ordinance E (since 2014). The groundwater supply for M&I has been reduced and the groundwater that was banked for a drought was no longer available and could not be relied upon for M&I use within the UWCD. Instead, the M&I portion of water remains unavailable (was interrupted) and is in the basin improving conditions while Ag uses are permitted to as much water as necessary for their lucrative crops.

After 30 years of basin management and groundwater replenishment operations provided by the UWCD, the M&I pumpers could not rely on the groundwater supply they had planned to use during surface water shortages. Existing conditions of a severely restricted supply and unavailable conserved groundwater do not support the analysis and conclusion of the rate study C:\HGC\Job Files 2020/01-009-10D/2020-21 rate study/Hopkins letter 6-8-20.docx

# that the average 38,525 AFY of groundwater for M&I use is reliable. *The M&I pumpers are not* able to rely on what they have paid for and have received mandatory cutbacks, while there has been no interruption to agricultural pumpers as overdraft in the UWCD continues.

The agricultural class of water user in the FCGMA portion of the UWCD was directed to use the irrigation allowance index system that is similar to the previous irrigation efficiency method of groundwater use accounting. Again, this method of management allowed use of groundwater for any crop as long as it was within the designated efficiency. *This management strategy clearly shows the agricultural class of groundwater user has historically had a reliable supply for its needs, one that it has not been proportionately paying for.* The direct result has been an increase in agricultural pumping since 2014 during the drought.

Adjudication of the Santa Paula Groundwater Basin resulted in phased reduction in groundwater pumping as required to achieve safe yield of the basin. If replenishment measures are insufficient to satisfy groundwater production in the basin, all users will be reduced, but the City of Ventura could potentially lose its entire 3,000 AFY of allocation. Here again is an unreliable City groundwater supply, for which it pays a premium pump tax. This amount is included in the annual average of 38,525 AFY for which the UWCD states is a reliable supply.

#### **State Mandated Conservation**

In 2015, during the extended drought period affecting the State of California, the Governor issued Executive Order B-29-15 and the State Water Resources Control Board adopted emergency regulation establishing that all M&I users were required to reduce water use by 25 percent. This affected all M&I users within the UWCD. This mandate did not apply to agriculture who could continue using water as necessary to support increased crop demands. Thus, since M&I uses in the UWCD were cut back by one restriction or the other, the M&I groundwater supply was effectively deemed unreliable even in the absence or reduction of surface water supplies, but not the agricultural groundwater supply.

#### Water Quality Impact Mitigation Costs

The burden of water quality impacts associated with agricultural return flows are borne by M&I users in the UWCD who must either treat or blend the groundwater to achieve drinking water standards. It has long been recognized that overwatering to leach minerals from the root zone of plants results in mineral buildup in the underlying aquifer system. The City of Oxnard and the City of Camarillo utilize imported State Project Water at a considerable cost to blend with produced groundwater and make the supply potable. The City of Oxnard also operates a brackish groundwater desalter to produce a high-quality water supply for blending. The desalter produces groundwater from the poorest quality aquifer zone in the Oxnard Plain and at a considerable cost removes salts from the basin. Similarly, the Oxnard Hueneme Pipeline wellfield is often impacted by high nitrate concentrations from surrounding agricultural land uses. *When the UWCD elects* 

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to import its allocation of State Project Water to be used for spreading to dilute the groundwater and mitigate the impact of elevated nitrate, the cost is attributed to benefitting M&I users. Actually, the cost is required for mitigation to reduce the impact of agricultural return flows that are high in nitrate from fertilizer. These types of water quality mitigation costs should be accounted for by the UWCD and attributed to agricultural pumping.

We trust the analyses of this letter-report provide a sufficient and concise explanation to further clarify the water balance issues that should be used as the basis for the UWCD's financial consultants to appropriately justify the UWCD's cost ratio between M&I and agricultural rates for groundwater extraction fees.

If you have questions or need additional information, please give us a call.

Sincerely,

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Curtis J. Hopkins Principal Hydrogeologist Registered Geologist RG 5695 Certified Engineering Geologist CEG 1800 Certified Hydrogeologist CHG 114

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- United Water Conservation District (UWCD, 2020), United Water Conservation District Proposed Budget Plan for Fiscal Year 2020-21. To Board of Directors, From Mauricio E. Guardado, Jr., General Manager, and Joseph Jereb, Chief Financial Officer, Dated May 1.



Phone 626.583.1894 Fax 213.262.9303



June 8, 2020

Ms. Susan Rungren Ventura Water General Manager City of Ventura 336 Sanjon Road Ventura, California 93001

#### Subject: Review of United Water Conservation District FY 2020-2021 Cost of Service Analyses

Dear Ms. Rungren:

The City of San Buenaventura (City) engaged Raftelis Financial Consultants, Inc. (Raftelis) to review HF&H and Stratecon Inc. reports regarding United Water Conservation District's (UWCD) justification of the 3:1 ratio between municipal and industrial (M&I) and agricultural (AG) water rates for fiscal year (FY) FY 2020-2021. Raftelis reviewed the reports prepared by HF&H and Stratecon Inc. dated May 27,2020 and May 26, 2020. The reports follow the basic premises that HF&H and Stratecon used to justify the 3:1 ratio in reports dated May 2018, May 2017, May 2016, May 2015, May 2014, June 2013, and October 2013 on which we commented in previous years.

#### **Comments on Both HF&H and Stratecon Reports**

UWCD has rates by Zone – Zone A and Zone B. If UWCD groups customers by Zone, then a
proper Cost of Service (COS) analysis would assess the costs to serve water in each of those
zones as the costs may be different. The two reports mentioned herein combine Zones A and B
to calculate one ratio - which does not follow COS principles.

# Comments on HF&H FY 2020-2021 Cost of Service Analysis Report (referred to as "the report")

#### **Comments Regarding the Underlying Methodology**

2. Proposition 218 does not apply to UWCD's rates; however, Proposition 26 does. The District's founding act favors agricultural water use (AG) in that it requires municipal and industrial (M&I) pumpers to be charged at least 3 times to no more than 5 times the rate for AG. These ratios, given that they are round numbers established by statute in 1966, do not have a cost basis, and contradict Proposition 26, which states:

"The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity."

- Rate setting uses the concept of cost components (cost centers). In this report, the cost components are **Replenishment**, **Reliability and Regulatory Compliance**. In a rate study, the analyst then seeks to allocate those cost components to each customer class based on how a class causes the costs for each cost component.
- 4. Replenishment costs the pertinent question is how does each class (AG and M&I) cause UWCD to incur Replenishment costs? It is reasonable to assume costs are generated in proportion to consumptive use – AG uses far more groundwater than M&I. Though Raftelis has questions about the consumptive calculations in Figure 7 of the report, in general, we agree that distributing costs to each class in proportion to use is consistent with ratemaking practice.
- 5. Reliability costs again the pertinent question is how does each class cause UWCD to incur Reliability costs? The report assumes Reliability costs are caused in proportion to each classes' take of the groundwater safe yield (Figure 9 and 10 of the HF&H Report). California Water Code Section 106 states "the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation." The report acknowledges this on page 12 (Section IIIB). It then uses this premise to distribute Reliability costs, stating that "Because of M&I's higher beneficial use, M&I pumpage is given first priority to the basin safe yield."
- 6. **Regulatory Compliance costs** Our comments are: 1) overdraft is not linked or proportional to regulatory compliance costs, 2) how can M&I have first priority to groundwater for Reliability costs but not for Regulatory Compliance in which Ag gets first priority to safe yield?

The Replenishment function replenishes groundwater – thus there is a link/nexus between replenishment and each classes' consumptive use of groundwater. The Regulatory Compliance function, according to the report, is related to the Endangered Species Act and Dam Safety Regulations. The regulatory compliance function does not seek to mitigate overdraft but rather to meet regulatory compliance related to the facilities. Therefore, we see no link/nexus between overdraft and regulatory compliance costs. The report, however, assumes that overdraft causes or is proportional to UWCD's Regulatory Compliance costs, meaning that whichever class contributes more to overdraft has more responsibility for Regulatory Compliance costs. However, in this instance, the report does not assign M&I first priority to safe yield as it did for the Reliability costs.

The FY 2020-2021 Cost of Service Analysis report, Section IIIC, has been reworded substantially from prior versions and the crux of the argument seems to be stated in the last paragraph before Figure 11. "At the time the District was formed, Ag was the predominant pumper.... Ag is therefore given preference to pumping the safe yield." We are uncertain how the same report can in one section (Section IIIB, pg. 12) claim that "Because of M&I's higher beneficial use, M&I pumpage is given first priority to basin safe yield" and in a following section (Section IIIC) claim

that Ag has priority to the safe yield. The selection of who has priority to safe yield seems to be contrived to yield the desired 3:1 cost ratio of M&I to Ag.

Assuming AG has priority to groundwater (safe yield) contradicts Water Code Section 106. Since it is assumed that AG has first right to the safe yield, AG's share of overdraft is much less than M&I. Therefore, in the report, Regulatory Compliance costs are distributed mostly (83%) to M&I and as such helps achieve the 3 to 1 ratio. Additionally, UWCD has no power to alter AG or M&I water use so as to give one more reliability than the other.

The link or nexus between overdraft and Regulatory Compliance is weak and likely conjured to back-calculate a cost ratio (of at least 3 to 1) to meet the District statute's pre-Proposition 26 requirements.

The middle paragraph of page 14 states "Because M&I's growth beyond the safe yield is at greater risk than Ag's growth, M&I is allocated the cost needed to protect its reliance." This statement infers that the cost needed to protect M&I's reliance are Regulatory Compliance costs. If Regulatory Compliance costs make the water *reliable*, then Regulatory Compliance costs should be allocated in the same manner as *Reliability* costs. If they were and we accept all the report's other assumptions simply to make the following point, it would change the ratio of M&I to AG rates to **1.21 to 1** as shown in Table 1.

The top of page 14 states "Regulatory Compliance costs in effect represent additional costs of **reliability** for which there is no corresponding improvement in basin safe yield." If Regulatory Compliance costs are reliability costs, they should be allocated in the same manner as **Reliability** costs.

			AG	M&I
Replenishment Unit Cost				
Replenishment Cost	\$	5,964,809		
Consumptive Use		84,981	65,797	19,184
Unti Cost of Service		\$70.19		
Cost of Service Distribution			\$4,618,286	\$1,346,523
Reliablity Unit Cost				
Reliability Cost	\$	5,929,429		
Basin Safe Yield		140,000	101,475	38,525
Unit Cost of Service		\$42.35		
Cost of Service Distribution			\$4,297,777	\$1,631,652
Regulatory Compliance Unit Cost				
Regulatory Compliance Costs	\$	8,221,852		
Basin Safe Yield		140,000	101,475	38,525
Unit Cost of Service		\$58.73		
Cost of Service Distribution			\$5,959,375	\$2,262,477
Total Cost of Service	ç	20,116,090	\$14,875,437	\$5,240,653
Total Water Use			149,448	43,364
Unit Rate			\$99.54	\$120.85
Ratio			1.00	1.21

# Table 1: M&I Ratio Assuming Regulatory Compliance Costs are Distributed in Proportion to Safe Yield

If overdraft ceased immediately, regulatory costs would not cease because, according to page 14, they are due to the Endangered Species Act and Dam Safety requirements. Therefore, overdraft is not a reasonable way of allocating regulatory compliance costs. How would regulatory costs be allocated if there was no overdraft? Page 14 of the report projects increases in these costs, though the District is presumably aiming to decrease overdraft. Regulatory costs would not exist if it weren't for the dams, which were constructed to improve reliability.

- 7. Raftelis concludes there is no nexus between overdraft and the Regulatory Compliance function. However, even if we hypothesize such a nexus, the premise that AG receives first priority to the safe yield because "At the time the District was formed, Ag was the predominant pumper" is counter to Water Code Section 106.
- 8. HF&H claims on the bottom of page 12 "The Ag interruption amounts to 46,694 AF." There is no support in the record demonstrating actual interruption of AG use. If we normalized the quantity of water used per acre between AG and M&I, as shown in Table 2, Line 15, AG uses significantly more water per acre than M&I does. Thus, if urbanization had not occurred and all lands were still used by AG, the basins would be in worse condition. Water use per acre falls when agricultural land is developed for urban uses.

		M&I Use	Ag Use	% Change	% Change
Line No.	Fiscal Year	(Acre Feet)	(Acre Feet)	M&I	Ag
1	2009	44,642	160,670	-8.2%	-1.3%
2	2010	43,220	149,788	-3.2%	-6.8%
3	2011	39 <i>,</i> 966	139,022	-7.5%	-7.2%
4	2012	38,011	147,574	-4.9%	6.2%
5	2013	40,108	158,386	5.5%	7.3%
6	2014	41,416	169,251	3.3%	6.9%
7	2015	36,749	145,485	-11.3%	-14.0%
8	2016	34,152	154,743	-7.1%	6.4%
9	2017	34,438	135,078	0.8%	-12.7%
10	2018	35,120	153,562	2.0%	13.7%
11	2019	35 <i>,</i> 956	116,291	2.4%	-24.3%
12	Average	38,525	148,168		
13	Standard Deviation			5.6%	11.6%
14	Acres	40,918	80,078		
15	Average Use per Acre (line 12 / 15)	0.94	1.85		

#### Table 2: Total Pumping by Class (Data from HF&H Report)

9. Raftelis proposes a cost of service-based method to determine the relative groundwater extraction charges between M&I and AG users that is straightforward and reflects the services UWCD provides. UWCD was formed under the State Water Conservation Act of 1931 and

"is provided statutory responsibility to protect and augment groundwater supplies necessary for the public health, welfare and safety of the people of the State of California. UWCD's mission therefore is to manage, protect, conserve, and enhance water resources on the Santa Clara River, its tributaries, and associated aquifers. The District administers a "basin management" program ... and other activities for replenishment of groundwater... In performing its District-wide Water Conservation efforts, United not only directly recharges the groundwater aquifers but also indirectly, via three delivery systems (pipelines, two agricultural and one M&I), to minimize groundwater extractions near the coastline to fight seawater intrusion into the aquifers."

(UWCD Proposed Budget Plan FY 2019-20, page 1.) Based on its stated mission, UWCD's role is to replenish or recharge the basins. Groundwater users should pay costs incurred by UWCD to maintain the basins via groundwater extraction charges. However, costs should be distributed to user classes in proportion to how each class causes UWCD to incur replenishment costs (as opposed to Regulatory Compliance costs which are a function of replenishment facilities). Thus, Raftelis concludes that all UWCD costs must be considered replenishment costs, as all its activities serve to replenish the groundwater basins. **Table 3** shows a revised calculation we prepared based on the reuse percentages

and rainfall estimates HF&H used<sup>1</sup>. Based on HF&H's figures, this revised calculation shows that the ratio of UWCD's cost of service between M&I to AG is only **1.18:1**, not 3:1.

#### Table 3: Proposed Groundwater Extraction Charges Based on Replenishment Costs

		FY 2019-2	020			
Line No.		Tota	I	AG		M&I
1	Pumpage (AF)	186	5,693	148,16	8	38,525
2	Consumptive Use Factor			74.4	1%	86.2%
3	Consumptive Use	143	3,446	110,23	57	33,209
4	Rainfall Contribution (AF)	60	0,352	46,71	.2	13,639
5	Adjusted Consmptive Use (AF)	83	3,094	63,52	5	19,569
6	Share of Costs	_	100%	76	5%	24%
7	Total Cost	20,116	5,090	15,378,61	.3	4,737,477
8	Pumpage (AF)	186	5,693	148,16	8	38,525
9	Unit Cost (\$ / AF) - line 7 / 8	\$1	.07.75	\$103.	79	\$122.97
10	Ratio of M&I to Ag (Ag = 1)				1	1.18

#### HF&H Assumptions Contradict UWCD's 2011 Rate Study

Raftelis noticed that the report's assumptions directly contradict UWCD's 2011 Rate Study, as discussed below.

- 10. The report on page 14 states "Overdraft represents the impact that development has on the basin." Figure 11 of the report states that overdraft is mostly due to M&I. This contradicts UWCD's 2011 Rate Study which, on page 34 of the Final Report, states "the majority of the overdraft in the Oxnard Plain aquifers has been caused by agricultural pumping in the eastern southern part of the plain."
- 11. The report on page 12 states "Any AG pumpage that exceeds the basin safe yield is considered interruptible...." And further down, "When Ag pumpage is reduced so that...." These statements imply that AG use is curtailed and interruptible. However, UWCD's 2011 Rate Study, on page 34 of the Final Report, states "M&I pumpers within the Fox Canyon GMA are subject to more stringent pumping restrictions than AG, which can receive the water it needs through the efficiency provisions of GMA ordinances."

#### **Comments Regarding the Calculations**

12. Regarding Figure 3, in Raftelis' comments on the **FY 2011-2012** report, we noted that the District did not provide the basis/logic to allocate costs to Replenishment, Reliability, and Regulatory Compliance (UWCD provided the allocation to HF&H). We noted that **73.5%** of UWCD's personnel and overhead costs are allocated to Regulatory Compliance. Capital was allocated 79.5% to Regulatory Compliance. Transfers were allocated 84% to Regulatory Compliance such

<sup>&</sup>lt;sup>1</sup> Raftelis accepts the reuse and rainfall infiltration estimates in the HF&H report to make a point. We have not fully vetted their accuracy and defer to other professionals, such as hydrogeologists to confirm them.
that, for the total allocation of costs, more than 50% of UWCD's costs were to meet regulatory requirements. This allocation has changed notably in the FY 2020-2021 report as shown in Table 4 below. The total allocated to regulatory compliance is now 40%. Personnel is now allocated 35% to Regulatory compliance compared to 73.5%.

13. The logic used to allocate UCWD's budget to the cost components should be provided so the reader can trace the rate derivation starting from the revenue requirement – which is shown at the bottom of Figure 1 (\$20.116 M). Absent that information one does not know the allocation basis for UCWD's costs to the different cost components (Replenishment, Reliability, Regulatory Compliance). All assumptions and derivations are normally shown in industry standard rate study reports.

.....

				Regulatory
FY 2020-2021	Total	Replenishment	Reliability	Compliance
Personnel	\$4,961,348	\$2,039,974	\$1,175,321	\$1,746,053
Program Costs	\$7,525,222	\$2,188,221	\$731,231	\$4,605,770
Overhead	\$3,437,233	\$1,413,299	\$814,265	\$1,209,669
Capital	\$333,000	\$96,831	\$32 <i>,</i> 358	\$203,811
Debt Service	\$1,812,206	\$33,098	\$1,656,959	\$122,149
Transfer to Capital Reserves	\$2,047,081	\$193,386	\$1,519,296	\$334,399
Total	\$20,116,090	\$5,964,809	\$5,929,430	\$8,221,851
Total Allocation		29.7%	29.5%	40.9%
Personnel	100.0%	41.1%	23.7%	35.2%
Program Costs	100.0%	29.1%	9.7%	61.2%
Overhead	100.0%	41.1%	23.7%	35.2%
Capital	100.0%	29.1%	9.7%	61.2%
Debt Service	100.0%	1.8%	91.4%	6.7%
Transfer to Capital Reserves	100.0%	9.4%	74.2%	16.3%
Total		29.7%	29.5%	40.9%

## Table 4: UWCD's Budget Allocation to the Cost Components

## **Comments on Stratecon May 26, 2020 Report**

- 14. Raftelis may not agree with all of HF&H's logic and conclusions, however, the HF&H report generally follows a sequential derivation of rates that the reader can follow (except for item 13 above undisclosed basis of cost allocation). It is prepared in a traditional, cost of service, rate setting fashion by allocating UWCD's costs (revenue requirement). The same cannot be said for the Stratecon report. That report departs significantly from rate-setting approaches as set forth in the American Water Works Associations' M1 manual on rate setting as described below and, therefore, from industry standards.
- 15. Rate making is a cost allocation exercise in which the first step is to establish the revenue requirement derived from an agency's yearly budgeted costs for operations and maintenance cost and capital costs. The revenue requirement is then distributed to each customer class (e.g., AG and M&I). Rates are then calculated to collect the total revenue requirement for each class. The Stratecon report does not follow this approach. It allocates *potential* future project costs to AG and M&I without discussing current costs, such as those for operations and capital investment as further discussed in items a-c below.
  - a. The Stratecon report, on pages 5 through 9, discusses the replenishment cost for several *potential* future projects to establish the costs of replenishment.
    There is no discussion of the District's actual costs. These costs are not actually incurred costs and therefore are not recoverable at this time. Should any of these projects be deemed necessary, the District would start planning for

these projects and fund them through a combination of 1) rates, 2) debt/SRF loans, 3) grants and 4) impact fees and ease these costs into rates over time.

- b. The Stratecon report (page 9) sets replenishment costs at \$1,961/AF and the rest of the report proceeds to calculate AG and M&I extraction rates that are much lower than the \$1,961/AF as shown in Table 3 on page 11. If it truly costs UWCD \$1,961/AF for groundwater replenishment, then how can UWCD continue to operate if they are charging rates that are much lower? It could not continue operations if revenue did not cover costs. The \$1,961/AF cost for "replenishment activities and program" is the mid-range cost for *potential* future projects, not the District's actual costs. Actual costs are needed when allocating costs, as Proposition 26 and industry-standard ratemaking practices require.
- c. The Stratecon calculation is circular it first assumes a groundwater replenishment cost (of \$1,961/AF on page 9) and then distributes that cost to somehow yield a lower rate for each class.
- 16. Table 6 below shows the different revenue requirements between the HF&H report and the Stratecon report. The revenue requirement is the total revenue rates are designed to collect. The Stratecon report would result in much lower revenue collection than the HF&H report. We are not sure how the revenue requirement can be different it should be a known amount.

	FY 2020-2021
HF&F	\$20,116,090
Stratecon	\$14,569,974
Difference	38.1%

## Table 6: Revenue Requirement in the HF&H and Stratecon Reports

- 17. Error Page 14 of the Stratecon report states that M&I acreage is 41,772 acres, when this number, according to Table 2 of the Staff Memorandum is the groundwater extraction in AF. The acreage from Table 2 is 40,918.
- 18. Error Page 13 of the Stratecon reports states that the return flow from AG users is 25.8%. Table 2 from the Staff Memorandum shows 25.6%.
- 19. Attachment A, page 10, puts forth that 10% of UCWD's costs are variable. How was this derived? The report should show a basis.
- 20. The Stratecon approach identifies 90% of costs as fixed and then allocates those costs to AG and M&I based on a consumptive use (use adjusted for the portion of applied water that returns to the basin). The second part of the calculation then calculates a credit by allocating the cost (established as \$1,961/ AF and described in item 15a above) to provide water to the acres in each class adjusted by the difference in rainfall infiltration for land in each class multiplied by the percent of rain that infiltrates the basin. Since it is assumed that the infiltration for M&I is

less than average infiltration (the "differential factor" is negative) the credit turns into a debit (subtracting a negative number is the same as adding a positive number) — increasing the cost for M&I. None of the calculations in the second part of the calculation are grounded in physical reality or cost of service principles.

## **Summary**

If one accepts the cost components as put forth in the HF&H report, UCWD allocates more than 40% of its budget to the Regulatory Compliance component and disproportionally allocates those Regulatory Compliance costs to M&I customers. We conclude that industry standards require Regulatory Compliance costs to be distributed like Reliability costs since the dams and diversion facilities (which increase reliability) are purportedly the cause of the regulatory compliance costs. Doing so<sup>2</sup> leads to a rate ratio of AG to M&I of **1.18 to 1**.

The Stratecon report departs from industry-standard rate setting and cost of service principles in many ways. It relies on potential **future** costs for "replenishment activity" and uses that to distribute costs to customer classes — this simply does not follow industry standards for rate setting. In our opinion, the approach was selected to yield the desired ratio between M&I and AG.

Sincerely,

Steve Gagnon, PE (AZ) Sr. Manager Raftelis Financial Consultants

<sup>&</sup>lt;sup>2</sup> This assumes we accept all other assumptions just to make this point. We are not recommend accepting all other assumptions.

June 9, 2020

CITY OF

CITY ATTORNEY

## VIA E-MAIL AND U.S. MAIL

President Mobley and Members of the Board of Directors United Water Conservation District 1701 N. Lombard Street Oxnard, CA 93030

## Re: Opposition to Proposed Groundwater Extraction Charges on the City of San Buenaventura for Fiscal Year 2020 – 2021

Gentlemen:

INTRODUCTION. We write on behalf of the City of San Buenaventura ("City") and Ventura Water's objection to and protest of the United Water Conservation District's ("UWCD" or the "District") proposed groundwater extraction charges for Zones A and B for fiscal year (FY) 2020–2021.

Since at least FY 2011–2012, the District has imposed charges that are not proportionate to the cost of serving the City. The charges for FY 2020–2021 are no exception. The District's consistent failure to remedy the problems the City has identified in previous protest letters and those identified by the Santa Barbara Superior Court in *City of San Buenaventura v. United Water Conservation District et al.*, Case Nos. VENCI-00401714 and 1414739 ignore the demands of our Constitution, various statutes, and common law. The decision by the California Supreme Court finding that Proposition 218 does not, and Proposition 26 does apply to the charges at issue does not change the City's position. (*City of San Buenaventura v. United Water Conservation District et al.*, 2017) 3 Cal.5th 1191, as modified on denial of reh'g (Feb. 21, 2018).) The California Supreme Court remanded the case back to the Court of Appeal to consider whether the charges violate the requirement that "the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity." (*Id.* at 1198, citing Cal. Const., art. XIII C, § 1, subd. (e).)

This letter, the letter by Susan Rungren, General Manager for Ventura Water, and the letters submitted by the City for the previous nine rate cycles explain why the rates your staff proposes do not comply with law. The City also incorporates the briefing and arguments made before the California Supreme Court, the Court of Appeal, and the Superior Court.

**SUMMARY OF CITY'S SUBSTANTIVE POSITION**. As discussed below, and as the City has expressed in previous protest letters, the District's proposed charges:

- compel the City to pay for services from which it does not benefit and which are not directly related, or reasonably proportionate, to its benefits from, or the burden it imposes on, the District's groundwater management services;
- impose a 3:1 ratio of municipal and industrial ("M&I") to agricultural water rates based on erroneous calculations and implausible assumptions that simply do not reflect the facts;
- are misallocated such that the City subsidizes UWCD's costs to benefit other users; and
- are based on a budget and other record materials which are inadequate to bear the District's burden to justify its rates.

Accordingly, the proposed charges violate Proposition 26. They also violate Proposition 13, Government Code Section 54999.7, and the common law of rate-making for these same reasons. For the reasons detailed below, the City respectfully requests the District refrain from approving the proposed charges and impose on the City a rate proportionate to the cost of serving it without respect to the 3:1 ratio demanded by an unconstitutional provision of the District's principal act.

THE 3:1 RATIO EFFECTS AN ILLEGAL CROSS-SUBSIDY. The proposed charges continue to impose on the City a charge for groundwater extraction that is three times the charge to agricultural groundwater producers without substantial record evidence that the City is three times as costly to serve. The District continues to maintain its allegiance to a 50-year old statute that cannot contravene subsequent mandates of the California Constitution. (Compare Cal. Const., art. XIII C, § 1, subd. (e) with Wat. Code, § 75594.) The District continues to claim that despite the complex hydrology of the

District, the entire area operates as a "common pool." (Prop. Budget Plan FY 2020-21, Exh. U626, p. 23)

The District knows this is not true. It has acknowledged that the most challenging area for UWCD to serve, and the area that commands a disproportionate share of UWCD's attention, is the agricultural region in the southeastern Oxnard Plain Basin and in the Pleasant Valley Basin. (See Staff Report, Item 1.5 Update Memorandum to 2011 Water Rate Study (May 30, 2012), Exh. U54, p. 4.) Indeed, UWCD Resolution No. 2016-07 acknowledges "[t]he extent of [hydraulic] connection varies from basin to basin." (Res. No. 2016-07, Exh. U488, ¶ 14.) The District's subsidized groundwater charges, combined with the incentives created by the Fox Canyon Groundwater Management Agency's ("FCGMA") rules to switch to water-thirsty (and more profitable) crops, only serve to encourage agriculture's use of groundwater in areas most affected by overdraft. (See FCGMA Ordinance Code, § 5.6; see also FCGMA Emergency Ord. - E, art. 2(D).) What is more, the FCGMA Emergency Ordinance forbids the City from relying on conservation credits set aside during wet years. (City of Ventura, Administrative Report re 2015 Comprehensive Water Resources Report and General Plan Status Report (May 11, 2015), Exh. U389, p. 4.) However, despite imposing strict limits on the City, FCGMA has allowed variances to the Emergency Ordinance – E so agricultural users can pump groundwater and drill new wells. (See Request for Reconsideration to FCGMA from Ventura Water (Apr. 21, 2015), pp. 4–5, attached hereto.)

Thus, while the FCGMA has mandated the City to reduce its groundwater use, it has allowed agricultural customers to drill new wells. This, combined with UWCD's 3:1 ratio, requires the City to subsidize agriculture's burden on the groundwater basins, which in turn requires more revenue from the City to mitigate the impacts of that water use. (See FCGMA Ordinance Code, §§ 5.4, 5.6.) Still further, the District's analysis of groundwater recharge acknowledges that most (but not all) M&I land uses overlie "confined basins" which cannot be recharged by rainfall or District efforts. (Sept. 2013 Technical Memorandum, Exh. U255, pp. A5-A6.)

The District also acknowledges the City's wells in the Mound and Santa Paula Basins do not benefit from the District's recharge activities as do wells in other basins downstream of the spreading grounds. (See, e.g., Rate Study, Exh. U53, p. 24; Rate Study Update, Exh. U54, p. 2.) Thus, though the District spends more to serve agricultural groundwater pumpers in the District's southeast, it imposes much of that

cost on the City, which pays three times what agriculture pays. The charges therefore violate the mandate that our Constitution imposes under Proposition 26. (Cal. Const., art. XIII C, § 1, subd. (e).)

THE RATES REFLECT FALSE ASSUMPTIONS. The District's proposed rates are based on reports of HF&H Consultants and Stratecon, Inc., who prepared updated reports, which is discussed in greater detail below. HF&H and Stratecon relied not only on their reports prepared for the prior seven years, but also the District's hydrological assessment in its 2013 Technical Memorandum. To the extent the City objected to these reports previously, we incorporate those comments and objections here.

HF&H Consultants' Report. HF&H Consultants provided a cost of service report, dated May 26, 2020. (HF&H FY 2020-21 Cost of Service Analysis, Exh. U634.) The cost of service report persists in the errors that the City identified in each of the last seven years by applying the wrong law and relying on erroneous and unsupported assumptions. The City therefore incorporates here the objections it detailed in previous years' letters. (See May 13, 2020 Groundwater Hearing Exhs. U240-U241, U277-U278, U283- U350–U351, U372, U375, U446-U447, U491-U492, U541-U542, U577, and U619.)

Like earlier analyses, HF&H's FY 2020-2021 Cost of Service Analysis applies the wrong legal standard. HF&H Consultants state the legal standard is whether ratemaking is "arbitrary, capricious, or discriminatory." (Compare Exh. U310, p. 2, with Exh. U634, p. 2.) Under California's Constitution, however, UWCD bears the burden to demonstrate that its rates are reasonably proportionate to the cost to serve its customers. (Cal. Const., art. XIII C, § 1, subd. (e); *Sinclair Paint Co. v. State Board of Equalization* (1997) 15 Cal.4th 866.)

HF&H's Cost of Service Analysis contains a number of questionable assumptions. First, HF&H allocates a greater share of the reliability component to M&I based on an assumption that agricultural use is interruptible. (Exh. U634, pp. 5, 9, 12-13, 18.) This assumption, however, is unsupported by the empirical evidence from the last 14 years, during which agricultural pumping alone has exceeded the basins' safe yields. (*See id.* at Figures 9, 10, and 11 [showing total agricultural extraction of 148,168 acre-feet compared to basin safe yield of 140,000 acre-feet].) Agricultural users should not receive a lower cost allocation when, contrary to HF&H's assumption, agricultural users actually pump more water during drought. (*See id.*; HF&H FY 2015–2016 Cost of Service Analysis, Exh. U419, p. 6 ["In part because of the drought conditions, Ag's actual

pumpage has been greater than the District's projections."].) In addition, the association between safe yield and reliability is incorrect. (Exh. U634, p. 5 ["Reliability costs are the costs associated with the District's storage and diversion facilities.... These facilities were constructed following the formation of the District to improve the reliability of groundwater supply for anticipated growth."].) Safe yield is a characteristic of a basin, while reliability refers to efforts taken to secure additional supplies for use in times of scarcity. Put differently, if safe yield is assumed to be a stable number (though it may vary with hydrological conditions), and use is restricted to safe yields, no reliability services are needed.

Second, a primary assumption by HF&H is that these reliability costs should be attributed to M&I because agriculture is subject to interruptions in service. HF&H contends that, "Absent these facilities, M&I reliability would be subject to the same interruptions that agriculture is exposed to and which agriculture is in a far better position to tolerate through land fallowing." (Exh. U634, p. 5.) However, this ignores the facts of what has recently played out in times of drought and shortage. Both the FCGMA, through its Emergency Ordinance – E, and the State, through the State Water Resources Control Board's Emergency Drought Regulations, required M&I to cut back or face penalties. In contrast, neither FCGMA nor the State required reductions of agriculture. Therefore, the *facts* of recent years demonstrate that it is inappropriate to assign adjusted reliability costs to M&I. (Raftelis Review of UWCD FY 2020-2021 Cost of Service Analyses, pp. 2-5; cf., HF&H FY 2020-21 Cost of Service Analysis, Exh. U634, pp. 12-13.) This contradicts HF&H's standard of utilizing assumptions supported by the facts: "Capricious rates contain data and assumptions for which there is no factual basis." (HF&H FY 2020-21 Cost of Service Analysis, Exh. U634, pp. 2.)

Third, HF&H persists in assigning all overdraft to M&I based on a false history, unsupported by record evidence, that agriculture always preceded M&I, which the City has rebutted in the past — indeed, M&I use decreases water use per acre of land used and not all agricultural use predated all M&I use. HF&H's bias in favor of agriculture here is plain: "At the time the District was formed, Ag was the predominant pumper. M&I pumpage was very slight but was expected to grow significantly. Ag is therefore given preference to pumping the safe yield." (Exh. U634, p. 14.) Based on total pumpage, however, M&I's allocation of overdraft mitigation costs would be much less. (Raftelis Review of UWCD FY 2020-2021 Cost of Service Analyses, p. 5, Tables 2 and 3.) HF&H's statement is particularly egregious given that it directly contradicts an earlier statement in the same analysis: "Because of M&I's higher beneficial use, M&I pumpage

is given first priority to the basin safe yield. Ag receives the remaining basin safe yield." (Exh. U634, p. 12.) HF&H incredibly changes whether M&I or agriculture has priority to safe yield in different sections *of the same analysis*, illustrating the weaknesses and faulty assumptions of their cost allocation scheme.

Fourth, as Raftelis noted in previous letters, HF&H's cost allocation percentages have also changed since 2014. Now, over half of UWCD's costs are allocated to ensuring reliability, though there has been no meaningful change in the District's services. This suggests an effort to favor agriculture and to justify the 3:1 ratio post-hoc, which is not appropriate when allocating costs to satisfy article XIII C of our Constitution. HF&H's cost allocation also improperly allocates the cost of the Freeman Diversion to the unusually large reliability component, rather than the replenishment component, though the Freeman Diversion facility is primarily a vehicle for replenishing the agricultural regions in Zone B. HF&H treats the dams as though they generate equal recharge for all pumpers, though UWCD's own records show differential recharge of the eight basins in the District, which benefit agricultural users and M&I users differently. Finally, the allocation inappropriately assigns the costs of mitigating the impact of quagga mussels to overdraft mitigation, when they should be assigned to recreation with Lake Piru, or a portion of the costs to replenishment.

More globally, HF&H's Cost of Service Analysis improperly conflates the costs to serve Zones A and B, producing one cost of service analysis for two separate charges. It does not separately analyze Zone B costs, for which the District accounts in a separate enterprise fund, and the groundwater management costs associated with Zone A. As a result, costs that are born by only some rate-payers — including costs associated with the Freeman Diversion Dam — are analyzed along with all other costs. This failure to separate costs is inconsistent with industry standards and results in an unreasonable cost allocation. Even if HF&H's Cost of Service Analysis is only intended to justify the legislatively-mandated differential between M&I and agriculture, such a justification must still account for different services and costs being born by different rate-payers. Because it does not, the Cost of Service Analysis cannot justify the District's proposed charges.

Finally, HF&H Consultants do not explain how they calculated the costs of serving Zone A and Zone B reported in Figure 3. (See Exh. U634, p. 7.) This problem affected HF&H Consultants' FY 2013–2014, FY 2014-2015, FY 2015-2016, FY 2016-2017, FY 2017-2018, FY 2018-2019, and FY 2019-2020 cost of service analyses as well.

(Compare Exhs. U213, U310, U419, U470, U517, U564, and U600.) This problem appears in part to result from the lack of clarity in United's budget. As in years past, the FY 2020-2021 Budget does not explain whether certain sub-fund deficits are made up from transfers from Zone A or Zone B charges, which would mean the District is improperly using restricted revenue to fund costs unrelated to the services for which the fees are imposed.

**Stratecon Report**. Stratecon's May 26, 2020 analysis of the structure of the District's extraction charges for FY 2020–2021 also persists in errors the City identified in the last seven years by applying the wrong law and relying on erroneous and unsupported assumptions. The City therefore incorporates the objections it detailed in previous years' letters. (See May 13, 2020 Groundwater Hearing Exhs. U240-U241, U277-U278, U283- U350-U351, U372, U375, U446-U447, U491-U492, U541-U542, U577, and U619.) For example, Stratecon states, "The information and analysis presented above supports a ratio of the municipal & industrial groundwater extraction charge to the agricultural groundwater extraction charge of at least 3.0." (Stratecon report, Exh. U635, p. 11.) However, Proposition 26 requires UWCD to reasonably estimate its costs, not to demonstrate that a 3:1 ratio is at least justifiable; agricultural must be shown not only to pay enough, it must also be shown not to pay too much. UWCD bears the burden of reasonably justifying its fees in the amount it imposes them, not to merely identify a range in which they may justifiably fall.

As discussed in greater detail in the accompanying letter from Raftelis, Stratecon's report also fails to persuasively support the District's rates. Fundamentally, Stratecon uses an unconventional method, inconsistent with cost-of-service principles, to allocate the revenue requirement based on return flow and recharge. This method could result in UWCD actually paying its agricultural customers to extract groundwater if they use little water on a large parcel credited with substantial recharge from rainfall. Stratecon also allocates variable costs to the fixed cost component. To compensate for this anomaly, Stratecon calculates fixed cost by the share of demands for replenishment, adjusted by a credit for the "differential contribution of a water user's class to recharge from overlying lands." (*Id.* at p. 2.) This credit needlessly complicates the fixed cost calculation when, under Stratecon's own rationale, the cost of replenishment activities should be based on net pumpage. Using net pumpage — assuming, without conceding, that its underlying numbers are correct — the differential between M&I and agricultural users should not be 3:1, as detailed in Raftelis' accompanying letter.

THE BUDGET MISALLOCATES GROUNDWATER CHARGES. As it did last year, the District acknowledges "[i]f the District's ad valorem property tax revenues are insufficient to cover these indirect water conservation costs, groundwater extraction charges may be used" for a list of district-wide necessary costs. (Prop. Budget Plan FY 2020-2021, Exh. U626, p. 24.) The use of restricted revenue from Zone A charges may not be used to cover costs that do not benefit the City and others who pay those charges. (See Cal. Const., art. XIII C, § 1, subd. (e)(2) ["A charge imposed for a specific benefit conferred or privilege granted **directly** to the payor ..."] [emphasis added].) Yet, because the Recreation sub-fund will again run a significant deficit, the District likely will use Zone A funds to pay for costs UWCD admits benefit the City only indirectly.

Similarly, the District acknowledges that "[a]ny cost incurred in an effort by the District to enhance imported water deliveries, beyond the District's Table A, allocation is paid out of the Water Purchase Fund or the General/Water Conservation Fund." (Exh. U626, p. 35.) Again, UWCD's use of Zone A revenue via the General/Water Conservation Fund to pay for State Water that recharges the Oxnard Forebay — providing little or no benefit to the City's wells in the Mound and Santa Paula Basins — violates the California Constitution. UWCD treats Zone A revenues as fully discretionary revenues to be placed in a "general fund," when they are legally groundwater augmentation fees which may fund only that activity.

In addition, the proposed budget continues the District's practice of misallocating costs, particularly by using Zone A charges to fund the District's spreading operations that disproportionately benefit the southeastern Oxnard Plain and the Pleasant Valley Basins. For instance, the proposed budget continues to fund the Ferro-Rose Recharge project with Zone A charges. (Exh. U626, pp. 72-73.) However, this spreading ground will recharge the southeastern Oxnard Plain and Pleasant Valley Basins and provide little or no benefit to the City's Mound and Santa Paula Basin wells. (Id. at p. 72 ["The aquifers of the Oxnard Plain remain in overdraft."].) It allocates Zone A revenue (via the Water Conservation sub-fund) to support the Saticoy spreading ground facilities, though it acknowledges that that Santa Paula Basin does not respond to recharge from Saticoy. (Id. at p. 24 ["Maintenance of the District's various spreading grounds (Piru, Saticoy, Ferro, Noble, Rose and El Rio) which provide District-wide benefits."]; see also Saticov Recharge Mound Study, March 2010, Exh. U48, p. 15 ["Santa Paula Basin doesn't respond to recharge at United Water's Saticov spreading grounds."].) The proposed budget also allocates costs for seawater intrusion lab analysis and other water quality services for the impacted southeastern Oxnard Plain and Pleasant Valley Basins to the

Water Conservation sub-fund, though the City does not receive a benefit from such work proportionate to its burden on the District's services. (See Exh. U626, p. 26.)

Although the District purports to separately account for recreational activities in the Recreation sub-fund, it nevertheless appears that funds from the Water Conservation sub-fund, and thus Zone A revenue, supports capital improvements related to recreational services. For instance, five years ago, the District proposed installing vehicle covers for boats at Lake Piru using the Water Conservation sub-fund. (Prop. Budget inserts, Exh. U416, p. 74.) It also intended to use nearly \$1.5 million of these funds to repair asphalt in the Lake Piru Recreation Area, an expense that should be borne by the Recreation sub-fund. (*Id.* at p. 64.) The District has not provided the same level of detail in this year's budget materials, however, nothing in this year's budget indicates that the District has stopped using Zone A funds to subsidize other services.

Finally, the proposed budget again indicates that, among the significant expenditures for water conservation activities are the legal fees the District incurs defending the City's lawsuits. (Exh. U626, p. 20.) These are not costs incurred to serve the City, but the contrary — these fees fund the District's attempt to impose costs on the City disproportionate to its cost of service. That cost must be borne by discretionary funds or by customers who benefit from the expenditure, not the City.

Because the District uses revenue from Zone A charges to fund projects and services that disproportionately benefit agriculture, the charges the District proposes exceed its proportional cost to the serve the City.

**CONCLUSION**. For all these reasons, the City respectfully requests the District refrain from imposing on the City the proposed groundwater extraction charges for Zones A and B, and to establish a new, lawful rate structure that does not discriminate against M&I customers.

Very truly yours,

Gregory G. Diaz

City Attorney City of San Buenaventura Miles Hogan Miles P. Hogan

Assistant City Attorney II – Water City of San Buenaventura

Enclosures

- c: Mauricio E. Guardado, UWCD General Manager David D. Boyer, UWCD General Counsel Susan Rungren, General Manager, Ventura Water Michael G. Colantuono, Special Counsel, City of San Buenaventura
- Attachments: A Request for Reconsideration to FCGMA from Ventura Water (Apr. 21, 2015) B – City of Ventura Variance Request PowerPoint Presentation to Fox

Canyon Groundwater Management Agency (Jan. 28, 2015)

## ATTACHMENT A

Trusted life source for generations



April 21, 2015

Board of Directors Fox Canyon Groundwater Management Agency 800 South Victoria Avenue Ventura, CA 93009-1600

## Re: Request for Reconsideration of Fox Canyon GMA Denial of City of San Buenaventura Variance Request and Appeal

Board of Directors:

This letter is a request for consideration of a decision made by the Board of Directors of the Fox Canyon Groundwater Management Agency (Agency) on January 28, 2015. As you may recall, on that date the Agency Board heard the Ventura Water/City of San Buenaventura (City) appeal of the Executive Officer's decision to deny the City's request for a variance from certain requirements of Emergency Ordinance E. Following a hearing on the City's appeal, the Board followed the recommendation of Agency staff to deny the appeal. For a variety of reasons, including but not limited to those set forth herein, the City respectfully requests the Agency to reconsider its decision.

This request for reconsideration provides an outline of the information and bases upon which the Agency should change its decision on the City's variance request. Additional information and bases exist throughout the record on this matter and are found in various other decisions by the Agency with regard to its administration of Emergency Ordinance E.

According to the Agency's staff report dated January 28, 2015, the City has a historical allocation of groundwater production within the Agency (the northwest portion of the Oxnard Plain basin) of 5,471.9 acre-feet per year (afy); an Adjusted Historical Allocation (AHA) of 4,103.9 afy; and a calculated Temporary Extraction Allocation (TEA) of 4,826.9 afy that is progressively reduced to 3,861.5 afy according to the schedule contained in Article 2.C of Emergency Ordinance E.

Initially the City requested a variance that would allow the City to use its TEA allocation plus a maximum of 2,000 afy during drought conditions that would be debited from the City's 25,595 acre-foot account of conservation credits. (City letter dated June 18, 2014.) Later the City formally revised its variance request to use its TEA allocation and only 1,000 afy of its conservation credits. (City letter dated December 24, 2014.)

During the hearing on its appeal, the City revised and again reduced its variance request for an allocation totaling its AHA of 4,103.9 afy plus 1,000 afy, which combined is well below the City's historical allocation of 5,471.9 afy. In support of its requests, the City has made the requisite showings that allow the Agency to grant a variance from the requirements of Emergency Ordinance E.

The Agency can grant a variance from the requirements of Emergency Ordinance E based on a showing that (1) there are special circumstances or exceptional characteristics of the owner or operator which do not apply generally to comparable owners or operators in the same vicinity; or (2) strict application of the reductions as they apply to the owner or operator will result in practical difficulties or unnecessary hardships inconsistent with the general purpose of the Emergency Ordinance; or (3) the granting of such variance will result in no net detriment to the aquifer systems. (Emergency Ordinance E, Article 2.H.)

For the Agency to grant a variance, the City needed to make <u>only one</u> of the showings in Article 2.H above. Yet based on the information and testimony submitted, the City has made sufficient showings for <u>all three</u> of the factors. Indeed, the Agency's own information and testimony show that each of the factors has been satisfied. Unfortunately, however, the Agency appears to have had a desired outcome in mind to deny the City's request for variance. To that end, the Agency (i) arbitrarily applied a novel and unsupported set of standards to the City that are not found in Emergency Ordinance E, (ii) disregarded substantial evidence presented by the City, and (iii) failed to support the Agency's findings by substantial evidence in light of the whole record.

Subsequent to the denial of its appeal, the City submitted a California Public Records Act request to the Agency dated February 27, 2015 (PRA request) seeking various records relating to the Agency's administration of Emergency Ordinance E and relating to definitions of key terms as they are used and applied by the Agency in specific regard to Emergency Ordinance E. As further set forth below, the records provided by the Agency in response to the City's PRA request further demonstrate that the Agency arbitrarily applied a novel and unsupported set of standards to the City that are not found in Emergency Ordinance E, disregarded substantial evidence presented by the City, and failed to support the Agency's findings by substantial evidence in light of the whole record. For these and other reasons, the City urges the Agency to reconsider its decision to deny the City's appeal.

1. <u>The City has shown there are special circumstances and exceptional</u> <u>characteristics of the City which do not apply generally to comparable</u> <u>owners or operators in the same vicinity.</u>

With regard to this first standard of Article 2.H, the City's PRA request sought records from the Agency that provide a definition of the terms "special circumstances" or "exceptional characteristics" as those terms are used and applied in specific relation to Article 2 of Emergency Ordinance E.

The Agency provided no records in response to this request, and therefore it is clear that the Agency has no objective standard by which it applied these definitions to the City. Instead, as illustrated herein, the Agency abused its discretion by applying arbitrary standards to the City.

The City provided substantial information and evidence showing special circumstances and exceptional characteristics of the City which do not apply generally to comparable owners or operators in the same vicinity. By way of example, the City does not have access to its State Water Project (SWP) supplies like other municipal operators in the same vicinity. Moreover, other sources of supply within the City's portfolio are facing exceptional constraints that are completely unique to the City, such as the hydrologic circumstances of the Ventura River and the water quality characteristics of the Mound Basin. The City has implemented extraordinary and successful water conservation measures throughout its municipal service area, yet its total demands are pressing the limits of its available supply. In light of the serious and present constraints on its other water supplies which are fully beyond the City's control, the City has a unique, special and exceptional need to access its historic use of groundwater from the northwestern portion of the Oxnard Plain basin to provide domestic water service in accordance with Water Code sections 106, 106.3 and 106.5.

Even though the Agency has no objective standards for determining what constitutes "special circumstances" or "exceptional characteristics" in relation to Emergency Ordinance E, it rejected the substantial evidence submitted by the City and concluded that the requisite showings were not made. One "justification" offered by the Agency is that the City has not installed infrastructure to receive SWP supplies. Yet that basis only serves to highlight the arbitrary nature of the Agency's decision-making as applied to the City. In granting exceptions for new agricultural wells, the Agency has not considered as a determining factor whether, for example, the operator has installed a connection to receive recycled water as an alternative to groundwater. Another reason expressed during the appeal hearing for the Agency to deny the City's request is that approval may result in an influx of other M&I variance requests. Yet again, that factor has no legal, equitable or evidentiary support. Instead the Agency employed a completely arbitrary standard and process to determine that the City has not shown special circumstances or exceptional characteristics in relation to its variance request. In sum, the Agency both disregarded the substantial evidence presented by City and failed to present its own substantial evidence in support of its findings.

2. <u>The City has shown that strict application of the reductions as they apply</u> to the City will result in practical difficulties or unnecessary hardships inconsistent with the general purpose of Emergency Ordinance E.

With regard to this second standard of Article 2.H, the City's PRA request sought records from the Agency that provide a definition of the terms "practical difficulties" or "unnecessary hardships" as those terms are used and applied in specific relation to Article 2 of Emergency Ordinance E.

The Agency provided no records in response to this request, showing again that the Agency has no objective standard by which it applied these definitions to the City. Instead, as illustrated herein, the Agency abused its discretion by applying arbitrary standards to the City.

Recital J of Emergency Ordinance E states that the reductions and other measures of the ordinance are necessary to improve and protect the quantity and quality of groundwater supplies within the Agency, to prevent a worsening of existing conditions, to allow time to implement a definite and long-term solution to improve groundwater conditions in the Agency, and to bring groundwater extractions into balance with recharge. The City supports the general purposes of Emergency Ordinance E, yet also recognizes that the Ordinance is not intended to interfere with the ability of municipal water providers to ensure a safe, clean, affordable, and accessible water supply for domestic users.

The City provided substantial information and evidence to show that strict application of the reductions to the City will result in practical difficulties and unnecessary hardships inconsistent with the general purpose of Emergency Ordinance E. For instance, the City has presented evidence to show that current and projected reductions according to the City's calculated TEA will result in unnecessary and undue hardships to domestic water customers that are served by the City, particularly those in disadvantaged communities who may not be able to absorb surcharges that the City will have to pass through to retail water customers. The City also presented evidence to show that practical difficulties and hardships will result because the City uses groundwater produced from the Oxnard Plain to blend with poorer water quality it produces from the Mound Basin. The City's variance request shows that the City must be able to maintain such blending to meet drinking water regulations promulgated by the SWRCB Division of Drinking Water, and without such blending the City faces the additional risk and substantial hardship of not being able to utilize its supplies in the Mound Basin.

These practical difficulties and unnecessary hardships actually exist. They are tangible and unique to the City, not hypothetical as suggested by the Agency. Clearly the general purpose of Emergency Ordinance E is not intended to interfere with the City's ability to ensure a safe, clean, affordable, and accessible water supply for its domestic users in accordance with Water Code sections 106, 106.3 and 106.5. Notwithstanding, the Agency abused its discretion by both disregarding the substantial evidence presented by City and failing to present its own substantial evidence in support of its findings that the City has not shown practical difficulties or unnecessary hardships.

3. <u>The City has shown that granting its request for variance will result in no</u> <u>net detriment to the aquifer systems</u>.

With regard to this third standard of Article 2.H, the City's PRA request sought records from the Agency that provide a definition of the term or condition "net detriment to the aquifer systems" as that term or condition is used and applied in specific relation to Article 2 of Emergency Ordinance E.

Again, the Agency provided no records in response to this request, thus showing that the Agency has no objective standard by which it applied this definition to the City under Article 2. Instead, as illustrated herein, the Agency abused its discretion by applying arbitrary standards to the City, disregarding substantial evidence presented by the City, and failing to support the Agency's findings by substantial evidence in light of the whole record.

On this subject, the Agency has truly revealed its double-standard against the City. The Agency's January 28th staff report refers to various exceptions the Agency has granted for new extraction facilities under Emergency Ordinance E, also noting the Agency's findings in those cases that the proposed uses "will result in no net detriment to the Basin, or any subbasin, or aquifer associated with the use ....." Records provided by the Agency in response to the City's PRA request confirm that the Agency has granted numerous exceptions to Emergency Ordinance E to parties other than the City, even though the Agency has expressly acknowledged that such exceptions may negatively impact the Oxnard Plain basin.

In this regard the City expressed concern that there are inconsistencies in the determinations made by the Agency under Article 2 and Article 4 of Emergency Ordinance E regarding the "no net detriment" standard. In response to the City's concern, the Agency's staff report states that "*the determinations are different*." The staff report explains that under Article 4, the Agency must find "that the proposed use will result in no net detriment to the Basin, or any sub-basin, or aquifer associated with the use, by determining that (1) the proposed use does not result in the material degradation of water quality of any type, or (2) recharge to any aquifer within the Agency is not materially diminished." In contrast, the staff report states that "the no net detriment criteria for granting a variance [under Article 2] is that the granting of such variance will result in no net detriment to the aquifer systems." Through this explanation that "*the determinations are different*" the Agency admits that the criteria used for determining "no net detriment" under Article 4 do <u>not</u> apply for determining "no net detriment" under Article 4 do <u>not</u> apply for determining "no net detriment" under Article 2 are <u>not</u> defined.

Remarkably, however, the Agency's staff report then applies the criteria of Article 4 to the City's variance request. In support of its request under Article 2, the City submitted information and testimony that the City's request would result in no net detriment to the aquifer systems because the City extracts groundwater from the northwestern portion of the Oxnard Plain basin which repeatedly has been shown as being in much better condition than other areas of the basin and not below sea level.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> Also, as noted above, the City's revised variance request was for an allocation totaling its AHA of 4,103.9 afy plus 1,000 afy, which combined is below the City's historical allocation of 5,471.9 afy. Records produced by the Agency in response to the City's PRA request show that in other cases the Agency has considered historic allocation a relevant factor in determining whether to grant an exception to the requirements of Emergency Ordinance E; however, no such consideration was provided by the Agency in denying the City's variance request.

In response, the Agency's staff report concludes that the City's showing of no net detriment "is not valid" because, according to the Agency, the City's extractions will negatively impact water quality and recharge of the aquifer systems – *i.e., the criteria used under Article 4 which the Agency expressly claims are different from the criteria used under Article 2*. Even worse, the Agency then invents and applies a completely novel standard to assert that the City's extractions will impact water quality and aquifer recharge. To rebut the City's showing that its request will result in no net detriment to the aquifer systems, the Agency contends that net detriment will occur based on total extractions "*within a one-mile radius*" of the City's wells. This "one-mile radius" standard is not found in Article 2 or Article 4 of Emergency Ordinance E. Moreover, the records produced by the Agency in response to the City's PRA request demonstrate that the Agency has never applied this so-called "one-mile radius" standard to any other party within the Agency, whether in connection with Article 2 or Article 4. Instead the Agency invented and applied this standard only to the City and for the first time ever in the Agency's administration of Emergency Ordinance E.

Ultimately, the Agency denied the City's variance request by rejecting the City's evidence and determining that the City has not shown there will be "no net detriment" to the aquifer systems. However, in addition to the arbitrary actions described above, the Agency's staff report simply concedes on this point that "<u>the potential for net</u> <u>detriment to the aquifer systems is not known</u>." This demonstrates that the Agency failed to base its determination on substantial evidence and abused its discretion by arbitrarily applying an illusory standard to deny the City's appeal.

The information and circumstances described above, in addition to other materials in the record, show that the Agency has not proceeded in the manner required by law, has applied arbitrary standards to the City, has disregarded substantial evidence presented by the City, and has failed to support the Agency's findings by substantial evidence in light of the whole record. The City urges the Agency to reconsider its decision on the City's variance request, and believes that the parties can and should reach a reasonable resolution of this matter without the need for further or protracted disagreement.

The City respectfully requests the Agency to inform the City in writing no later than Wednesday, May 1, 2015 as to whether the Agency will reconsider its decision on the City's variance request. Should you have any specific questions, please feel free to contact me at (805) 652-4518 or at sepstein@venturawater.net.

Sincerely

Shana Epstein, General Manager, Ventura Water

cc: Gregory Diaz, City Attorney

## ATTACHMENT B

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14



## City of Ventura Variance Request

Ventura Water January 28, 2015



## **Oxnard Plain Basin City** Allocation

- Historical Allocation = 5472 AFY (1985 to 1989)
- M & I Reduction
- 1992 = 5198 AFY
- -1995 = 4925 AFY
- 2000 = 4651 AFY
- 2009 = 4378 AFY
- 2010 = 4104 AFY (25% reduction)



## Emergency Ordinance E

- April 11, 2014 City TEA = 4827 AFY
- Phase Reduction of 20%
- January 1<sup>st</sup> 2016, TEA = 3862 AFY
- Summary of FCGMA Reductions
- City Historical with 25% reduction = 4104 AFY
  - City revision per Emergency Ordinance E = 3862 AFY
- 29% reduction from Historical



# City's Conservation Credits

- City's Credits = 25,595 AF (2013 Total City Supply = 17,709 AF)
  - All credits now at 0 AF
- production from the Oxnard Plain Basin, as reflected by the City's conservation credits. alternative supplies, to reduce historical responsible steps, including the use of The City has taken extraordinary and I



## Variances Granted

- Well Drilling Exemptions Only
- Nine agricultural users within the southern Oxnard plain
- Berryland Management 350.76 AF/Year
  - No Historical Allocation
- Helm Ranch 489.5 AF/ Year
- Historical Allocation 306.126 AF/Year
- Stephen Dodge and Fred Rosenmund 220AF/Year Historical Allocation 21.046 AF/Year
- 2 E&H Land Company Wells 414 AF/Year No Historical Allocation
- Residential well that produces 2 AF/AC T



## Ventura's Commitment







# Ventura's Conjunctive Use Management





## Ventura's Existing Supply

- Ventura River
- Casitas
- Mound Groundwater Basin
- Santa Paula Groundwater Basin
- Oxnard Plain Groundwater Basin
- Reclaimed Water



Regional Integrated Water Resource Management



## Ordinance E

- Special circumstances or exceptional characteristics of the water operator
- Ventura City has service population of over 113,500 ppl (Oxnard = 203, 645, Port Hueneme = 21, 555 both haveaccess to State Water)
- Ventura has no connection to State Water Supply
- Paula Basin, Casitas (exceeding in district demand for CY Decreasing supplies: Ventura River, Mound Basin, Santa 2014)
- Water Quality Issues: Need higher quality Oxnard Plain sources due to not meeting drinking water standards. water to blend with lower quality water from other sources. If lose Oxnard plain, can lose other supply



40% of Groundwater Sourced from Golf Course Wells in November (26% of total supply)






# **Related Considerations**

have not been diminished by virtue of groundwater constitutes a reasonable groundwater rights to new and other its reduced use of groundwater. The City's rights to extract groundwater and beneficial use of water and the GMA cannot reallocate the City's The City's reduced use of uses.



# **Related Considerations**

the ability to utilize a small portion of its conservation credits and the The City has reasonably relied on City is not requesting a large or even moderate redemption of those credits. . .



### Remedy

## Variance Request:

Allocation of 4,104 AFY (25% reduction from historical) + 1,000 AFY (1,000 AFY from 25,595 AF of conservation credits) = 5,104 AFY 1



### Questions?































UWCD Recreation Committee Meeting Presentation Monthly Operational Updates



	<b>Economic Update</b> 2018 – 2021 Revenue and Visitation Comparison								
	Year	2021	2020	2019	2018				
	Day Use Revenue	\$135,551.00	\$9,731.25	\$56,934.00	\$36,086.40				
	Camping Revenue	\$207,564.80	\$61,065.70	\$229,710.91	\$137,840.65				
	Combined Revenue	\$343,116.20	\$70,769.95	\$286,644.91	\$173,927.05				
	Other Revenue	\$900.00	\$3,445.00	\$18,490.00	\$14,620.00				
	Persons	19,433	2,885	23,517	16,811				
	Vehicles	9,961	1,282	9,354	6,900				
	Vessels	1,757	224	1,174	732				
M	United Water	r Conservation District							





- 2271 of 4797 visitor nights were for electric sites
- Electric sites accounted for 47% of visitor nights



### **Guest Nights**



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### **Operational Update**

### **General Facility Maintenance**

- Completed Phase 2 of Group 2 tree replacement
  - 16 new trees and irrigation to support them
- Awarded a contract To Pacific Vista Landscape to perform Day Use Irrigation overhaul
  - 20 new valves, new timer & wires, replacement of all 240 irrigation heads
- Performed an irrigation overhaul of the Ranger station & entry kiosk irrigation systems
- Completed annual fire & brush clearance work within the recreation area







### **Operational Update**

Travel, Trainings and Meetings

- Conducted 3 days of CPR/First Aid/ AED training for recreation staff
- Participated in FERC 2020 Physical and Cybersecurity follow up
- Continued Master planning discussions
- Annual Law Enforcement Coordination meeting with local partners



### Operational Update Marketing, Outreach & Events

- Coordinated a social media marketing campaign with CV Strategies (Begins June 7<sup>th</sup>)
- Participated a marketing Co-Op advertisement with the Central Coast Tourism Council
- Chief Strahan was featured on the latest MobileRVing.com podcast (airs June 7<sup>th</sup>)
- Exploring implementation of events to include a cornhole tournament, movie in the park, and chili cook off.



### Summary of Initial Surface Water Modeling Results of New Projects, Oxnard and PV Basins

Bram Sercu, PhD UWCD Board Meeting June 9, 2021



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6/9/2021







Initial Modeling Results for the Suite of Proposed Water-Supply Projects Recommended by OPV Stakeholder Projects Committee

> United Board of Directors Meeting June 9, 2021



The Primary Driver for Reducing Pumping or Enhancing Yield in Oxnard and Pleasant Valley Basins is Seawater Intrusion

Estimated 2016 seawater intrusion fronts in Upper Aquifer System (UAS) and Lower Aquifer System (LAS), and forecasted future seawater intrusion through 2070 if current trends continue.





















### Summary

- New projects *mostly* prevent seawater intrusion while meeting historical water demands, *but*:
  - Some continuing seawater intrusion in Lower Aquifer System (LAS) at Port Hueneme and Point Mugu
- Some inefficiencies are apparent under current project configuration
  - Especially recycled water

### Potential Modifications to Project Scenarios

- Adjust projects to stop seawater intrusion in LAS at Port Hueneme and Point Mugu
  - Expand brackish water extraction and treatment?
  - Expand "no pumping" zone in southern Oxnard and PV basins?

### This scenario was just the first iteration!

- It's mostly effective at achieving sustainability goals
- It also meets 100% of current demand

### Questions?



### Density-Dependent Transport Model

- UWCD Model uses MODFLOW-NWT recently updated in 2020 (released in 2011)
- UWCD Model will be converted into the density-dependent transport model
- SEAWAT (released in 1998) was proposed
- MODFLOW-USG (released in 2013) will be used

Model	SEAWAT	MODFLOW-USG	
Latest Update	2012	Current	
Technical Support	Little to none	Available	
Compatibility with flow model	Backward	Full	
Model Refinement	Rigid	Flexible	
Water level variation (wet/dry cells)	Poor	Good	











UWCD Groundwa	ater Models
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Models	2018 Model	2020 Model	MODFLOW USG
Area	Coastal Plain Basins	Coastal Plain and SCR river basins	Coastal Plain Basins
Simulation Period	1985 - 2015	1985 - 2019	1985 - 2015
Time Step	Monthly	Daily	Monthly / Daily
Applications	Groundwater Flow	Groundwater Flow and SCR stream	Flow, Transport, Density Dependent







### **Project Objectives**

- Combat Seawater Intrusion
- Enable NBVC to Meet its Water Security Goals
- Increase Resilience of Regional Water Supplies (create a New drought-proof supply)
- Increase Sustainable Yield of Oxnard and Pleasant Valley Basins
  - California Code of Regulations requires sustainable basin conditions within 20 years



## Step 1: REGCOM signed a Letter of Support Step 1: REGCOM signed a Letter of Support Support is essential for United to continue project development, planning, and securing funds Letter of support was reviewed by NBVC, NRSW, Legal, and Real Estate prior to signature Step 2: USN enters into a long-term real estate agreement for land at Point Mugu to support the Brackish Groundwater Extraction and Treatment Project Science and engineering must be sound and approved by regulatory agencies (CA EPA and Groundwater agencies) to move forward Contingent upon United successfully gaining required approvals to implement their project Outgrant Easement is best-suited real estate mechanism Approval Levei: ASN EI&E In-Kind Consideration to the Navy is included in easement Additional Navy Actions NEPA and other permitting requirements Coordinate tactical-level details for design, construction and operation of plant (e.g., base access)

5



### 6-Month Outlook

### United team action items:

- Complete hydrogeological flow model / Prop 1 feasibility study
- Determine potential geologic data gaps
- Plan for potential geotechnical exploration
- Continue and expand special groundwater sampling program
- Complete desktop conceptual design
- Prepare pilot test plan
- Start preparation of CEQA initial study

### Navy team action items:

- Continue efforts related acquisition of real-estate at NBVC Point Mugu
- Determine agreement options for utilizing SDTF
- NEPA and permitting planning in conjunction with CEQA process







United Water CONSERVATION DISTRICT

Information Item:

### Water Resources Department Updates

June 9, 2021

### **Major Departmental Activities**

- Model documentation nearly complete
- Brackish-Water model refinements are under way:
  - Converting to unstructured grid and adding solute transport function
  - Conducted TAC meeting #2 for Prop 1 Grant (5/19/21)
  - Meeting with Navy leadership (5/26/21)

### Model application:

- Hydrologists developed daily surface water routing tool for project coordination
- Continue optimizing potential water-supply projects
- Ongoing monitoring activities, data management, public interaction




