

**ORDINANCE NO. 2021-02**

**AN ORDINANCE OF SAN DIEGO COUNTY WATER AUTHORITY  
AMENDING AND RESTATING THE SYSTEM CAPACITY AND  
WATER TREATMENT CAPACITY CHARGES IMPOSED BY THE  
WATER AUTHORITY PURSUANT TO SECTION 5.9 OF THE  
COUNTY WATER AUTHORITY ACT**

WHEREAS, pursuant to Section 5.9 of the County Water Authority Act, the San Diego County Water Authority (“Water Authority”) may fix and impose Capacity Charges upon the ultimate users of water delivered by the Water Authority to its member agencies and to require its member agencies to collect the charges on behalf of the Water Authority; and

WHEREAS, the Water Authority initially adopted a capacity charge in 1990 and thereafter has continuously imposed a capacity charge through the adoption and amendment of various ordinances; and

WHEREAS, the Water Authority’s capacity charges are nondiscriminatory and imposed in accordance with applicable law as demonstrated by the various studies, reports, budgets, and apportionment methodologies upon which they are and have been based; and

WHEREAS, the Water Authority Board of Directors has previously adopted Ordinances No. 97-1, 99-2, 2000-1, 2000-3, 2001-03, 2002-05, 2005-03, 2008-01, 2013-03, 2014-03, 2017-02, 2018-04, 2019-03 and 2020-02 the operative requirements of which, subject to adjustments in the amount of the capacity charges imposed, are amended and restated in this ordinance; and

WHEREAS, at least fifteen (15) days prior to the meeting at which the System and Water Treatment Capacity Charges were levied, the Water 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; and

WHEREAS, the Water Authority has determined that imposition of the revised System and Water Treatment Capacity Charges recommended by the Fixed Revenue Study is exempt from CEQA under Section 15378(b)(4) of the State CEQA Guidelines regarding the creation of government funding mechanisms that do not involve any commitment to any specific project that may have potentially significant physical impacts on the environment. Any project funded by this charge either has or will have appropriate CEQA documentation completed prior to any activities that could result in physical impacts on the environment.

WHEREAS, pursuant to Resolution No. 2021-14 a duly noticed public hearing was held by the Administrative and Finance Committee which thereafter recommended the

adjustments to the System Capacity Charge and Water Treatment Capacity Charge as set forth in this ordinance; and

WHEREAS, the Board has considered the recommendations of the Administrative and Finance Committee and is fully informed: and

NOW, THEREFORE, the Board of Directors of the San Diego County Water Authority does ordain as follows:

**Section 1. Capacity charges imposed on ultimate users of water.**

(a) A System Capacity Charge in the amount specified in section 2 is imposed on each person, corporation, partnership, public agency, entity, or other ultimate user of water within the territory of the Water Authority for the establishment of a new metered connection or the increase in capacity of an existing metered connection, except as provided in subdivision (d).

(b) A Water Treatment Capacity Charge in the amount specified in section 3 is imposed on each person, corporation, partnership, public agency, entity, or other ultimate user of water within the territory of the Water Authority for the establishment of a new metered connection or the increase in capacity of an existing metered connection within a member agency having an existing or planned connection to the Water Authority's treated water system, except as provided in subdivision (d).

(c) "Establishment of a new metered connection" includes any act that results in, or is intended to result in the delivery of water to property through a water meter, including, without limitation receipt of a meter from a member agency or the installation of one or more water meters.

(d) The following are exempt from the capacity charges imposed by this section:

(1) Sub-meters receiving service through a water meter for which a capacity charge is or has been imposed;

(2) Water meters permanently connected to a reclaimed water system and measuring reclaimed water only;

(3) Water meters used to measure water provided solely through a separately metered fire suppression system;

(4) Water meters obtained for temporary service in connection with construction, preliminary land development, landscape installation and interim maintenance in connection with land development or habitat restoration, or similar temporary activities, and the member agency does not impose a capacity or connection

charge for the temporary service meter in accordance with its standard practices and procedures;

(5) Reinstallation or unlocking of a water meter for which a capacity charge was previously paid or that was installed before October 1, 1990, where the reinstallation or unlocking is required to restore service following a temporary disconnection or disruption of service;

(6) Replacement of a meter with one of the same or smaller size, provided, however, that no refund or credit for any capacity charge previously paid will be made for the installation of a smaller meter.

**Section 2. Amount of System Capacity Charge.**

(a) Effective January 1, 2022 amount of the System Capacity Charge will be determined according to the following schedule:

<b>Meter Size (Inches)</b>	<b>Factor</b>	<b>System Capacity Charge (\$)</b>
Under 1"	1	5,328
1"	1.6	8,525
1.5"	3	15,984
2"	5.2	27,706
3"	9.6	51,149
4"	16.4	87,379
6"	30	159,840
8"	52	277,056
10"	78	415,584
12"	132	703,296

(b) The Director of Finance may adjust the schedule established by this section as of January 1, 2022, and as of each January 1 thereafter, based on the annual percentage change in the Engineering News-Record Construction Cost Index for Los Angeles, California (ENR-CCI LA) for the calendar year immediately preceding the adjustment.

**Section 3. Amount of Water Treatment Capacity Charge.**

- (a) Effective January 1, 2022 the amount of the Water Treatment Capacity Charge will be determined according to the following schedule:

<b>Meter Size (Inches)</b>	<b>Factor</b>	<b>Water Treatment Capacity Charge (\$)</b>
Under 1"	1	149
1"	1.6	238
1.5"	3	447
2"	5.2	775
3"	9.6	1,430
4"	16.4	2,443
6"	30	4,470
8"	52	7,748
10"	78	11,622
12"	132	19,668

- (b) The Director of Finance may adjust the schedule established by this section as of January 1, 2022, and as of each January 1 thereafter, based on the annual percentage change in the Engineering News-Record Construction Cost Index for Los Angeles, California (ENR-CCI LA) for the calendar year immediately preceding the adjustment.

**Section 4. Collection of Charges.**

(a) Each Water Authority member agency is required to collect on behalf of the Water Authority the capacity charges imposed by Section 1, in the amounts determined according to Sections 2 and 3, and to pay to Water Authority, at least quarterly, on or before the 30<sup>th</sup> day of the months of January, April, July, and October of each year, the total amount of the capacity charges collected during the prior three calendar months. At the time of each payment, the member agency must report to the Water Authority the number and size of all meters supplied to water users within the territory of the member agency during the prior three calendar months, including meters for which a capacity charge is imposed and meters exempt from a capacity charge. A member agency is liable to the Water Authority for the full amount of any capacity charge for which the member agency provides a water meter to an ultimate user without having collected a required capacity charge.

(b) Water will be provided to an ultimate user of water within the territory of the Water Authority only through a metered connection. A Water Authority member agency shall not provide a water meter to an ultimate user of water within the territory of the Water Authority unless the user has paid the capacity charges imposed by the Water Authority.

(c) The size of the meter necessary or appropriate to serve an ultimate user of water will be determined by the member agency.

(d) When a water meter for a single-family residential property is required to provide standby capacity for a fire sprinkler system, the capacity charge may be determined according to the size of the meter necessary to meet the water use requirements for the property, as determined according to the rules of the member agency providing the meter, without consideration of additional size necessary to provide the standby capacity. Standby capacity for a fire sprinkler system is required when (1) the fire sprinkler system is required by law, including any requirement imposed by statute, ordinance, or as a condition of development, permit, or occupancy, and (2) the fire chief, fire marshal, or building official of the city, county, or special district responsible for fire protection service to the property has provided a written statement verifying the requirement for additional meter size. The determination under this subdivision will be made at the time of installation of the meter, including installation to replace a meter with one of greater size because of the later installation of a fire protection system. This subdivision does not apply to any meters greater than one inch in size.

(e) If a single meter is exchanged for more than one smaller meter to serve property that has been subdivided or otherwise developed, the capacity charges shall be determined based on the difference between the cumulative capacity charges for all the smaller meters according to the schedules set forth in sections 2 and 3 and the capacity charges for the exchanged single meter according to sections 2 and 3, regardless of the capacity charge, if any, in effect when the exchanged meter was first obtained; provided, however, that no credit or refund will be made if the cumulative capacity charges for the small meters is less than the capacity charges for the exchanged meter.

(f) No capacity charge will be collected for installation of a new water meter on a previous service connection for a parcel within the territory of the Water Authority if the member agency determines all of the following to exist: the parcel is receiving water from the member agency through a lawful connection; the new meter will not result in a material change in land use; the new meter will not result in a material increase in water use; and the member agency will not impose for its own account a capacity or connection charge for the new meter.

(g) Any interest earned by a member agency on capacity charges collected and held before payment to the Water Authority pursuant to subdivision (a) may be retained by the member agency as reimbursement for any costs incurred in collecting and remitting capacity charges for the Water Authority.

(h) In lieu of retaining interest, a member agency may apply for reimbursement of costs it reasonably incurs in collecting the Water Authority's capacity charges. If a member agency intends to apply for reimbursement, it must remit the interest earned on capacity charges collected and held on behalf of the Water Authority at the time it makes its quarterly payments. The application for reimbursement shall be filed annually on or before September 1. The application may be in the form established by the Finance Director and must itemize the costs incurred and shall include supporting documentation and explanation to reasonably verify the amounts sought. The Finance Director may request supplemental information. After review and approval of the application and any supplemental

information, the Finance Director is authorized to reimburse a member agency in the amount of the reasonable costs incurred as determined by the Finance Director.

(i) Any member agency that wholesales or otherwise supplies water obtained from the Water Authority to another public agency, private water company, or mutual water company (each referred to as a “sub-agency”) shall, as a condition of service, require the sub-agency to collect from each ultimate water user within the sub-agency a capacity charge pursuant to this ordinance. The sub-agency, at its option, may remit the charges at least quarterly, on or before the 10<sup>th</sup> day of the months of January, April, July, and October of each year, or it may remit the charges to its supplying member agency, which shall then remit the charges to the Water Authority as provided in subdivision (a). At the time of each payment to either the Water Authority or the supplying member agency, the sub-agency must report the number and size of all meters supplied to water users within the territory of the member agency during the period for which the payment is made, including meters for which a capacity charge is imposed and meters exempt from a capacity charge. Any interest earned by a sub-agency on capacity charges collected and held before payment to the Water Authority pursuant may be retained by the sub-agency as reimbursement for any costs incurred in collecting and remitting capacity charges for the Water Authority. In lieu of retaining interest, a sub-agency may apply for reimbursement of costs it reasonably incurs in collecting the Water Authority’s capacity charges. If a sub-agency intends to apply for reimbursement, it must remit the interest earned on capacity charges collected and held on behalf of the Water Authority at the time it makes its quarterly payments. The application for reimbursement shall be filed annually on or before September 1. The application may be in the form established by the Finance Director and must itemize the costs incurred and shall include supporting documentation and explanation to reasonably verify the amounts sought. The Finance Director may request supplemental information. After review and approval of the application and any supplemental information, the Finance Director is authorized to reimburse a sub-agency in the amount of the reasonable costs incurred as determined by the Finance Director. If a sub-agency remits capacity charges through its supplying member agency, the sub-agency shall pay any administrative costs imposed by the member agency without reimbursement by the Water Authority. A member agency is liable to the Water Authority for an amount equal to any capacity charges for which its sub-agency fails to collect or pay under this subdivision.

(j) Notwithstanding anything in this section to the contrary, the Water Authority may, pursuant to a written agreement with a member agency or a member agency’s sub-agency, collect capacity charges directly from each ultimate user of water for the installation of a water meter. The written agreement must provide that the member agency or sub-agency will not provide or authorize the installation of a water meter within the territory of the Water Authority until the Water Authority provides written documentation of compliance with the requirements of this ordinance.

### **Section 5. Application of Government Code Section 54999.3.**

The imposition of the Water Authority capacity charges on any school district, county office of education, community college district, the California State University, the

University of California, or state agency is subject to the provisions of Government Code section 54999.3. Payment by any of these entities of a Water Authority capacity charge for the installation of a meter shall be deemed to be an agreement with the Water Authority regarding that charge. No water meter will be provided or approved for installation to any of these agencies without an agreement regarding that charge. If any of these entities refuses to pay a Water Authority capacity charge, the Water Authority will enter into negotiations for an agreement regarding the charge.

#### **Section 6. Protests.**

Any person, corporation, partnership, public agency, entity, or other ultimate user of water within the territory of the Water Authority may protest the application of this ordinance to the installation of a meter by filing of a written protest with the member agency and the Water Authority Director of Finance before payment of the charge, in which case the member agency will not provide or authorize the installation of a meter, or by payment of the charge and filing a written protest with the member agency and the Water Authority Finance Director not later than 10 days after payment of the charge. The protest will be reviewed by the Finance Director who will provide a written response within twenty days from the date of the protest. If the protester is not satisfied with the response by the Finance Director, a written appeal to the Water Authority General Manager may be filed within fifteen days of the date of the Finance Director's response. The appeal shall provide a detailed explanation of the grounds for disagreement with the Finance Director's response. The General Manager may determine the matter based on the written appeal and the Finance Director's response. The final determination of the appeal will be provided by the General Manager in writing within thirty days of the date the appeal is filed. If the General Manager fails to provide a written determination within thirty days, the appeal is deemed denied on the grounds stated in the Finance Director's response.

#### **Section 7. Refunds for Conversion to Reclaimed Water Systems.**

If a water user converts a water meter to permanently measure reclaimed water only, the capacity charges previously collected for the meter will be refunded, without interest, upon written request by the water user and written verification by the member agency of compliance with this subdivision. The request must be filed within 180 days of the connection of the meter to the reclaimed water system.

#### **Section 8. Credit for Annexation Charge Paid**

This section applies to property annexed to the territory of the Water Authority after November 17, 2005. Any person, corporation, partnership, public agency, entity, or other ultimate user of water that paid an annexation charge with respect to a parcel, or that is a successor-in-interest to the parcel for which an annexation charge was paid, may apply for a credit toward the System Capacity Charge imposed for that parcel or a subdivided portion of that parcel. The amount of the credit will be determined by the Water Authority before the capacity charge is paid and the meter provided. No credit will be provided for the charge

imposed to reimburse the Water Authority for the cost of processing the application for annexation. No refund will be made for any charge previously paid.

**Section 9. Use of Funds**

All funds received from the System Capacity Charge, and interest attributable to those funds, will be separately accounted and expended only for capital expenses of existing or new Water Authority system facilities as authorized by law. All funds from the Water Treatment Capacity Charge, and interest attributable to those funds, will be separately accounted and expended only for capital expenses of existing or new Water Authority treatment facilities as authorized by law.

**Section 10. Indemnification**

The Water Authority will defend and indemnify member agencies, and their officers, employees, and agents against and from all claims, expenses, and costs, including costs of defense and reasonable attorneys' fees, arising from implementation or application of this ordinance, except a claim, expense, or cost caused solely by the failure of a member agency, or its officers, employees, and agents to comply with the requirements of this ordinance.

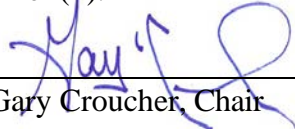
PASSED, APPROVED AND ADOPTED, this 24<sup>th</sup> day of June, 2021

AYES: Unless noted below all Directors voted aye.

NOES: Bebee, Cate, Kennedy, and Scalzitti.

ABSTAIN: None.

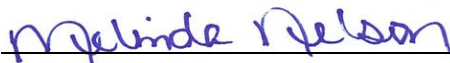
ABSENT: Katz, Simpson, and Thorner (P).

  
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Gary Croucher, Chair

ATTEST:

  
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Jerry Butkiewicz, Secretary

I, Melinda Nelson, Clerk of the Board of the San Diego County Water Authority, certify that the vote shown above is correct and this Ordinance No. 2021-02 was duly adopted at the meeting of the Board of Directors on the date stated above.

  
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Melinda Nelson, Clerk of the Board