

RESOLUTION NO. 21-1153

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA LEVYING A REPLENISHMENT ASSESSMENT ON THE PRODUCTION OF GROUNDWATER FROM THE GROUNDWATER SUPPLIES WITHIN THE DISTRICT DURING THE FISCAL YEAR COMMENCING JULY 1, 2021 AND ENDING ON JUNE 30, 2022 AS PROVIDED IN SECTION 60317 OF CALIFORNIA WATER CODE AND MAKING FINDINGS AND DETERMINATIONS REGARDING SAID ASSESSMENT IN ACCORDANCE WITH SECTIONS 60315 AND 60316 OF THE WATER CODE OF THE STATE OF CALIFORNIA

WHEREAS, the Board of Directors (“the Board”) of the Water Replenishment District of Southern California (“the District”) on February 4, 2021, in compliance with California Water Code § 60300, timely ordered an Engineering Survey and Report (“ESR”) to be made regarding the groundwater supplies and groundwater quality issues within the District; and

WHEREAS, the ESR has been prepared pursuant to the Board’s request and the ESR has been available for inspection by any interested party for the time required by law; and

WHEREAS, the Board, by Resolution No. 21-1147, has declared that funds shall be raised to purchase water for replenishment of groundwater supplies within the District during the ensuing fiscal year, 2021-22, and to accomplish all acts reasonably necessary pursuant to said replenishment, including, but not limited to, the development and operation of capital projects, and that such funds shall be raised by a replenishment assessment as provided in Chapter 2 of Part 6 of the California Water Code, and further finding that the funds to be raised will benefit, directly or indirectly, all of the persons or real property and improvements within the District; and

WHEREAS, the Board, by Resolution No. 21-1147, has declared that funds shall be raised to remove contaminants from groundwater supplies and to exercise any other power under California Water Code § 60224, including, but not limited to, the development and operation of capital projects, and that such funds shall be raised by a replenishment assessment as provided in Chapter 2 of Part 6 of the California Water Code, and further finding that the funds so raised will benefit, directly or indirectly, all of the persons or real property and improvements within the District; and

WHEREAS, the District prepared a Cost of Service Report dated April 1, 2021, which has been made available to the public, describing the services the District anticipates performing in Fiscal Year 2021/22, estimating the costs of providing those services, and calculating a Replenishment Assessment that ensures that those costs are spread amongst water producers in an equitable manner; and

WHEREAS, on April 15, 2021, as required by California Water Code § 60307, the Board held a public hearing for the purpose of determining whether and to what extent the estimated cost of water replenishment programs and the estimated cost of water quality programs for the ensuing year shall be paid for by a replenishment assessment; and

WHEREAS, notice of the April 15, 2021 hearing was published as required by law; and

WHEREAS, in addition to the public hearing, the District also held budget workshops that were open to the public, where the District provided the public with information concerning its Fiscal Year 2021/22 budget, which is directly related to the Replenishment Assessment; and

WHEREAS, the District's Budget Advisory Committee has met and the Board has received and considered recommendations from the Budget Advisory Committee; and

WHEREAS, all evidence and testimony relevant to the ESR and the Board's determination that such a Replenishment Assessment shall be levied was heard at the public hearing; and

WHEREAS, all other findings required by law have already been made, including, but not limited to, any findings required by California Water Code § 60231; and

WHEREAS, the Board desires to move forward with the levy of a Replenishment Assessment for the upcoming year.

NOW, THEREFORE, BE IT RESOLVED AND DECLARED BY THE BOARD OF DIRECTORS OF THE WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA AS FOLLOWS:

1. That said Board pursuant to §60315 of the Water Code of the State of California finds as follows:
 - a) The annual overdraft of the preceding water year, 2019/20, was 56,287 acre-feet as provided in the 2021 ESR and any updates.
 - b) The estimated annual overdraft for the current water year, 2020/21, is 99,800 acre-feet as provided in the 2021 ESR and any updates.
 - c) The estimated annual overdraft for the ensuing water year, 2021/22, is also 75,800 acre-feet as provided in the 2021 ESR and any updates.

- d) The accumulated overdraft as of the last day of the preceding water year was 742,240 acre-feet as provided in the 2021 ESR and any updates.
- e) The estimated accumulated overdraft as of the last day of the current water year is 764,800 acre-feet as provided in the 2021 ESR and any updates.
- f) The total production of groundwater from the groundwater supplies within the District during the preceding water year was 201,767 acre-feet as provided in the 2021 ESR and any updates.
- g) The estimated total production of groundwater from groundwater supplies within the District for the current water year is 218,000 acre-feet as provided in the 2021 ESR and any updates.
- h) The estimated total production of groundwater from the groundwater supplies within the District for the ensuing water year is also 221,000 acre-feet as provided in the 2021 ESR and any updates.
- i) Water Year 2019/20 had normal precipitation, reduced pumping, and an average amount of replenishment by WRD. Therefore, groundwater levels rose on average 5.5 feet Districtwide. This led to an increase in groundwater storage of approximately 24,225 AF. The 2021 ESR and any updates provide details of water levels and basin conditions.
- j) The District is currently 44% of normal rainfall through January 26, 2021. Water levels in the Montebello Forebay dropped nearly 13 feet by the start of the winter season but are presently about 4.6 feet lower than the previous water year (January 2021). Basin conditions have improved over the past couple water years but are still below pre-drought conditions. The 2021 ESR and any updates provide details of water levels and basin conditions.
- k) The quantity of water that should be purchased by the District for the replenishment of the groundwater supplies of the District during the ensuing water year is 89,900 acre-feet, which includes 61,400 acre-feet at the spreading grounds and 28,500 acre-feet at the seawater barrier wells. Details of the calculations for these amounts are presented in the 2021 Engineering Survey and Report and any updates, and on budget discussions with the Board of Directors and Budget Advisory Committee.
- l) The source and estimated cost of the water available for the replenishment described in Section (k) is presented in the 2021 ESR and any updates.
- m) The estimated net costs of replenishing the groundwater supplies with the water so purchased are \$35,766,072. The derivation of this amount is described in the 2021 ESR, the 2021 Cost of Service Report, and any updates to these documents, and on Board and Budget Advisory

Committee decisions at various public meetings. The estimated rate of the replenishment assessment required to fund these purchases based on the anticipated pumping in the ensuing year described in Section (h) is \$168 per acre-foot of groundwater pumped.

The estimated additional costs to the District for its replenishment program costs, estimated capital costs, and other costs relating to accomplishing replenishment of the groundwater supplies, are \$50,958,080. The estimated rate of the replenishment assessment required to fund these costs based on the anticipated pumping in the ensuing year described in Section (h) is \$239 per acre-foot of groundwater pumped. A listing of the projects and programs and their intended objective – replenishment and/or clean water – is provided in the 2021 ESR and Cost of Service Reports, and any updates to these documents.

- n) It is not anticipated that additional replenishment funds need to be raised in the ensuing year for future replenishment water that should be purchased in the ensuing year but cannot be purchased due to an anticipated unavailability of replenishment water in the ensuing year.
 - o) The estimated rate of the replenishment assessment required to be levied upon the production of groundwater from the groundwater supplies within the District during the ensuing fiscal year for the purposes of accomplishing replenishment activities (replenishment water plus replenishment projects and programs) is \$407 per acre-foot.
 - p) Contaminants should be removed from groundwater supplies during the ensuing fiscal year pursuant to the District's projects and programs described in the 2021 ESR and any updates, the District's capital improvement program, and the District's draft annual budget document. The estimated costs to the District for the groundwater quality program for the 2021/22 fiscal year are estimated at \$7,777,920. The estimated additional rate of replenishment assessment required to be levied upon the production of groundwater from the groundwater supplies within the District during the ensuing fiscal year for those purposes is \$37 per acre-foot.
 - q) The programs for the removal of contaminants or other actions under Water Code § 60224 are multi-year programs.
 - r) The estimated amount of reserves on hand at the end of the fiscal year of 2021/22 will not exceed the applicable limitations provided in Water Code Sections 60290.
2. After accounting for other revenue, possible debt financing, or use of reserves, the estimated rate of the replenishment assessment required to be levied upon the production of groundwater from the groundwater supplies within the District during

the ensuing fiscal year 2021/22, for the purpose of accomplishing such replenishment and water quality programs by the District is \$394 per acre-foot of yearly groundwater production. After accounting for the use of an estimated \$11,396,000 in other revenue, possible debt financing for capital improvement projects, and District reserve funds as necessary, said replenishment assessment will produce the approximate necessary funds to pay the following costs: \$369 per acre-foot for the cost of purchasing water, financing capital improvement projects and other costs relating to accomplishing groundwater replenishment, \$25 per acre-foot for clean water programs (including the per- and polyfluoroalkyl substances (PFAS) program). Of the \$369 per acre-foot allocated to accomplishing groundwater replenishment, \$87 per acre-foot is allocated to capital projects. Of the \$25 per acre-foot allocated to clean water programs, \$6 per acre-foot may be allocated to capital projects. General and administrative expenses of the District will be met on a pro tanto basis given each function's (replenishment and clean water) load factor on operations.

3. Prior to accounting for other revenue, possible debt financing, or use of reserves, the entire cost of purchasing water for replenishment for the ensuing fiscal year shall be paid for by the assessment identified in Section 2 above. The cost of removing contaminants from groundwater supplies and taking other actions authorized under Water Code § 60224 shall be paid for by the assessment identified in Section 2 above, from possible debt financing for capital improvement projects, and from reserve funds as necessary maintained in accordance with Water Code § 60290. The costs of those capital projects to be undertaken in the ensuing fiscal year, but for which no capital construction accounts have been established pursuant to Water Code § 60291, shall also be paid for by the reserve fund maintained in accordance with Water Code § 60290.
4. All of the estimated costs for the ensuing fiscal year for water replenishment programs and for groundwater quality programs by the District as found in Section 1 of this Resolution shall be paid for by a replenishment assessment levied pursuant to Water Code § 60317 and by the reserve fund maintained in accordance with Water Code § 60290. There is hereby levied on the production of groundwater from groundwater supplies within the District during the fiscal year commencing July 1, 2021 and ending June 30, 2022, a replenishment assessment in the amount of \$394 per acre-foot produced during said fiscal year.
5. This Replenishment Assessment complies with the California Environmental Quality Act ("CEQA"), based on any one of the following grounds:
 - (a) That the District's groundwater replenishment program is exempt from CEQA pursuant to CEQA Guidelines §15261(a), in that it is an ongoing project commencing at a date such that an environmental impact report has not been required, and the 2021/22 program is part of that ongoing project.

- (b) Funds generated by the RA will be used for (1) operating expenses, (2) financial reserve needs, (3) purchasing or leasing supplies, equipment and materials, and (4) funds for capital projects necessary to maintain service within existing service areas. That Finding is based on documents and information provided in the record of these proceedings, including but not limited to the annual Engineering Survey Report, the 2021 Cost of Service Report, the proposed 2021/22 budget, and the staff's written reports and PowerPoint presentations to the Board. Further, the funds raised by the RA will not be used to expand the area or territory in which the District provides services or to fund capital projects that would expand the District's service area or system. Accordingly, the District finds that its adoption of this resolution exempt from CEQA pursuant to, among other bases, CEQA Section 20180(b) (8) and CEQA Guidelines 15261 and 15273, and the Board directs staff to file an appropriate Notice of Exemption.
 - (c) Notwithstanding the exemptions cited above, an Environmental Impact Report ("EIR") for the District's groundwater replenishment program was previously prepared and that EIR and program have been approved by the District's Board. Subsequent to the preparation of that EIR, the District prepared and certified a number of Mitigated Negative Declarations and Negative Declarations for various water quality and water supply projects (collectively, the "NDs"). The District has examined the imposition of a water replenishment assessment for the 2021/22 fiscal year to determine whether an additional environmental document must be prepared. Based on this examination, the 2021 Engineering Survey and Report and all other evidence in the administrative record of the District's proceedings herein, the District concludes that: (1) the imposition of a water replenishment assessment for the 2021/22 fiscal year would not have any effects that were not examined in the EIR and NDs; (2) pursuant to CEQA Guidelines §15162, no new effects would occur and no new mitigation measures would be required; and (3) the imposition of a water replenishment assessment for the 2021/22 fiscal year is within the scope of the groundwater replenishment program covered by the EIR and NDs and such activity is adequately described in said EIR, and no new environmental document is required.
6. The Replenishment Assessment will be imposed on persons and entities that extract groundwater from the Central Basin and West Coast Basin. Extraction of groundwater from those Basins is governed by court judgments entered in 1962 and 1965 pursuant to groundwater adjudication lawsuits. Those judgments granted certain parties an allocation to pump water based on prescriptive water rights and not based on any aspect of ownership of land overlying either Basin. Accordingly, since the pumping rights granted by the Judgments were based on prescriptive water rights, the parties do not pump the groundwater pursuant to any tenancy or fee interest in the overlying land or any rights that attach as a result of a tenancy or fee interest in overlying land. Further, neither of the Judgments for

the Central and West Coast Basins included a determination of the amount or extent to which any party to said Judgment may extract groundwater from said basin without exceeding the natural safe yield of said basin.

7. The purpose of the Replenishment Assessment is to fund the District's water basin management services. These services are a package of services that make high quality water available to those exercising adjudicated pumping rights, and consist of: monitoring the level and quality of groundwater in the basins; purchasing and producing water needed to replenish the basins; preventing seawater contamination of the groundwater supply; funding replenishment operations; and other activities that make the basins a reliable and low-cost source of safe, high-quality water. Every activity of the District is a part of the water basin management services.

The water basin management services benefit those charged. All persons receiving the services or benefitting from the services by exercising pumping allocations are subject to the Replenishment Assessment. Services are not provided to those who are not charged the Replenishment Assessment and do not benefit those who are not charged the Replenishment Assessment. The amount of the Replenishment Assessment does not exceed the District's reasonable costs to provide services, confer benefits and/or grant privileges as described in this paragraph. Consequently, the Replenishment Assessment is not a "tax" within the meaning of Article XIII C, Section 1(e) of the California Constitution.

Pursuant to the recent California Supreme Court decision in *City of San Buenaventura v. United Water Conservation District*, the District does not believe that its replenishment assessment is a "property-related fee" subject to the requirements of Article XIII D, Section 6 of the California Constitution (Proposition 218). Notwithstanding this, in the interest of public participation, the District has conducted a noticed public hearing with respect to the replenishment assessment. The fact the District has done so should not be interpreted to mean that the District believes that the requirements of Article XIII D, Section 6 apply to the replenishment assessment.

The Board also makes the following findings:

- (a) Notice of the May 4, 2021 Public Hearing was mailed by the District to the holders of adjudicated pumping rights in the basins.
- (b) The purpose of this mailing was to ensure that every adjudicated pumping rights holder in the basins was kept informed of the Replenishment Assessment proposal.
- (c) On April 15, 2021 the Board opened the Public Hearing, provided an opportunity for oral and written comment, and then continued to the Public Hearing to May 4, 2021.

- (d) On May 4, 2021 the Board considered all written testimony and protests and heard oral comments from all who wished to speak regarding the proposed Replenishment Assessment.
- (e) From the date the hearing notice was mailed through the close of the public testimony portion of the Public Hearing on May 4, 2021, the District accepted written testimony and protests, all of which were entered into the record of the Public Hearing and made available for inspection by the public and by members of the Board.
- (f) The Board determines that it has not received written protests from a majority of active pumpers.
- (g) The rate of the Replenishment Assessment is such that proceeds of the Replenishment Assessment will not exceed the funds required to provide the water basin management services.
- (h) Revenues derived from the Replenishment Assessment will not be used for any purpose other than providing water basin management services.
- (i) The amount of the Replenishment Assessment imposed upon any parcel or person does not exceed the proportional cost of water basin management services attributable to that parcel or person.
- (j) No Replenishment Assessment is imposed upon any person who neither actually uses water basin management services nor has water basin management services immediately available to them.
- (k) Water basin management services are not a "general government service" that is available to the general public.
- (l) The Board notes that, in addition to replenishment assessment proceeds, the District receives an allocation of ad valorem property tax revenues. It is the intent of the Board that the District's Grants and Sponsorship Program, memberships and dues, water education expenses, and other community programs, be funded from these property tax revenues.

[RECORD OF THE VOTE AND SIGNATURES ON FOLLOWING PAGE]

PASSED, APPROVED AND ADOPTED THIS 4th day of May 2021 by the following vote:

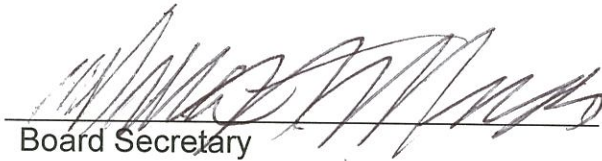
AYES:3
NOES:0
ABSENT:1
ABSTAIN:1

WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA



Board President

ATTEST:

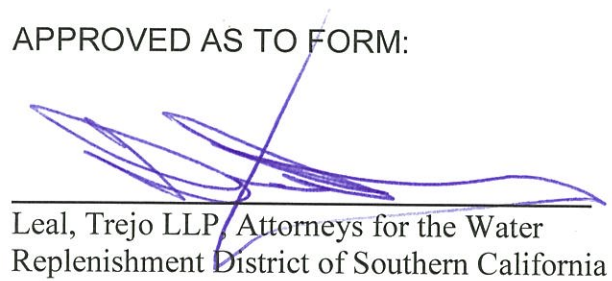


Board Secretary

5/4/2021

DATE

APPROVED AS TO FORM:



Leal, Trejo LLP, Attorneys for the Water
Replenishment District of Southern California