



# INFORMATION SHEET

## Facility Capacity Fees (FCFs)

### Settlement and Release Agreement

#### Participants:

- **SCV Water**
- **Los Angeles/Ventura Chapter of the Building Industry Association of Southern California, Inc. (BIA)**
- **Building Industry Legal Defense Foundation (BILD)**

**Date: July 20, 2018**

#### **What are Facility Capacity Fees?**

Facility Capacity Fees (FCFs) are fees collected at the time new development occurs within a publicly owned water system to recover the appropriate growth-related costs for facilities built to serve future water users.

The basic economic philosophy behind capacity fees is that the costs of providing water service should be paid for by those that benefit from the service. To achieve this, new connectors will typically pay for a share of expanded and existing facilities based on the proportion of the facility that will serve new growth, providing equity with existing customers. The fees for access to water facilities should reflect a reasonable estimate of the cost of providing capacity to new users, without unduly burdening existing users. This is often referred to as “growth-should-pay-for-growth.”

There are two primary steps in calculating facility capacity fees: (1) determining the cost of capital related to new development, and (2) allocating those costs equitably to various types of new connections. There are, however, multiple methodologies for calculating the fees.

#### **How are FCFs calculated for SCV Water customers?**

In November 2017, the Board of Directors of the former Castaic Lake Water Agency adopted a Facility Capacity Fee Update Study. Previously, under a 2014 study, FCFs were calculated

based on expected customer demand. But future facilities provide capacity for peak usage and fire flow, not just average demand, so the Board decided to use a different method.

The new method is based on meter capacity, as measured in equivalent meter units (EMUs). Water meters typically come in a range of standard sizes to fit different customer capacity needs. Larger meters allow a higher volume of water in an instant than smaller meters. When the FCF study was updated in 2017, it used a standard meter size of 1 inch and set that as the minimum size.

A number of assumptions were updated as well. The two most significant were 1) The One Valley/One Vision plan reduced the population projections at future build-out; and 2) An updated Capital Improvement Program (CIP) for Castaic Lake Water Agency changed the projected costs through build-out.

	2014	2017
Projected increase in demand	52,000 AF	29,200 AF
Current Built-Out	56%	65%
Population growth	From 287,000 to 511,900	From 273,000 to 421,500
CIP – Recycled Water Projects	\$230 million	\$178.2 million
CIP – Water Storage (emergency and operational)	\$64.4 million	\$196.9 million

The net effect is that FCF costs are spread out over a projected population that has decreased by 34%, and CIP costs that have increased. Thus, FCF costs per development have increased.

### **Why was this settlement needed?**

When the changes in FCF inputs and method took effect in January 2018, a number of residential homebuilders were surprised and concerned by the degree of increase in the fee, particularly for multi-family and attached residential products. (It should be noted that fees for some development elements, like landscape meters went down.) BIA expressed these concerns to SCV Water and the parties agreed to meet and discuss the details of the fee and FCF study,

SCV Water and the BIA together reviewed the technical inputs to the FCF model and report. Several policy issues were discussed, and it was noted that a portion of new water meters are still sized at ¾ inches.

They also explored alternatives to assure that growth would pay its fair share, while still managing significant financial impacts to certain home types. In the end, the parties were able to agree on some administrative solutions, as well as the need for a new fee study.

## **What are the terms of the Settlement Agreement?**

A settlement was approved by the SCV Water Board on July 17, 2018, executed on July 20, and is attached here as a matter of public record.

The key provisions of the settlement are that:

- 1) SCV Water will provide for ¾-inch and 5/8-inch meter sizes with appropriate fees determined by an agreed upon capacity ratio established by the American Water Works Association.
- 2) SCV Water will complete a new FCF study and adopt a new fee schedule by January 1, 2020.
- 3) SCV Water will not change the fee or adjust the fee for inflation until the new FCF study is completed.

## **Next Steps**

During discussions, it became clear some of the policy options and ideas would best be addressed through an updated study. SCV Water anticipates initiating the next FCF study later in 2018 with completion in 2019, ahead of the agreed upon time frame. Input will be sought at public and focused stakeholder meetings, including specific outreach to the development community operating in the SCV Water service area.

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is entered into by and between the Santa Clarita Valley Water Agency (“SCV Water”) on the one hand; and the Los Angeles/Ventura Chapter of the Building Industry Association of Southern California, Inc. (“BIA”), and the Building Industry Legal Defense Foundation, Inc. (“BILD”) (collectively “Claimants”), on the other hand. SCV Water and Claimants will sometimes be referred collectively hereinafter as “the Parties.” The Effective Date of this Agreement shall be July 19, 2017.

### RECITALS

This Agreement is made with reference to the following facts:

A. SCV Water is a California special district formed as of January 1, 2018 and is the successor to the Castaic Lake Water Agency and the Newhall County Water District.

B. BIA is a nonprofit trade association, whose members include developers, builders, contractors and associated professionals in the construction industry in Los Angeles and Ventura Counties.

C. BILD is a nonprofit subsidiary of BOA whose mission, in part, is to initiate or support litigation designed to improve the business climate for the building industry.

D. On November 20, 2017, the Castaic Lake Water Agency Board of Directors adopted Resolution 3207 which established facility capacity fees and charges to be paid for new water service connections effective January 1, 2018 for customers served by SCV Water (“Fees”).

E. Claimants informed SCV Water of claims Claimants or its members may assert to challenge the validity of the Fees (“Claims”).

F. The Parties executed a Tolling Agreement effective March 19, 2018 to toll the applicable statutes of limitations and any other defense based upon the passage of time in order to allow the Parties to discuss possible resolution of any Claims.

G. The Parties now desire to settle all issues, claims and disputes arising out of or related to the Fees.

### SETTLEMENT AGREEMENT

NOW, THEREFORE, in consideration of the matters recited above, which are incorporated herein as if recited in full and in consideration also of the mutual covenants and representations set forth herein, the Parties hereto agree as follows:

1. Facility Capacity Fees: 3/4 and 5/8 Inch Meters. The SCV Water imposes facility capacity fees ("FCFs") on any person, firm, corporation or other entity that requests a new or additional water connection, a larger water connection or in any other way increases the water usage required to serve an existing developed property within a water service area ("WSA") as a result of new construction, the addition of any type of dwelling, commercial or industrial unit or units, or the conversion of all or a portion of any dwelling, commercial or industrial unit or units. The rates of the FCFs for each WSA are determined on the basis of the size of the water meter serving a property. Larger meters have the potential to use more of SCV Water's water system capacity, compared to smaller meters. The potential capacity demanded for a property is proportional to the maximum hydraulic flow through each meter size as established by the American Water Works Association hydraulic capacity ratios. The base meter size for the purposes of the Agency's FCFs is one inch, with the base meter ratio therefore being 1.0. However, SCV Water will not restrict the use of smaller meters that are adequate to meet all applicable codes. The rates of the FCF for each WSA imposed on a property to be served by a meter smaller than one inch shall be adjusted in accordance with the AWWA hydraulic capacity ratios as follows:

- 3/4 inch meter ratio = 0.60
- 5/8 inch meter ratio = 0.40

2. CPI Adjustments. SCV Water will not increase the rates for the FCFs or adjust for inflation until SCV Water completes a new FCF rate study and adopts a new fee schedule.

3. Rate Study. SCV Water will complete a new rate study for the Fees and adopt a new schedule for the Fees by January 1, 2020 in accordance with all applicable laws and regulations.

4. Attorney's Fees and Costs. The Parties agree to bear their own attorney's fees and costs in connection with this Agreement and the Fees.

5. Releases. Excepting only the obligations of this Agreement and any claims that may arise in the future that are attributable to the new study and adoption of a new schedule for the Fees (as provided in Section 2 and 3), Claimants, for itself and anyone claiming through Claimants, in exchange for the consideration herein, hereby fully release, acquit, absolve and forever discharge SCV Water and the officers, directors, employees, attorneys, accountants and other professionals, insurers and agents of SCV Water, of and from any and all rights, claims, demands, actions, compensation or causes of action which Claimants have or may have against SCV Water arising out of or in any way related to the Fees, including but not limited to, any claim to attorneys' fees, litigation expenses, costs, interest, and compensation.

This release is intended as a full and complete release and discharge of any and all such claims in existence up to the effective date of this Agreement that Claimants may or might have against SCV Water arising from or in any way related to the Fees. In making this release, Claimants intend to release SCV Water and its agents from any liability of any nature whatsoever for any claim or injury for damages or equitable or declaratory relief of any kinds, whether the claim, or any facts on which such claim might be based, is known or unknown.

6. Civil Code Section 1542 Waiver.

The releases set forth herein extend to all claims described in Section 5, whether or not currently claimed, known, or suspected to exist, and the releases shall be deemed to waive any and all provisions, rights, and benefits conferred by any law of the State of California or any law of the United States that governs or limits the release of unknown claims. The foregoing waiver includes, without limitation, an express waiver, to the fullest extent permitted by law, of any and all rights under California Civil Code section 1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

The Parties understand and acknowledge the significance and consequences of this Agreement and of such specific waiver of section 1542 and expressly consent that this Agreement shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown and unsuspected claims, demands, obligations and causes of action described in Section 5, if any, as well as those relating to any other claims, demands, obligations or causes of action specified above in Section 5. The Parties further acknowledge and agree that the waivers of rights under section 1542 are essential and material terms of this Agreement, and, without such waivers, this Agreement would not have been entered into

7. Full Settlement. The Parties intend this to be a full settlement and compromise of any potential claims and a release and discharge of any and all claims and causes of action in any way arising out of the Fees as provided in Section 5, above.

8. Entire Agreement. This instrument comprises the entire understanding between the Parties concerning the subject matter of this Agreement and supersedes and replaces all prior negotiations, proposed agreements, written and oral. This Agreement is a final expression of the Parties' intent with respect to the subject matter. There are no other contracts, understandings, representations or warranties made by any other party to the Agreement except as expressly contained in this Agreement.

9. Jurisdiction. This Agreement shall be construed under the laws of the State of California, and the parties hereto agree that any action relating to this Agreement shall be instituted and prosecuted in the County of Los Angeles, California.

10. Modification. No change in, addition to, or erasure of any printed portion of this Agreement except for completion of execution shall be valid or binding upon any party hereto unless in writing and signed by the Parties. In addition, no verbal agreement of any nature

relating to the subject matter of this Agreement or any relationship between the parties will be considered valid or enforceable.

11. Binding Enforceable Agreement. Pursuant to California Evidence Code section 1123(b), this Settlement Agreement is enforceable, binding and admissible in a court of law, and any Party hereto may seek specific performance and/or injunctive relief concerning this Agreement, including but not limited to the obligations set forth in Section 2 and 3, above.

12. Construction. This Agreement is to be construed fairly and not in favor of or against any party regardless of which party or parties drafted or participated in the drafting of its terms. It is acknowledged that all parties have had an opportunity to consult with an attorney concerning the terms and conditions of this Agreement. As a result, this Agreement shall be deemed to have been drafted by all parties hereto and no party shall urge otherwise.

13. Severability. Should any term of this Agreement be deemed unlawful, that provision shall be severed and the remaining terms shall continue to be valid and fully enforceable.

14. Authority to Enter Agreement. Each individual signing this Agreement expressly represents and warrants that they are authorized by the entity for which they sign, to legally bind and commit that entity to the terms set forth herein.

15. Counterparts. This Agreement, and all covenants herein, shall be binding upon and shall inure to the benefit of the respective parties hereto, their legal successors, heirs, assigns, representatives, partners, executors, administrators, agents, attorneys, officers, directors and shareholders. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but such counterparts, taken together shall constitute but one Agreement. The parties agree to execute any additional documentation reasonably required to facilitate the terms of this Agreement. The Parties also agree that facsimile or PDF signatures of the Parties on this Agreement may be treated as original signatures.

IN WITNESS THEREOF, the Parties hereto execute, stipulate and agree to all terms stated herein.

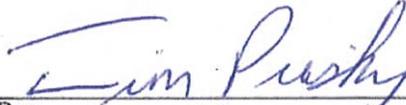
Dated: 7/17/18

SANTA CLARITA VALLEY WATER  
AGENCY

  
By Matt Stone, General Manager

Dated: 7/19/18

LOS ANGELES /VENTURA CHAPTER  
OF THE BUILDING INDUSTRY  
ASSOCIATION OF SOUTHERN  
CALIFORNIA, INC.

  
By: Tim Piasny, CEO

Dated: 7/20/18

BUILDING INDUSTRY LEGAL  
DEFENSE FOUNDATION, INC.

  
By: Adam Wood