

Notice and Agenda of a Regional Water Workshop

Thursday, April 5, 2012 at 4:00 p.m.

MEETING LOCATION:

City of Banning City Hall
99 East Ramsey Street
Banning, California 92220

RETAIL WATER AGENCIES:

City of Banning
Banning Heights Mutual Water Company
Beaumont Cherry Valley Water District
Cabazon Water District
High Valley Water District
South Mesa Mutual Water Company
Yucaipa Valley Water District

- I. Call to Order**
 - II. Roll Call and Introductions of Elected Officials and Staff Members from Each Retail Water Agency**
 - III. Public Comment**
 - IV. Presentation and Discussion Regarding a Regional Allocation Agreement for Water Imported by the San Gorgonio Pass Water Agency**
 - A. Comments from the City of Banning
 - B. Comments from Banning Heights Mutual Water Company
 - C. Comments from Beaumont Cherry Valley Water District
 - D. Comments from Cabazon Water District
 - E. Comments from High Valley Water District
 - F. Comments from South Mesa Mutual Water Company
 - G. Comments from Yucaipa Valley Water District
 - V. Adjournment**
-

REGIONAL WATER ALLOCATION AGREEMENT FOR WATER IMPORTED BY THE SAN GORGONIO PASS WATER AGENCY

This Agreement, dated _____ by and between the San Gorgonio Pass Water Agency, a State Water Contractor (hereinafter referred to as "SGPWA"), Beaumont Cherry Valley Water District, a California irrigation district, City of Banning, a California municipal corporation, Yucaipa Valley Water District, a California county water district, Cabazon Water District, a California water district, High Valley Water District, a California water district, South Mesa Mutual Water Company, a California mutual water company, Banning Heights Mutual Water Company, a California mutual water company, each individually referred to or collectively referred to in this Agreement as "Party" or "Parties".

NOW THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt of all of which is hereby acknowledged, the Parties agree as follows:

RECITALS

A. California's water law and policy, Article X, Section 2 of the California Constitution requires that all uses of the State's water be both reasonable and beneficial. Specifically, this section of the Constitution states in part, "It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use of unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.

B. On November 16, 1962 the State of California, acting by and through the Department of Water Resources, and the San Gorgonio Pass Water Agency entered into a Water Supply Contract pursuant to the provisions of the California Water Resources Development Bond Act and the State Central Valley Project Act and other applicable laws.

C. The Water Supply Contract between the Department of Water Resources and the San Gorgonio Pass Water Agency been subsequently amended eighteen times, with the latest amendment dated December 26, 2007 providing a Maximum Annual Table A allocation of 17,300 acre feet per year of imported water from the State Water Project to the San Gorgonio Pass Water Agency.

D. The San Gorgonio Pass Water Agency Law codified as Chapter 101 of the California Water Code specifically provides for the San Gorgonio Pass Water Agency to "...sell water under the control of the agency to cities, and to other public corporations and public agencies within the agency...for use within said agency without any preference...".

E. The Urban Water Management Planning Act (California Water Code Section 10610 et. seq.) requires California's urban water suppliers to support their long-term resource planning and ensure adequate water supplies are available to meet existing and future water demands. Every urban water supplier that either provides over 3,000 acre-feet of water annually or serves more than 3,000 or more connections is required to assess the reliability of its water sources over a 20-year planning horizon considering normal, dry, and multiple dry years. The implementation of reliable and prudent water management plans require all water retailers within the service area of the San Gorgonio Pass Water Agency, regardless of size or number

of customers, to be able to anticipate a given quantity of imported water to meet the needs within each retail water service area.

F. The Parties recognize that an Agreement allocating imported water from the San Gorgonio Pass Water Agency will: (1) provide certainty for water retailers thereby enabling better water resource planning in the future; (2) supports the ability for each water retailer to establish community related goals with an understanding of the rules pertaining to the receipt of imported water; (3) promote improved water management since an allocation will enable each water retailer to implement and directly benefit from specific policies related to sustainability, dual plumbing and conjunctive use; and (4) improve coordination and confidence between the water retailers and the regional state water contractor.

DEFINITIONS

Adjusted Water Resource Allocation. The Adjusted Water Resource Allocation represents the additional purchase of water rights or source of supply that is added is calculated using the Sphere of Influence boundary area for each water retailer to proportionally allocate the existing Maximum Table A allotment of 17,300 acre feet per year of imported water from the California State Water Project.

Annual Water Resource Allocation. The Annual Water Resource Allocation is the total amount of water available to each Water Retailer from the Baseline Water Resource Allocation and the Adjusted Baseline Water Resource Allocation each year based on the actual and independent availability of the specific source of supply.

Baseline Water Resource Allocation. The Baseline Water Resource Allocation is calculated using the Sphere of Influence boundary area for each water retailer to proportionally allocate the existing Maximum Table "A" allotment of 17,300 acre feet per year of imported water from the California State Water Project. The Baseline Water Resource Allocation shall also include any other water source of supply available to the San Gorgonio Pass Water Agency from the California Department of Water Resources or other entity that provides water to the region through the State Water Project.

Sphere of Influence. A sphere of influence is the planning boundary of an agency's legal boundary that designates the probable future boundary and service area. The purpose of the sphere of influence is to ensure the provision of efficient services while preventing overlapping jurisdictions and duplication of services.

Water Retailers. The term Water Retailers refers to the following Parties to this Agreement: City of Banning; Banning Heights Mutual Water Company; Beaumont Cherry Valley Water District; Cabazon Water District; High Valley Water District; South Mesa Mutual Water Company; and Yucaipa Valley Water District.

AGREEMENT

1. **Allocation of Water from the State Water Project.** The Parties acknowledge that the following provision of the San Gorgonio Pass Water Agency Law is integrated within this Agreement to ensure the highest priority of imported water from the San Gorgonio Pass Water Agency is consistent with the intent of the Legislature.

1.1. The San Gorgonio Pass Water Agency Law codified as Chapter 101, Section 15.5 of the Appendix to the California Water Code states, "It is the intent of the

Legislature that, in allocating water received from the State Water Project pursuant to this act, the highest priority shall be given to eliminating groundwater overdraft conditions within any agency of district receiving the water.”

- 2. Boundaries of the Parties.** As shown in Exhibit A and Exhibit B, the boundary of the San Gorgonio Pass Water Agency encompasses a portion or the entire service area of each Water Retailer that is a Party to this Agreement.
- 2.1. The Parties agree to utilize that portion of the sphere of influence of each Water Retailer within the boundary of the San Gorgonio Pass Water Agency as the basis of the imported water allocation methodology provided herein. The Sphere of Influence boundary is utilized since this boundary line represents the reasonable planning boundary of each Water Retailer’s legal boundary and designates the water retailer’s ultimate service area.
- 2.2. The Parties acknowledge that the Local Agency Formation Commission of Riverside County will periodically review the Sphere of Influence of each Water Retailer and adjust these boundaries based on factors such as current and future land use, current and future need and capacity for service, municipal service reviews, and any relevant communities of interest. Any such change in the Sphere of Influence shall also change the baseline allocation of water as provided in Section 4.5 herein.
- 2.3. The Parties acknowledge that the Sphere of Influence boundary area for each Water Retailer within the boundary of the San Gorgonio Pass Water Agency is as follows:

Table 1 - Boundary Summary		
Water Retailer	Sphere of Influence Boundary Area (Acres)	Percentage of Area for Each Retail Water Agency
Banning Heights Mutual Water Company	876	1.2%
South Mesa Mutual Water Company	974	1.4%
High Valley Water District	5,287	7.4%
Cabazon Water District	7,990	11.1%
Yucaipa Valley Water District	17,388	24.2%
City of Banning	19,644	27.3%
Beaumont Cherry Valley Water District	19,693	27.4%
Morongo Band of Mission Indians	34,611	--
Unincorporated Riverside County	34,043	--
Unincorporated San Bernardino County	1,910	--
SGPWA Service Area	142,416	100.0%

- 3. State Water Project Reliability.** For planning purposes, the availability of water from the State Water Project is based on a long-term average reliability. The California Department of Water Resources prepares a *State Water Project Delivery Reliability Report* to describe current and future deliveries from the State Water Project.
- 3.1. The Water Retailers understand the annual fluctuations in the availability of water deliveries from the State Water Project and further acknowledge that these fluctuations will create variations in the actual quantity of water available to the region from the State Water Project.
- 3.2. The San Gorgonio Pass Water Agency agrees to take every reasonable measure to insure the delivery of the maximum amount of imported water available to the region from the State Water Project.
- 3.3. All Parties agree that any increase or decrease of the reliability of the State Water Project will be automatically reflected in the allocation of water available to each Water Retailer.
- 4. Baseline Water Resource Allocation.** The San Gorgonio Pass Water Agency maintains a contract with the California Department of Water Resources for a maximum annual delivery of 17,300 acre feet per year of Table "A" water from the State Water Project.
- 4.1. The Parties agree to use the area within the Sphere of Influence of each Water Retailer in the service area of the San Gorgonio Pass Water Agency to calculate the Baseline Water Resource Allocation as follows:

Table 2 - Baseline Water Resource Allocation		
Water Retailer	Percentage of Area for Each Retail Water Agency	Baseline Water Resource Allocation (Acre Feet)
Banning Heights Mutual Water Company	1.2%	211
South Mesa Mutual Water Company	1.4%	235
High Valley Water District	7.4%	1,273
Cabazon Water District	11.1%	1,924
Yucaipa Valley Water District	24.2%	4,187
City of Banning	27.3%	4,730
Beaumont Cherry Valley Water District	27.4%	4,742
Morongo Band of Mission Indians	--	Not Applicable
Unincorporated Riverside County	--	Not Applicable
Unincorporated San Bernardino County	--	Not Applicable

Maximum SGPWA Table "A" Delivery Amount	17,300
--	---------------

- 4.2. The Baseline Water Resource Allocation for each Water Retailer represents the maximum quantity of imported water from the San Gorgonio Pass Water Agency that each retail water provider shall use for planning purposes unless augmented with additional imported water supplies as provided herein. Using the amount of imported water allocated as the Baseline Water Resource Allocation for planning purposes will insure that the Water Retailers do not oversubscribe the existing maximum Table "A" delivery amount of 17,300 acre feet provided by contract to the San Gorgonio Pass Water Agency.
- 4.3. The purchase of any additional water supplies or rights by the San Gorgonio Pass Water Agency shall be automatically added to the existing Maximum SGPWA Table "A" Delivery Amount of 17,300 acre feet and distributed to the Water Retailers increasing the Baseline Water Resource Allocation for all Water Retailers based on the methodology above. The quantity, quality and reliability of additional water supplies purchased by the San Gorgonio Pass Water Agency shall be melded together with Maximum SGPWA Table "A" Delivery Amount of 17,300 acre feet to benefit/impact all Parties equally.
- 4.4. No portion of the Baseline Water Resource Allocation can be sold, traded, exchanged or transferred between the Parties except as provided below.
- 4.5. The Parties acknowledge that any addition or deletion to the Sphere of Influence boundary of any Water Retailer after the effective date of this Agreement will change the Baseline Water Resource Allocation.
 - 4.5.1. Any proposed administrative action by the Local Agency Formation Commission that will potentially change the Sphere of Influence boundary of any Water Retailer shall be distributed to the Parties 60 days prior to the scheduled action by the Local Agency Formation Commission.
- 4.6. The Baseline Water Resource Allocation will not be amended to provide any portion of the existing maximum annual delivery of 17,300 acre feet per year of Table "A" water from the State Water Project to any existing water retailer or new water retailer not a Party to this Agreement.
 - 4.6.1. A water retailer not a Party to this Agreement shall be required to purchase a sufficient quantity of physical water rights and complete pipeline improvements to the existing conveyance and delivery system(s) such that no Party to this Agreement is damaged or subordinated with respect to expenses, water conveyance, water supply or other related issue under the authority of the San Gorgonio Pass Water Agency.
- 4.7. Any improvements to the capital assets owned, operated or controlled by the San Gorgonio Pass Water Agency that result in additional water resources being available to the region will be reflected in the Baseline Water Resource Allocation and approved by an amendment to this Agreement by the Parties.

- 4.8. The San Gorgonio Pass Water Agency will only provide imported water to Water Retailers and no other entity within the boundary of the San Gorgonio Pass Water Agency.
- 5. Adjusted Baseline Water Resource Allocation.** The Baseline Water Resource Allocation amount allocated to each Water Retailer can be further adjusted at any time as follows:
- 5.1. Purchase of Additional Sources of Supplies. Each Water Retailer may elect, at the sole and absolute discretion of each entity, to purchase additional imported water sources of supplies that will be added to the Baseline Water Resource Allocation amount.
 - 5.1.1. The purchase of additional water sources of supplies or water rights by any Water Retailer shall be added to the Baseline Water Resource Allocation amount of the Water Retailer(s) purchasing the additional supply or rights. The additional sources of supply may then be added to the planning as an increase to the Baseline Water Resource Allocation.
 - 5.1.2. The quantity, quality and reliability of any water purchased that results in an adjustment of the Baseline Water Resource Allocation shall be tracked independently from the Baseline Water Resource Allocation such that any enhancements/degradations of water quality, reliability or other parameter shall only benefit/impact the Party(ies) purchasing the additional source of supply.
 - 5.1.3. In some cases the availability of the Adjusted Baseline Water Resource Allocation will be equal to the availability of the Baseline Water Resource Allocation if both supplies originate from the location and are conveyed using the same facilities.
 - 5.1.4. A Water Retailer shall not be restricted from using funds collected by the San Gorgonio Pass Water Agency as a component of the water rates for the purchase of additional water supplies and rights.
 - 5.1.5. No portion of the Adjusted Baseline Water Resource Allocation can be sold, traded, exchanged or transferred between the Parties except as provided below.
- 6. Annual Water Resource Allocation.** The Annual Water Resource Allocation is the total amount of water available to each Water Retailer from the Baseline Water Resource Allocation and the Adjusted Baseline Water Resource Allocation each year based on the actual and independent availability of the specific source of supply.
- 6.1. The Parties acknowledge that the annual amount of imported water available from all sources of supply are variable based on factors such as seasonality, climatic changes, precipitation, snowpack, and drought. These changes will cause variability in the amount of water available to each Water Retailer on an annual basis.

- 6.2. The amount of water available from the State Water Project is adjusted throughout each calendar year based on the notices issued by the California Department of Water Resources. Any notice issued by the California Department of Water Resources that changes the Maximum SGPWA Table "A" Delivery Amount shall be effective on the date of issuance of the notice from the Department of Water Resources.
- 6.3. Baseline Water Resource Allocation. The Annual Water Resource Allocation for available water from the Baseline Water Resource Allocation shall generally be based upon the availability of imported water from the State Water Project as determined by the California Department of Water Resources.
 - 6.3.1. The Baseline Water Resource Allocation for each Water Retailer shall also be adjusted throughout the calendar year based on notices issued by the California Department of Water Resources regarding other water quantities provided to the San Geronio Pass Water Agency such as the Turn-Back Water Pool Program and the Article 21 Program. These programs will be allocated on the same percentage basis as provided in Section 3 above.
- 6.4. Adjusted Baseline Water Resource Allocation. The Annual Water Resource Allocation for water allocated from the Adjusted Baseline Water Resource Allocation shall be based upon the availability of specific sources of supply for the specific water source.
7. **Surplus Annual Water Resource Allocation.** If Water Retailer is unable to make use of their specific Annual Water Resource Allocation as provided herein, then the amount of unused imported water shall be reallocated proportionally to the other Water Retailers using the total amount of water allotted to each Water Retailer pursuant to the Adjusted Baseline Water Resource Allocation amount.
8. **Prohibitions to Exchange, Transfer or Sale.** The Parties agree that any water made available to the San Geronio Pass Water Agency shall be used by the Water Retailers within their respective Sphere of Influence and not assigned, exchanged, transferred or sold to create or support a secondary water market or similar benefit for any public or private entity, developer, investor, agricultural interest or speculator.
9. **Excess Conveyance Capacity in State Water Project Facilities.** During times of water shortages, there will be excess pipeline conveyance capacity in the State Water Project. The Parties agree to cooperate and maximize the use and availability of excess State Water Project conveyance facilities to augment the water supplies within the service area of the San Geronio Pass Water Agency based on the rate schedule utilized for routine deliveries of imported water.

General Provisions

10. **General Provisions.** The following General Provisions have been incorporated herein:

- 10.1. Notices. All notices and demands which any Party is required or desires to give to the others pursuant to this Agreement shall be given in writing by certified mail, return receipt requested with appropriate postage paid, by personal delivery, by facsimile or by private overnight courier service to the business address of the other Party(ies).
- 10.2. Entire Agreement; Amendment. This Agreement, together with all Exhibits hereto and documents referred to herein, if any, constitute the entire agreement among the Parties hereto with respect to the subject matter hereof, and supersede all prior understandings or agreements.
 - 10.2.1. This Agreement may be modified or amended only by a consensus of more than 66% of the total amount of water allotted to each Water Retailer pursuant to the Adjusted Baseline Water Resource Allocation amount.
- 10.3. No Assignments. This Agreement and the rights, duties and benefits given in it, may not be assigned.
- 10.4. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the Parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.
- 10.5. Governing Law. This Agreement shall be governed by the laws of the State of California.
- 10.6. Attorneys' Fees. Each Party shall bear its own attorneys' fees and expenses in the preparation and review of this Agreement. In the event that any party hereto institutes an action or proceeding for a declaration of the rights of the Parties under this Agreement, for injunctive relief, for an alleged breach or default of, or any other action arising out of, this Agreement, or the transactions contemplated hereby, or in the event any party is in default of its obligations pursuant thereto, whether or not suit is filed or prosecuted to final judgment, the non-defaulting party or prevailing party shall be entitled to its actual attorneys' fees and to any court costs incurred, in addition to any other damages or relief awarded.
- 10.7. Successors and Assigns; No Assignment. This Agreement shall inure to the benefit of and be binding on the parties to this Agreement and their respective successors and assigns.
- 10.8. Covenants, Conditions or Remedies. The waiver by one Party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The remedies set forth in this Agreement are cumulative and not exclusive to any other legal or equitable remedy available to a party. The exercise of any remedy

provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

- 10.9. Exhibits. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement whether or not actually attached. The following exhibits are attached to this Agreement:
- 10.10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.
- 10.11. Legal Advice. Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

[Signatures on following pages]

SAN GORGONIO PASS WATER AGENCY

By: _____
President, Board of Directors

Attest:

Secretary, Board of Directors

Approved as to form:

Counsel, San Gorgonio Pass Water Agency

BEAUMONT CHERRY VALLEY WATER DISTRICT

By: _____
President, Board of Directors

Attest:

Secretary, Board of Directors

Approved as to form:

Counsel, Beaumont Cherry Valley Water District

CITY OF BANNING

By: _____
Mayor

Attest:

City Clerk

Approved as to form:

Counsel, City of Banning

YUCAIPA VALLEY WATER DISTRICT

By: _____
President, Board of Directors

Attest:

Secretary, Board of Directors

Approved as to form:

Counsel, Yucaipa Valley Water District

CABAZON WATER DISTRICT

By: _____
President, Board of Directors

Attest:

Secretary, Board of Directors

Approved as to form:

Counsel, Cabazon Water District

HIGH VALLEY WATER DISTRICT

By: _____
President, Board of Directors

Attest:

Secretary, Board of Directors

Approved as to form:

Counsel, High Valley Water District

SOUTH MESA MUTUAL WATER COMPANY

By: _____
President, Board of Directors

Attest:

Secretary, Board of Directors

Approved as to form:

Counsel, South Mesa Mutual Water Company

BANNING HEIGHTS MUTUAL WATER COMPANY

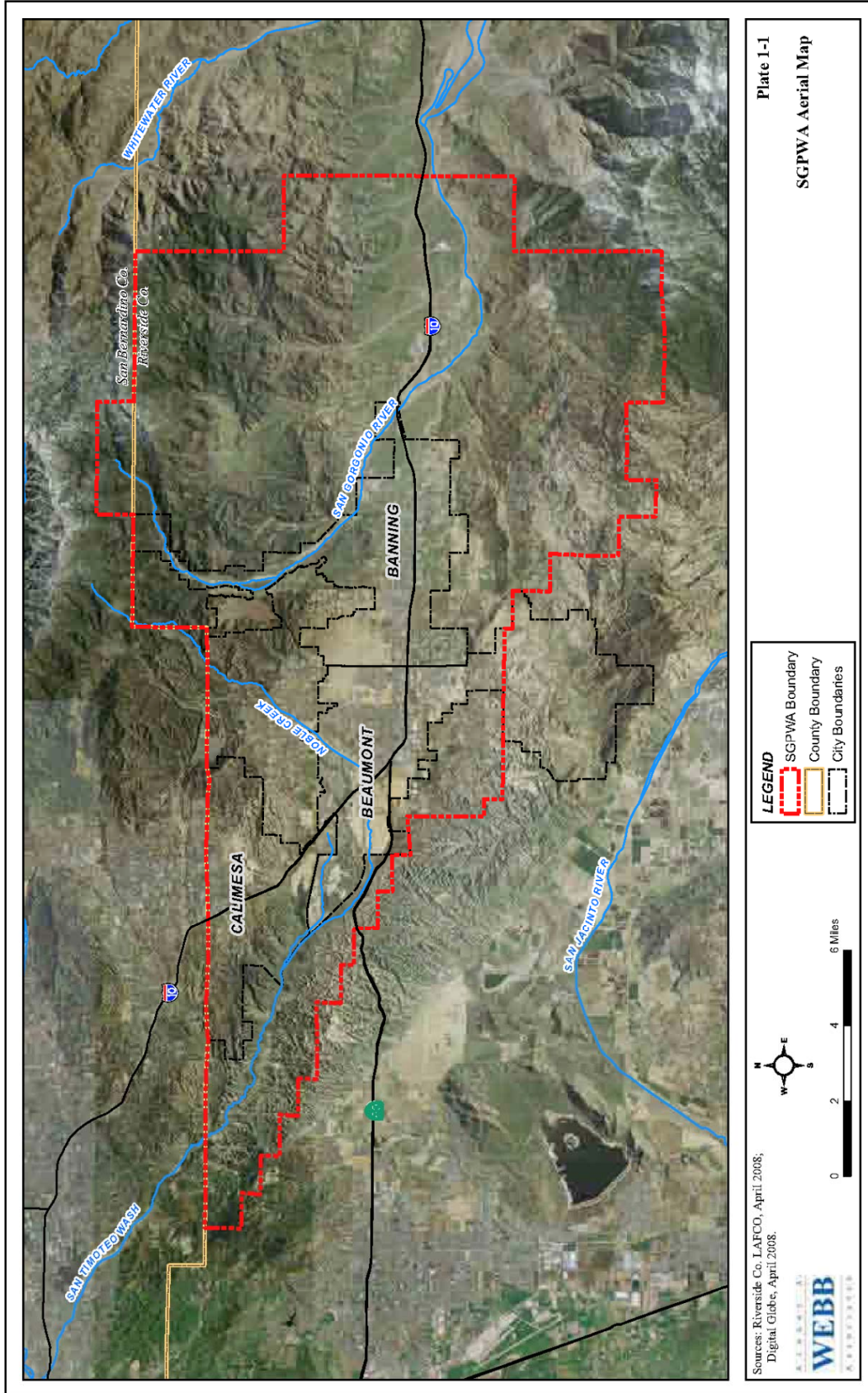
By: _____
President, Board of Directors

Attest:

Secretary, Board of Directors

Approved as to form:

Counsel, Banning Heights Mutual Water Company



Page Intentionally Left Blank