



**BEAUMONT-CHERRY VALLEY WATER DISTRICT
560 Magnolia Avenue, Beaumont, CA 92223**

**Notice and Call of a Special Meeting
at the
Beaumont Cherry Valley Water District
560 Magnolia Avenue, Beaumont, California 92223**

Thursday, May 26, 2016 at 6:00 p.m.

NOTICE IS HEREBY GIVEN that a Special Meeting of the Board of Directors of the Beaumont-Cherry Valley Water District will be held on Thursday, May 26, 2016, at 6:00 pm, at the Beaumont Cherry Valley Water District located at the address above.

The following business will be transacted and this document serves as the Agenda for this Special Meeting:

AGENDA

1. Call Meeting to Order
2. Welcome and Introductions
3. Public Comment - *At this time, members of the public may provide general comments. To provide comments on specific agenda items, please complete a speaker's request form and submit the completed form to the Board Secretary before that agenda item.*
4. Final Review of the Allocation Strategy for Imported Water within the San Geronio Pass Water Agency
 - a. Banning Heights Mutual Water Company
 - b. Beaumont Cherry Valley Water District
 - c. Cabazon Water District
 - d. City of Banning
 - e. High Valley Water District
 - f. Mission Springs Water District

Any person with a disability who requires accommodation in order to participate in this meeting contact the Beaumont Cherry Valley Water District at (951) 845-9581 at least 48 hours prior to the scheduled meeting.

- g. San Gorgonio Pass Water Agency
 - h. South Mesa Mutual Water Company
 - i. Yucaipa Valley Water District
5. Topics for Future Meetings
 6. Next Meeting Date and Time
 7. Adjournment

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

This Agreement, effective _____, 2016, by and between, the San Gorgonio Pass Water Agency, a State Water Contractor (hereinafter referred to as “SGPWA”); the City of Banning, a California municipal corporation; Banning Heights Mutual Water Company, a California mutual water company; Beaumont Cherry Valley Water District, a California irrigation district; Cabazon Water District, a California water district; High Valleys Water District, a California water district; Mission Springs Water District, a California county water district; South Mesa Mutual Water Company, a California mutual water company; and Yucaipa Valley Water District, a California county water district; each individually referred to or collectively referred to in this Agreement as “Party” or “Parties”.

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 Valleys Water District; Mission Springs Water district; South Mesa Mutual Water Company; and Yucaipa Valley Water District.

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, Article X, Section 2 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 or 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 (including all amendments thereto) 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 has been amended eighteen times, with the latest amendment dated December 26, 2007. The Water Supply Contract provides a Maximum Annual Table “A” Allocation of 17,300 acre feet per water year of imported water from the State Water Project to the San Gorgonio Pass Water Agency.
- D. The statute creating the San Gorgonio Pass Water Agency is codified at Chapter 101, Section 15(g) of the Appendix to the California Water Code, which specifically provides that the San Gorgonio Pass Water Agency is 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 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. Currently, only the following four Water Retailers are required to prepare an Urban Water Management Plan: Beaumont Cherry Valley Water District, City of Banning, Mission Springs Water District and Yucaipa Valley Water District.
- F. While not all Water Retailers are required to prepare an Urban Water Management Plan, all agencies recognize the importance of implementing a reliable and sustainable long-term water resource management strategy.
- G. On February 18, 2014, the Board of Directors of the San Gorgonio Pass Water Agency adopted Resolution No. 2014-02, *A Resolution of the San Gorgonio Pass Water Agency Establishing a Policy for Meeting Future Water Demands*. Section 3(a) of this Resolution states, "the [San Gorgonio Pass Water] Agency is prepared to take the necessary actions to provide its service area with adequate supplies of water to meet expanding and increasing needs in the years ahead. As additional water resources are required to meet increasing needs, the [San Gorgonio Pass Water] Agency will be prepared to take the necessary actions to deliver such supplies.
- H. On July 27, 2015, the Board of Directors of the San Gorgonio Pass Water Agency adopted Resolution No. 2015-05, *Resolution of the Board of Directors of the San Gorgonio Pass Water Agency to Adopt Facility Capacity Fees for Facilities and Water*. The recitals of said Resolution state, "...the Board of Directors finds and determines that the present existing water importation, production, transportation, delivery facilities and water supplies are inadequate to meet anticipated demand".
- I. The Parties recognize that this Agreement allocating imported water from the San Gorgonio Pass Water Agency will: (1) provide guidance and certainty as to the amount of imported water expected to be provided to each of the Water Retailers thereby enabling better water resource planning; (2) support the ability for each Water Retailer to establish community specific policies and goals based on uniform and consistent rules pertaining to the delivery and use of imported water; (3) promote improved water management since an annual water resource allocation methodology will enable each Water Retailer to implement and directly benefit from specific policies related to sustainability, dual plumbing, conjunctive use, and the setting of Water Retailer specific Facility Capacity Charges for the purchase of water rights and water supplies; and (4) improve coordination and management of existing and future imported water supplies between the Water Retailers and the San Gorgonio Pass Water Agency.

AGREEMENT

Now, therefore, based on the foregoing recitals the Parties agree as follows:

1. **Allocation of Water from the State Water Project.** The following provision of the San Gorgonio Pass Water Agency Law, codified at Chapter 101, Section 15.5 of the Appendix to the California Water Code, is hereby incorporated into this Agreement to ensure the

allocation of imported water is consistent with the intent of the Legislature. “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 or district receiving the water.”

2. Boundaries of the Parties. The service area of the San Gorgonio Pass Water Agency is comprised of a portion or the service area of each Water Retailer that is a Party to this Agreement.

2.1. The Sphere of Influence of each Water Retailer within the service area of the San Gorgonio Pass Water Agency shall be the basis of the water resource allocation methodology set forth in this Agreement. 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 Source of Supply Allocation set forth in this Agreement.

2.3. The Sphere of Influence Boundary Area for each Water Retailer within the service area of the San Gorgonio Pass Water Agency is as follows:

Table 1 - Sphere of Influence Boundary Summary		
Column 1	Column 2	Column 3
Water Retailer	Sphere of Influence Boundary Area (Acres)	Percentage of Area for Each Water Retailer
Mission Springs Water District	656	0.9%
Banning Heights Mutual Water Company	876	1.2%
South Mesa Mutual Water Company	974	1.3%
High Valleys Water District	5,287	7.3%
Cabazon Water District	7,990	11.0%
Yucaipa Valley Water District	17,388	24.0%
City of Banning	19,644	27.1%
Beaumont Cherry Valley Water District	19,693	27.2%
Morongo Band of Mission Indians	34,611	Not Applicable
Unincorporated Riverside County	34,043	Not Applicable
Unincorporated San Bernardino County	1,910	Not Applicable
SGPWA Service Area	142,416	100.0%
Total Area of Water Retailers	71,852	

Source: *San Gorgonio Pass Water Agency Supplemental Water Supply Planning Study, Albert A. Webb Associates, October 2009, plus the territory of Mission Springs Water District within the San Gorgonio Pass Water Agency.*

- 3. State Water Project Reliability.** The availability of water from the State Water Project is based on a long-term average reliability. The California Department of Water Resources routinely prepares a *State Water Project Delivery Reliability Report* to describe current and future deliveries from the State Water Project.
- 3.1. The Water Retailers acknowledge that there will be annual fluctuations in the availability of water deliveries to the San Gorgonio Pass Water Agency from the State Water Project and that these fluctuations will affect the amount of water available to the Water Retailers.
- 3.2. The San Gorgonio Pass Water Agency agrees not to reduce the current Maximum Table “A” Allocation of 17,300 acre feet without prior written consent from a majority of the Water Retailers that are receiving imported water supplies.
- 4. Baseline Source of Supply and Baseline Source of Supply Allocation.** The San Gorgonio Pass Water Agency has entered into a contract with the California Department of Water Resources for a Maximum Table “A” Allocation of 17,300 acre feet per water year from the State Water Project for use within the service area of the San Gorgonio Pass Water Agency. This contract also includes access to other water resources specifically assigned to the San Gorgonio Pass Water Agency, in the existing contract/amendments plus future amendments, which include but are not limited to, water supplies such as the Turn-Back Water Pool Program and the Article 21 Program. All of the existing and future contractual water supplies not paid for by specific Water Retailers shall be referred to in this Agreement as the Baseline Source of Supply Allocation.
- 4.1. The Parties agree that the Sphere of Influence of each Water Retailer in the service area of the San Gorgonio Pass Water Agency shall be used to calculate the Baseline Source of Supply Allocation.

Table 2 - Baseline Water Resource Allocation		
Column 1	Column 2	Column 3
Water Retailer	Percentage of Area for Each Water Retailer (Table 1)	Baseline Source of Supply Allocation (Acre Feet)
Mission Springs Water District	0.9%	157
Banning Heights Mutual Water Company	1.2%	209
South Mesa Mutual Water Company	1.3%	232
High Valleys Water District	7.3%	1,261
Cabazon Water District	11.0%	1,906
Yucaipa Valley Water District	24.0%	4,149
City of Banning	27.1%	4,687
Beaumont Cherry Valley Water District	27.2%	4,699

Morongo Band of Mission Indians	Not Applicable	Not Applicable
Unincorporated Riverside County	Not Applicable	Not Applicable
Unincorporated San Bernardino County	Not Applicable	Not Applicable

Maximum SGPWA Table "A" Allocation 17,300

- 4.2. The Baseline Source of Supply Allocation for each Water Retailer represents the initial quantity of imported water that each Water Retailer may receive from the San Gorgonio Pass Water Agency. This quantity of water excludes the allocation of excess Baseline Source of Supply and Supplemental Source of Supply as described below. For planning purposes for each Water Retailer, using the Baseline Source of Supply Allocation is intended to insure that the Maximum Table "A" Allocation of 17,300 acre feet provided by the San Gorgonio Pass Water Agency from the Department of Water Resources is not oversubscribed or over-allocated in the region.
- 4.3. The Parties acknowledge that any adjustment of the Sphere of Influence boundary of any Water Retailer after the effective date of this Agreement will result in an adjustment to the Baseline Water Resource Allocation.
- 4.3.1. Written notice of any proposed administrative action by the Local Agency Formation Commission that may change the Sphere of Influence boundary of any Water Retailer shall be provided to the Parties 90 days prior to any action by the Local Agency Formation Commission.
- 4.3.2. Section 4.3.1 shall also apply to a merger or consolidation of a Water Retailer. Any such merger or consolidation shall also result in an automatic adjustment of the Baseline Source of Supply Allocation.
- 4.4. The acquisition, purchase, exchange or transfer of any water supplies and/or water rights by the San Gorgonio Pass Water Agency shall be added to the Baseline Source of Supply and distributed to the Water Retailers pursuant to the percentages in Table 2 resulting in an increase of the Baseline Source of Supply Allocation. The quantity, quality and reliability of the water supplies acquired by the San Gorgonio Pass Water Agency shall be combined with the existing Maximum Table "A" Allocation of 17,300 acre feet in a manner that benefits or impacts all Parties in a proportional manner without any prejudice or preference. This Section excludes water purchased by Water Retailers as described in Section 5.
- 4.5. The water provided to the San Gorgonio Pass Water Agency pursuant to this Agreement as the Baseline Source of Supply shall be used by Water Retailers within their respective Sphere of Influence and shall not be assigned, exchanged, transferred, sold, or traded, directly or indirectly, to create or support a secondary water market, speculation, or similar activity with any party/non-party, public agency, private entity, developer, tribe, company investor, agricultural interest or speculator. This prohibition also applies to transfers of water in storage through, by and between the Beaumont Basin Watermaster or any similar entity.
- 4.6. No water in the Baseline Source of Supply Allocation shall be provided to any existing or new retail water agency or entity who is not a Party to this Agreement

without prior written approval of Water Retailers of a majority vote of a weighted average of the Baseline Source of Supply Allocation (Table 2, Column 3) of those Water Retailers that are a Party to this Agreement.

4.6.1. The San Geronio Pass Water Agency agrees that a retail water agency, or other entity, not a Party to this Agreement, shall be required to purchase a sufficient quantity of water rights and complete pipeline improvements to the existing conveyance and delivery system(s) such that no Party to this Agreement is damaged, impacted, or subordinated with additional expenses, water conveyance, water supply, water quality, or other any other matter under the authority, ability and discretion of the San Geronio Pass Water Agency.

4.6.2. The Parties may, by written agreement approved by a majority vote of the Water Retailers that are a Party to this Agreement, based on a weighted average of the Baseline Source of Supply Allocation (Table 2, Column 3), may temporarily transfer or exchange a portion of available imported water supplies to a non-party to this agreement.

4.7. Any improvement to the capital assets or facilities owned, operated or controlled by the San Geronio Pass Water Agency or the California Department of Water Resources that provides additional imported water resources or improves reliability will be reflected in the Baseline Source of Supply and the Baseline Source of Supply Allocation and distributed to the Water Retailers accordingly.

5. Supplemental Source of Supply and Supplemental Source of Supply Allocation. The Baseline Source of Supply Allocation quantity of imported water allotted to each Water Retailer pursuant to this Agreement will be increased with the purchase of any additional water rights as follows:

5.1. Purchase of Supplemental Source of Supply. Each Water Retailer may elect, in its sole and absolute discretion, to purchase imported water rights as an additional water supply to be provided above and beyond the Baseline Source of Supply Allocation. The coordinated purchase of additional water rights by one or more Water Retailers shall be accounted separately from the Baseline Source of Supply Allocation as a Supplemental Source of Supply for the specific Water Retailer(s). The purchase of a Supplemental Source of Supply may have a unique reliability that is different from the reliability of the Baseline Source of Supply and will be allotted to the Water Retailer(s) involved in the purchase of the water rights in a manner consistent with the specific reliability of the purchased water rights. Supplemental water rights purchased by any Water Retailer(s) shall remain the property of the Water Retailer in the event this Agreement is terminated pursuant to Section 9.1.

5.1.1. The purchase of Supplemental Source of Supply by a Water Retailer(s) shall be added to the amount of imported water identified as the Baseline Water Resource Allocation for the specific Water Retailer(s) purchasing the water rights. The Supplemental Source of Supply shall be added to the quantity of water used for planning purposes and identified as a separate and additional quantity of imported water than the Baseline Source of Supply Allocation provided pursuant to this Agreement.

- 5.1.2. The quantity, quality and reliability of any purchased supplemental water rights shall be identified independently and separately from the Baseline Source of Supply such that any degradation of water quality, reliability or other parameter shall not impact any Party to this Agreement. The Supplemental Water Rights shall be considered equivalent to the quantity and quality of imported water delivered as part of the Department of Water Resources and San Geronio Pass Water Agency Maximum Table "A" Allocation of 17,300 acre feet if the supply originates from the same location and conveyed using the same Department of Water Resources facilities. In this case, the quantity, quality and reliability shall be considered equal to the Baseline Source of Supply. If the Supplemental Source of Supply is not considered equal to the Baseline Source of Supply at any location prior to or within the Department of Water Resources facilities, then the Water Retailer(s) securing the water rights shall directly incur the quantified cost/expense and/or quantified benefit of the Supplemental Source of Supply.
- 5.1.3. A Water Retailer shall not be restricted at any time from applying funds paid to the San Geronio Pass Water Agency as part of the imported water rate component(s), as determined by the Board of Directors of the San Geronio Pass Water Agency, for the purchase of Supplemental Source of Supply.
- 5.1.4. The Supplemental Source of Supply may be sold, traded, exchanged or transferred between the Parties or non-parties at the sole discretion of the Water Retailer(s) acquiring the water rights.

6. Annual Water Resource Apportionment. An Annual Water Resource Apportionment is used to calculate the total amount of available water allocated by the San Geronio Pass Water Agency to each Water Retailer based on the Baseline Source of Supply Allocation plus any acquired Supplemental Source of Supply Allocation each year.

- 6.1. The Parties acknowledge that the annual amount of imported water available from all sources of supply (Baseline Source of Supply and Supplemental Source of Supply) are variable and based on factors such as seasonality, climatic changes, precipitation, snowpack, regulations, and drought. The regulatory, climatic and environmental changes will cause variability in the amount of water available to each Water Retailer on an annual basis regardless of the allocation of water assigned pursuant to this Agreement.
- 6.2. The amount of water available from the State Water Project is adjusted throughout each water year based on written notices issued by the California Department of Water Resources. Any notice issued by the California Department of Water Resources changing the Maximum Table "A" Allocation amount from the Department of Water Resources shall be effective on the date of issuance of the notice from the Department of Water Resources.
- 6.3. Distribution of the Baseline Source of Supply. The Baseline Source of Supply is typically based upon the availability of imported water from the State Water Project as determined by the Department of Water Resources.

- 6.3.1. That portion of the Baseline Source of Supply assigned to a Party electing not to execute the Agreement shall be considered a water resource not put to beneficial use and is therefore excess to the Baseline Source of Supply subject to be reapportioned as described in Section 6.3.5.
 - 6.3.2. The re-allocation of the Baseline Source of Supply Apportionment shall be determined by calculating the sum in acre feet of the total Baseline Source of Supply, including but not limited to, all contractual water sources provided by the San Gorgonio Pass Water Agency from the Department of Water Resources plus water from any other State Water Contractor(s) provided to the San Gorgonio Pass Water Agency, excluding those water rights secured under contract by the Water Retailer(s). The Baseline Source of Supply Apportionment for each Water Retailer shall then be determined by multiplying the "Percentage of Area for Each Water Retailer" (Table 2, Column 2) by the quantity of Baseline Source of Supply as calculated above in acre feet. The Baseline Source of Supply Apportionment will adjusted throughout the year based on notices issued by the California Department of Water Resources allocating Table "A" water to the San Gorgonio Pass Water Agency.
 - 6.3.3. In the event that the Department of Water Resources reduces the amount of Baseline Source of Supply provided to the San Gorgonio Pass Water Agency during the water year and one or more Water Retailers received an excess apportionment of the Baseline Source of Supply, then the Water Retailers and the San Gorgonio Pass Water Agency shall initiate drinking water transfers to resolve the disparity within the same year.
 - 6.3.4. In the event one or more Water Retailers are unable to put any portion of their Baseline Source of Supply Apportionment to beneficial use, then the amount of any excess Baseline Source of Supply shall be reapportioned to any Water Retailer willing to purchase that excess Baseline Source of Supply from the San Gorgonio Pass Water Agency. The reapportionment of the excess Baseline Source of Supply from the first round of appointments shall continue by multiplying the "Percentage of Area for Each Water Retailer" (Table 2, Column 2) from each Water Retailer willing to purchase the excess Baseline Source of Supply by the quantity of excess Baseline Source of Supply remaining. The reapportionment process shall continue until there is no remaining Baseline Source of Supply.
 - 6.3.5. In the event that there is excess Baseline Source of Supply remaining after the reapportionment process described above, then the San Gorgonio Pass Water Agency, at the sole discretion of the Board of Directors, shall decide the best way to utilize the excess supply for the benefit of the region.
- 6.4. Distribution of the Supplemental Source of Supply. The Annual Water Resource Apportionment for water available from the Supplemental Source of Supply Allocation is based upon the availability of imported water from the State Water Project as determined by the Department of Water Resources and/or based upon the availability of specific water rights purchased by the Water Retailer(s). The

Supplemental Source of Supply Apportionment is in addition to the Baseline Source of Supply Apportionment described above.

6.4.1. The Supplemental Source of Supply Apportionment shall be determined by calculating the sum in acre feet of all Supplemental Source of Supply(ies) from those water rights secured under contract by the Water Retailer(s). The Supplemental Source of Supply(ies) Apportionment for each Water Retailer shall be determined by the proportional amount of ownership of each water right secured by the Water Retailer(s). The Supplemental Source of Supply Apportionment may be adjusted throughout the water year based on notices issued by the California Department of Water Resources.

7. **Conjunctive Use of Baseline Source of Supply(ies) and Supplemental Source of Supply(ies).** Any Party to this Agreement may implement and use water allocated to that Party in a Conjunctive Use Project outside of the San Geronio Pass Water Agency as long as the water, minus project losses, is returned for use by that Party within the service area of the San Geronio Pass Water Agency.
8. **Excess Conveyance Capacity in State Water Project Facilities.** During times of water shortages, there will be excess pipeline, storage and conveyance capacity in the State Water Project. The Parties agree to cooperate to maximize the use and availability of excess State Water Project conveyance facility capacity in order to augment the water supplies within the service area of the San Geronio Pass Water Agency based on the same cost rate schedule utilized for routine deliveries of imported water charged to the San Geronio Pass Water Agency by the Department of Water Resources.

General Provisions

9. **General Provisions.** The following General Provisions have been incorporated herein:
 - 9.1. **Termination.** This Agreement shall terminate immediately upon a 66% weighted vote using the Baseline Source of Supply Allocation (Table 2, Column 3) of those Water Retailers that are a Party to this Agreement.
 - 9.2. **Notices.** All notices and demands which any Party is required to give to the others pursuant to this Agreement shall be given in writing by certified mail, return receipt requested with postage paid, by personal delivery, by facsimile or by private overnight courier service to the business address of the other Party.
 - 9.3. **Entire Agreement.** This Agreement, together with all Exhibits and documents referred to herein, constitutes the entire Agreement among the Parties with respect to the subject matter hereof, and supersede all prior understandings or agreements.
 - 9.4. **Amendments.** This Agreement may be modified or amended in writing by agreement of those Parties executing this Agreement that form a consensus in excess of a 66% weighted vote using the Baseline Source of Supply Allocation (Table 2, Column 3) of those Water Retailers that are a Party to this Agreement.

- 9.5. No Assignments. This Agreement and the rights, duties and benefits given in it, may not be assigned.
- 9.6. 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.
- 9.7. Governing Law. This Agreement shall be governed by the laws of the State of California.
- 9.8. No Attorneys' Fees. Each Party shall bear its own attorneys' fees and expenses in the preparation and review and performance 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, or related to, this Agreement, each Party shall bear their own attorney fees and litigation costs and expenses.
- 9.9. Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the Parties to this Agreement and their respective successors and assigns.
- 9.10. 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.
- 9.11. 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:
- Exhibit "A" - San Gorgonio Pass Water Agency Aerial Boundary Map.
 - Exhibit "B" - San Gorgonio Pass Water Agency Map of Major Water Retailers.
- 9.12. 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.
- 9.13. 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. The provisions of this Agreement shall be construed as to the fair

meaning and not for or against any party based upon preparation of the document, or any attribution of such party as the sole source of the language in question.

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

Notices for the San Gorgonio Pass Water Agency shall be sent as follows:

Attention: General Manager
1210 Beaumont Avenue
Beaumont, California 92223

With copies to:

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

Notices for the Beaumont Cherry Valley Water District shall be sent as follows:

Attention: General Manager
560 Magnolia Avenue
Beaumont, California 92223

With copies to:

CITY OF BANNING

By: _____
Mayor

Attest:

City Clerk

Approved as to form:

Counsel, City of Banning

Notices for the City of Banning shall be sent as follows:

Attention: City Manager
99 East Ramsey Street
Banning, California 92220

With copies to:

YUCAIPA VALLEY WATER DISTRICT

By: _____
President, Board of Directors

Attest:

Secretary, Board of Directors

Approved as to form:

Counsel, Yucaipa Valley Water District

Notices for the Yucaipa Valley Water District shall be sent as follows:

Attention: General Manager
12770 Second Street
Yucaipa, California 92399

With copies to:

CABAZON WATER DISTRICT

By: _____
President, Board of Directors

Attest:

Secretary, Board of Directors

Approved as to form:

Counsel, Cabazon Water District

Notices for the Cabazon Water District shall be sent as follows:

Attention: General Manager
50256 Main Street
Cabazon, California 92230

With copies to:

HIGH VALLEYS WATER DISTRICT

By: _____
President, Board of Directors

Attest:

Secretary, Board of Directors

Approved as to form:

Counsel, High Valleys Water District

Notices for the High Valleys Water District shall be sent as follows:

Attention: General Manager
47781 Twin Pines Road
Banning, California 92220

With copies to:

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

Notices for the South Mesa Mutual Water Company shall be sent as follows:

Attention: General Manager
391 West Avenue L
Calimesa, California 92320

With copies to:

MISSION SPRINGS WATER DISTRICT

By: _____
President, Board of Directors

Attest:

Secretary, Board of Directors

Approved as to form:

Counsel, Mission Springs Water District

Notices for the Mission Springs Water District shall be sent as follows:

Attention: General Manager
66575 2nd Street
Desert Hot Springs, California 92240

With copies to:

BANNING HEIGHTS MUTUAL WATER COMPANY

By: _____
President, Board of Directors

Attest:

Secretary, Board of Directors

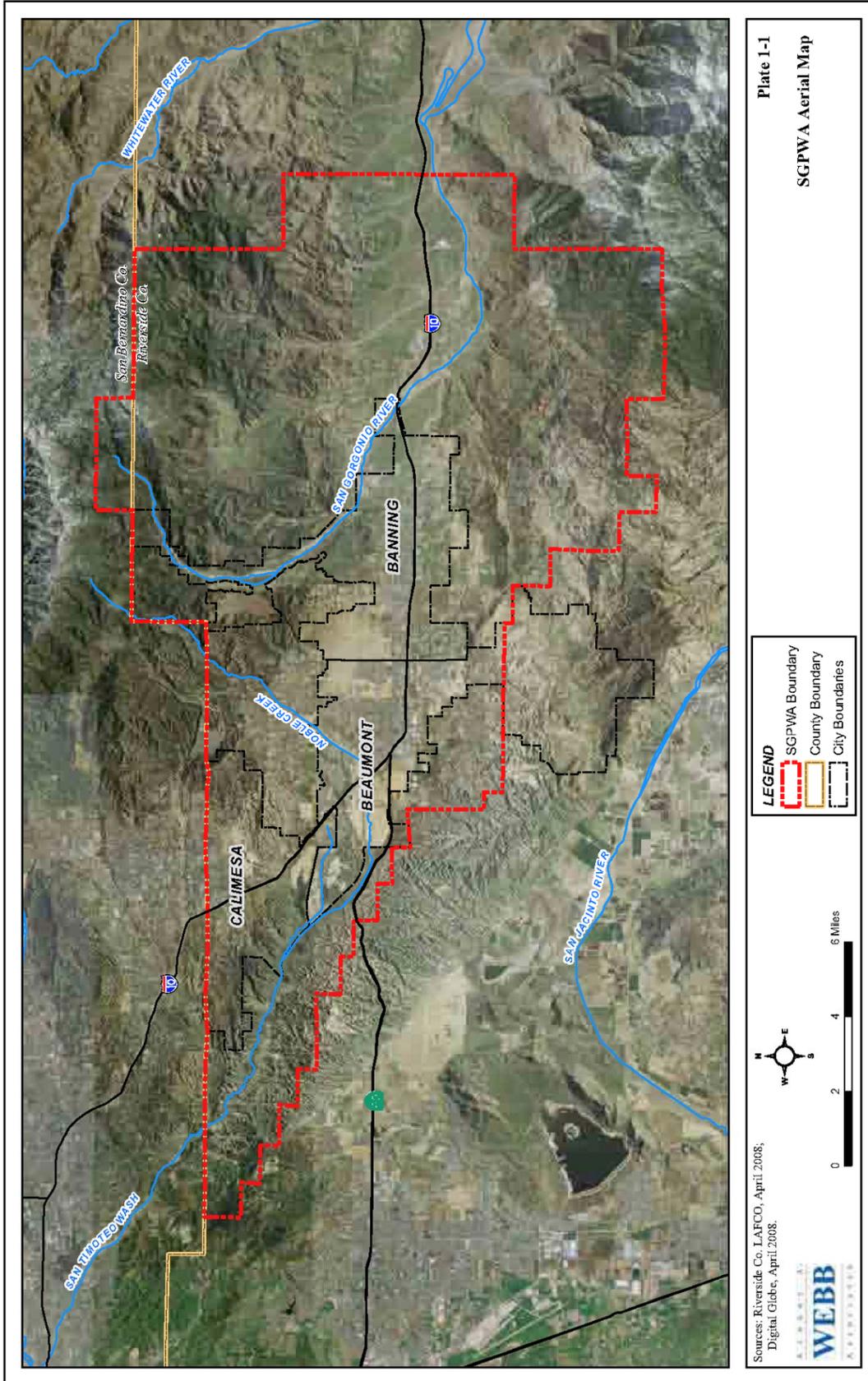
Approved as to form:

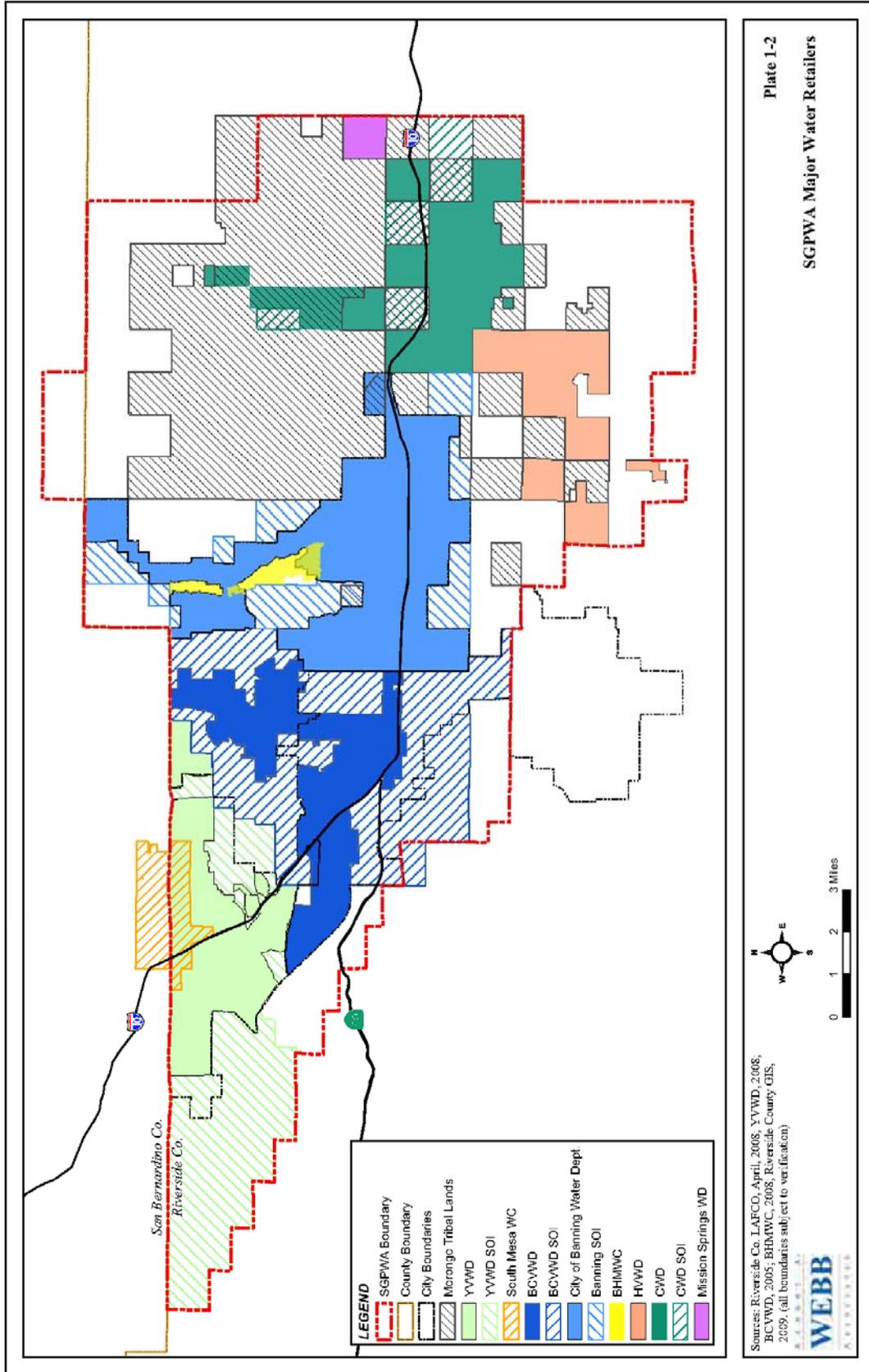
Counsel, Banning Heights Mutual Water Company

Notices for the Banning Heights Mutual Water Company shall be sent as follows:

Attention: General Manager
7091 Bluff Street
Banning, California 92220

With copies to:







Cabazon Water District

14816 Broadway Street • P.O. Box 297
Cabazon, California 92230

May 20, 2016

Via Email and U.S. Mail
Joseph Zoba
Yucaipa Valley Water District
12770 Second Street
Yucaipa, CA 92399

Re: Draft Allocation Agreement

Dear Mr. Zoba:

Thank you for sharing the draft “Regional Water Allocation Agreement for Water Imported by the San Gorgonio Pass Water Agency” and requesting Cabazon Water District’s comments on the agreement.

Cabazon understands and is sympathetic to the needs of the larger retail agencies in the Pass Area regarding their need to show firm water supplies for planning and other purposes. However, as written, we do not believe the agreement provides much benefit to Cabazon Water District and its customers. In fact, by “re-allocating” any unused State Water Project (SWP) allocations to the larger retailers (even for those smaller agencies that sign the document), the agreement seems to create a disincentive for ever achieving SWP water delivery to Cabazon and other areas of the Pass not currently able to receive imported water. Indeed, how would Cabazon ever hope to receive imported water supplies if the larger retailers come to rely upon all of the Pass Agency’s SWP Table A rights to exclusively meet their current and future development needs?

As outlined below, we believe the agreement could be reshaped to provide benefit to the larger agencies, Cabazon and the other smaller retailers alike. We believe the agreement should maximize the benefit of SWP water for the entire Pass region and all of its citizens. We ask that the other potential signatories to the agreement, including the Pass Agency, give meaningful review to these proposals.

Principal Terms of Draft Agreement

The draft agreement appears to provide that Cabazon would be entitled to an allocation of 1,906 acre feet, or 11%, of the Pass Agency's full SWP contractual entitlement of 17,300 acre feet. (Para. 4.1, Table 2.) (The document does not address that DWR currently projects (2015 report) that the SWP can only deliver approximately 62% of that supply, in an average year.) The agreement further states that all SWP water must be used within the respective retailer's service area, and cannot be assigned, sold, etc. to any party or non-party. (Para. 4.5.) However, there is a provision that upon a majority vote of the larger retailers temporary transfers or exchanges to a non-party may be allowed. (Para. 4.6.2.) Also, any agency that does not sign on to the agreement purportedly loses its rights to SWP water, unless a majority of the larger retailers allow otherwise. (Paras. 4.6, 6.3.1.) Finally, even if a water retailer signs on to the agreement, if it cannot take its allocated share of SWP water in any given year, such water "shall be reapportioned to any water retailer willing to purchase that excess [SWP water]." (Para. 6.3.4.)

Cabazon appreciates that, on paper, it would receive an 11% allocation of the Pass Agency's SWP Table A rights. (The agreement's provisions regarding rights to Turnback Pool and Article 21 water remain vague, in our view.) Notwithstanding, the primary provisions of the draft agreement outlined above provide little or no benefit to Cabazon Water District and may be contrary to law. As you know, there is currently no infrastructure to convey SWP water to Cabazon. However, with regional support, we hope that situation will change in the future. The residents of Cabazon have paid ad valorem taxes to fund their fair share of SWP infrastructure for many decades and they deserve to benefit from the financial outlays they have made.

The notion that Cabazon Water District and its residents could lose access permanently to even the potential to receive SWP water through an allocation agreement which Cabazon elects not to sign is completely unacceptable. It is also likely contrary to the Pass Agency Act, the Pass Agency-DWR SWP contract, the Burns-Porter Act, and the bond covenants associated with the SWP. Depriving Cabazon residents of future supplies would also create a fair argument that adverse environmental impacts would be suffered in the Cabazon Basin without the potential to receive replenishment water in the future. Were these provisions to remain, we believe YVWD and the other parties would also be required to undertake comprehensive review under the California Environmental Quality Act before approving the agreement. The provisions likely also create a roadblock to compliance the Sustainable Groundwater Management Act for the Cabazon Sub-basin. To show good faith in moving forward, we ask that the objectionable provisions (Paras. 4.6 and 6.3.1) be deleted from the draft allocation agreement.

Options to Improve Allocation Agreement

Cabazon believes that the allocation agreement could be improved if the rights of the smaller water retailers to actually receive "wet" SWP water now or in the future are more directly recognized and supported. The goals of the agreement should not only be allocation, but helping ensure that the entire region and all water retailers actually receive and benefit from imported water supplies. To that end, we believe that Cabazon, the smaller retailers, and their customers should receive more meaningful benefit from the agreement. The proposals set forth below are in keeping with similar arrangements that are in place among SWP water wholesalers and retailers in other areas of the state.

- Those retail agencies that do not yet have the ability to receive SWP water should have the right to sell their (unused) allocations on an annual basis. Priority for sales would be to the other agencies in the Pass. Sales could also be done on a multi-year basis if sold to Pass Area agencies.
- A 12% “surcharge” would be paid by the retailer taking delivery of SWP water allocated to but not taken by Cabazon or other retailers. Payments would be made directly to the retail agency not taking its allocated SWP water.
- In the above example, instead of forwarding such surcharge payments to the retail agency not taking its allocated share of SWP water, such surcharge payments could be held by the Pass Agency for the future benefit of the retailer not taking its allocation. For Cabazon, the surcharge could be held by the Pass Agency to help fund a future pipeline to Cabazon. For example, the surcharge funds could be used to provide a local match for a grant to do so applied for by the Pass Agency and supported by the entire region through IRWMP, the Regional Water Alliance or otherwise.
- Any retail agency that receives a portion or all of Cabazon’s or other local retailer’s unused SWP allocation shall be required to place that water into storage in the Beaumont Basin. That retailer will pay 100% of the cost of purchasing that SWP water from the Pass Agency. 12% of all such water shall be placed into a storage account in the Beaumont Basin for the benefit of Cabazon/applicable retailer, at no initial or ongoing cost to Cabazon/applicable retailer. Cabazon/applicable retailer will be able to call on that water in the future, once they can take delivery of the water. Cabazon would also be able to sell that water if a pipeline is not constructed within a reasonable period. This arrangement would help the Pass Agency fulfill its statutory duty to replenish groundwater and help retailers using the Beaumont Basin by raising groundwater levels.
- The allocation agreement should contain a firm commitment to allow the Pass Agency and Cabazon to try to swap Cabazon’s SWP allocation with Metropolitan in exchange for delivery of equal amounts of Colorado River water to Cabazon from the MWD aqueduct.
- The allocation agreement should contain a firm commitment to support grants to build a turnout facility for the MWD aqueduct in Cabazon, if an arrangement with MWD can be made.
- There should be a firm commitment in the allocation agreement that there will be regional support by all parties to the agreement for grants to actually build a pipeline to convey SWP water to Cabazon and for any other SWP-related small retailer proposed projects.
- A commitment that no retailer can use Cabazon’s allocation in actuality or in its water supply planning documents in a manner that will effectively deprive Cabazon of the ability to receive wet SWP water in the future should also be placed in the agreement.

Other Comments

Cabazon also provides the following comments on specific provisions of the draft agreement.

- Paragraph 2.3 misstates the sphere of influence area of Cabazon Water District as 7,990 acres. In fact, Cabazon’s current SOI encompasses 8,767 acres. We can provide a map upon request.
- In Paragraph 3, DWR no longer uses a “reliability” report. DWR now utilizes SWP water delivery “capability” reports. See <http://baydeltaoffice.water.ca.gov/swpreliability/index.cfm>

- Paragraph 4: Terms such as “Baseline Source of Supply Allocation” and “excess Baseline Source of Supply Allocation” should be further clarified.
- Paragraph 4: The reference to existing and future contractual water supplies not paid for by specific water retailers as being outside “Baseline Source of Supply Allocation” is vague. Does this include Pass Agency SWP contractual supplies or only imported water purchased separately by a retailer? What about Article 21 and turnback pool water?
- Paragraph 5: Cabazon has no objection to water retailers being given the right to seek to acquire alternative imported water supplies. However, it would be helpful to include information about which source(s) of water have priority access to the SWP facilities needed to convey the water to the region (presumably it would be Table A water). Also, it appears the retailers already have the right to buy imported water and use available capacity in the SWP/Pass Agency system, as allowed by the Water Wheeling Statutes (Water Code, sections 1810-1814.) As such, it is unclear why paragraphs 5.1 and 5.1.1 are necessary.
- Paragraph 7: Cabazon is under the impression that, under the Pass Agency – DWR contact and other SWP rules, SWP water can only be used in the Pass Agency or other SWP service area.

Thank you for the opportunity to provide comments on the draft allocation agreement. Cabazon looks forward to working towards solutions that will benefit the smaller agencies, the larger agencies, the Pass Agency and, most importantly, the Pass Area as a whole.

Sincerely



Robert Lynk, Chair
Board of Directors

cc: Stan Houghton, High Valleys Water District
George Jorritsma, South Mesa Mutual Water Company
Julie Hutchinson, Banning Heights Mutual Water Company
Art Vela, City of Banning
Jeff Davis, San Gorgonio Pass Water Agency
Eric Fraser, Beaumont-Cherry Valley Water District