

ORDINANCE NO. 97-1

ORDINANCE OF SAN DIEGO COUNTY WATER AUTHORITY FIXING
CAPACITY CHARGES ON ULTIMATE USERS OF WATER FROM THE
SAN DIEGO COUNTY WATER AUTHORITY

WHEREAS, Section 45-5.9 of the County Water Authority Act permits the San Diego County Water Authority (the "Authority") to fix and impose capacity charges upon the ultimate users of potable water delivered by the Authority to its member agencies and to require its member agencies to collect the charges on behalf of the Authority; and

WHEREAS, the Authority has prepared, approved and considered an analysis and study regarding proposed capacity charges, entitled "San Diego County Water Authority Annual Evaluation of Capacity Charges," dated April 1997; and

WHEREAS, the Authority has prepared, approved, and considered the environmental effects of proposed capacity charges as set forth in the negative declaration, which was adopted pursuant to Resolution No. 97- of the Board of Directors following notice and a public hearing as required by law; and

WHEREAS, the Board has heard all persons desiring to be heard and has considered all objections and protests to the proposed capacity charges; and

WHEREAS, it is in the interests of the Authority, its member agencies, its water users and taxpayers, that the Authority take final action to adopt capacity charges on new water users in order to provide funds to pay a portion of the costs of new capital facilities needed to serve such users; and

WHEREAS, the proposed capacity charges are nondiscriminatory and will not exceed the estimated reasonable amount required to provide the services for which the charges are to be levied; and

WHEREAS, at least fifteen (15) days prior to the meeting at which the capacity charges were levied, the Authority made available to the public data indicating the amount of cost, or estimated cost, required to provide the services for which the charges are to be levied and the revenue sources anticipated to provide such services, including general fund revenues;

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of the San Diego County Water Authority as follows:

Section 1. Findings. The foregoing recitals are true and correct and constitute legislative findings of this Board.

Section 2. Imposition of Capacity Charges.

2.1 Schedule of Charges. Except as hereinafter provided, there is hereby fixed and imposed a capacity charge on each person, corporation, partnership, public agency, or other entity (hereinafter referred to as "a water user") obtaining a water meter from a member agency for the use of water received by the member agency from the Authority. The capacity charge for a meter size of one (1) inch, or greater than one (1) inch, shall be the basic charge of \$1,585 multiplied by one of the following factors:

| <u>Meter Size (Inches)</u> | <u>Factor</u> | <u>Capacity Charge</u> |
|----------------------------|---------------|------------------------|
| Under 1" | 1.0 | \$ 1,585 |
| 1" | 1.6 | \$ 2,536 |
| 1.5" | 3.0 | \$ 4,755 |
| 2" | 5.2 | \$ 8,242 |
| 3" | 9.6 | \$ 15,216 |
| 4" | 16.4 | \$ 25,994 |
| 6" | 30.0 | \$ 47,550 |
| 8" | 52.0 | \$ 82,420 |
| 10" | 78.0 | \$123,630 |
| 12" | 132.0 | \$209,220 |

The member agency shall determine the size of the water meter to serve any property.

2.2 Capacity Charge for Increasing Meter Size. If a water user desires to increase the size of a water meter serving his or her property, and if the member agency determines such larger size meter is appropriate, the capacity charge shall be the difference between the capacity charge determined pursuant to Section 2.1 hereof for the new meter and the capacity charge determined pursuant to Section 2.1 for the existing meter, whether or not any charge was in effect for the existing meter when it was obtained.

2.3 No Capacity Charge for Reducing Meter Size. No capacity charge shall be imposed upon and no credit or refund shall be made to a water user replacing an existing water meter for a water meter of smaller size, whether or not any capacity charge was in effect for the larger meter when it was obtained.

2.4 Capacity Charges for Exchange for Multiple Meters. If a single meter is exchanged for more than one smaller meter to serve property that has been subdivided or otherwise developed, the capacity charge shall be the difference between the capacity charges determined pursuant to Section 2.1 hereof for the new meters and the capacity charge determined pursuant to Section 2.1 for the existing meter, whether or not any capacity charge was in effect for the existing meter when it was obtained; provided, however, that no credit or refund shall be made to the water user if the capacity charge

determined for the single existing meter exceeds the total capacity charges for the smaller meters.

2.4.1 No capacity charge shall be made when a water meter(s) is obtained from a member agency for the use of water received from the Authority if each of the following circumstances is found to exist:

- i) The parcel to be served by the new meter(s) had previously been served water by the agency and no material change in land use will occur by reason of issuance of the new meter(s); and
- ii) The agency determines that no increase in water use is to be reasonably expected by issuance of the new meter(s); and
- iii) The agency, for its own account, makes no charge for the new water meter(s) in the nature of a capacity or connection charge.

2.5 No Capacity Charge for Fire Service Meter. No capacity charge shall be imposed upon a water user for a water meter obtained and used solely for fire protection purposes.

2.6 No Capacity Charge for Unlocking of Meter. No capacity charge shall be imposed upon a water user upon the unlocking of any water meter obtained prior to the effective date of the capacity charges fixed and imposed by this ordinance. No additional capacity charge shall be imposed upon any water user upon the unlocking of any water meter obtained after the effective date of the capacity charges fixed and imposed by this ordinance if the capacity charge was paid at the time the water meter was obtained.

2.7 No Capacity Charge for Resetting Meter. No capacity charge shall be imposed upon a water user upon the reinstallation of the capacity charges fixed and imposed by this ordinance, but was disconnected and stored because of rotation of crops, the temporary suspension of irrigation or for other reasons.

2.8 No Capacity Charge for Temporary Meter. No capacity charge shall be imposed upon a water user for a water meter obtained for temporary purposes, such as construction, interim landscape maintenance, preliminary development or similar uses. The member agency shall determine, in accordance with its standard practices and procedures, whether a water meter is to be used for temporary purposes.

2.9 Capacity Charges for School and State Agencies. The imposition of the Authority's capacity charges on any school district, county office of education, community college district, the California State University, the University of California or any state agency (as defined in Government Code Section 54999.1(g)) shall be subject to the provisions of Section 54999.3(b) of the Government Code. Payment by any such agency of the Authority's applicable capacity charge shall be deemed agreement with the Authority regarding the charge. If any such agency refuses to pay the applicable capacity charge of the Authority, the agency and the Authority shall enter into negotiations regarding the charge. No water meter shall be supplied to such agency by the member agency until

notified by the Authority that agreement has been reached with the Authority regarding the capacity charge and the agreed-upon capacity charge has been paid.

Section 3. Collection and Remittal by Member Agencies. Each member agency of the authority is hereby required to collect the capacity charges on behalf of the Authority and to pay to the Authority, at least quarterly on or before the tenth (10th) day of the months of January, April, July and October of each year, the total amount of the Authority's capacity charges collected during the prior three calendar months. At the time of such payment each member agency shall report to the Authority the number and size of all meters supplied to water users. Any interest earned on such funds collected and held by the member agency prior to payment to the Authority may be retained by the member agency to reimburse it for any costs incurred in collecting the Authority's capacity charges, unless the member agency applies for reimbursement pursuant to Section 4 of this ordinance; if the member agency intends to apply for reimbursement, it shall remit to the Authority, with its quarterly payments, any interest earned on such funds.

Section 4. Reimbursement of Costs. Upon application by a member agency, the Authority shall reimburse the member agency for all reasonable costs incurred by it in collecting the Authority's capacity charges. The application shall be filed annually on or before September 1 of each year, shall be in such form as may be established by the Authority, shall itemize the costs incurred and shall be supported by such documentation and explanation as may be reasonably necessary to verify the amount of such costs. Upon verification of the amount of such reasonable costs, the Authority shall reimburse the member agency for such costs.

Section 5. Refusal of Water Service. No member agency of the Authority shall provide a water meter to a water user for the use of water received by the member agency from the Authority until the water user has paid to the member agency the applicable capacity charge of the Authority. The member agency shall be liable to the Authority for an amount equivalent to the capacity charge if it does not collect the charge before providing a meter for such water service.

Section 6. Collection by Subagencies. Each member agency that wholesales or otherwise supplies water obtained from the Authority to another public agency, private water company or mutual water company (each being hereinafter referred to as "subagency," which, in turn, supplies meters and such water to water users, shall require each subagency to collect from each new water user an amount equivalent to the Authority's capacity charge. The subagency may, at its option, remit the amount directly to the Authority at least quarterly on or before the tenth (10th) day of the months of January, April, July and October of each year, or it may remit such funds to the supplying member agency, which shall thereupon pay such funds to the Authority. Any interest earned by the funds collected and held by the subagency prior to payment to the member agency or the Authority may be retained by the subagency to reimburse it for any costs incurred in collecting the capacity charges, unless the subagency applies for reimbursement for reasonable costs incurred in collecting those charges, in which case it shall remit with its

quarterly payments any interest incurred. If it applies for reimbursement, it shall follow the procedures set forth in Section 4 of this ordinance. The member agency shall be liable to the Authority for an amount equal to the capacity charges not collected by a subagency or not paid to the Authority.

Section 7. Collection by the Authority. Notwithstanding Section 3 and Section 6 hereof, the Authority may, pursuant to a written agreement with a member agency or a subagency, collect capacity charges directly from each person, corporation, partnership, public agency or other entity obtaining a water meter from the member agency or subagency, which agreement shall provide that the member agency or subagency shall not provide a water meter to such water user for use of water received by the member agency from the Authority until such water user has paid to the Authority the applicable capacity charge of the Authority.

Section 8. Protests. Any person, corporation, partnership, public agency or other entity objecting to any capacity charge of the Authority shall have the right to file a complaint with the Authority, provided the complaint is filed, in writing, at the offices of the Authority, 3211 Fifth Avenue, San Diego, California 92103-5718, before payment of the charge of within ten (10) days after payment of the charge. Any such complaint shall be reviewed by the General Manager or Designee and a written response shall be mailed or personally delivered within fifteen (15) days of receipt of the complaint. If the person, corporation, partnership, public agency or other entity is dissatisfied with the decision of the General Manager or Designee, it shall have the right to appeal the decision to the Authority's Board of Directors by filing an appeal, in writing, with the Executive Secretary of the Board within ten (10) days after the written response of the General Manager or Designee is mailed or personally delivered. If such an appeal is filed, the appellant shall be notified of the time and place of the meeting of the Authority's Fiscal Policy Committee at which time the matter shall be considered. At the committee meeting, the appellant shall be given an opportunity to be heard and to present evidence. Thereafter, the Fiscal Policy Committee shall make a recommendation to the Board regarding the appeal. The Board may make such modifications or adjustments to the capacity charges as it deems just and equitable. The decision of the Board of Directors shall be final.

Section 9. Indemnification. The Authority shall indemnify and hold harmless each member agency, its officers, employees and agents, from and against all claims, expenses and costs, including costs of defense and reasonable attorneys' fees, arising out of or in connection with any claim or challenge relating to the Authority's capacity charges, except any claim or challenge arising out of the failure of the member agency to comply with the requirements of this ordinance.

Section 10. Deposit and Use of Funds. All funds received by the Authority from capacity charges shall be deposited in a capital facilities account or fund and shall be expended solely for the purposes described in the analysis and study entitled, "San Diego County Water Authority Annual Evaluation of Capacity Charges," dated April 1997. All

interest income earned by monies in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the same purposes.

Section 11. Effective Date. The capacity charges fixed and imposed by this ordinance shall take effect July 14, 1997.

PASSED, APPROVED AND ADOPTED, this 15h day of May, 1997

AYES: Unless noted below all Directors voted aye.

NOES:

ABSTAIN: Leach and Madigan

ABSENT: Brammell, Drake, Russell



Chris Frahm, Chair
Board of Directors

ATTEST:



Harold Ball, Secretary
Board of Directors

I, Janet R. Maltman, Executive Secretary of the Board of Directors of the San Diego County Water Authority, do hereby certify that the above and foregoing is a full, true and correct copy of said ordinance of said Board and that the same has not been amended or repealed.



Janet R. Maltman, Executive Secretary
Board of Directors