

ORDINANCE 2008-A

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE NORTH OF THE RIVER MUNICIPAL WATER DISTRICT SETTING THE CAPITAL FACILITIES FEES FOR DEVELOPMENT WITHIN ITS RETAIL SERVICE

WHEREAS, the North of the River Municipal Water District is a Municipal Water District organized under Water Code section 71000 et seq.; and

WHEREAS, this District has the authority, pursuant to Chapter 5 of Division 1 of Title 7 of the Government Code (section 66000 et seq.), Article 4 of Chapter 6 of Part 3 of Division 5 of the Health and Safety Code (section 5470 et seq.), and Part 5 of Division 20 of the Water Code (section 71590 et seq.), to levy fees upon new development projects to help defray the cost of facilities needed to serve such projects with water; and

WHEREAS, this District has previously enacted Ordinance 2006-B on July 31, 2006, establishing Capital Facilities Fees for all development within its retail service area at the rate of \$8,718.50 per acre of residential development (currently \$9,103, as adjusted for inflation per Ord. 06-B) and \$4,982 per acre of industrial/commercial development (currently \$5,202.33, as adjusted for inflation per Ord. 06-B) to fund expansion of the Improvement District #4 of the Kern County Water Agency's water treatment plant and related improvements, which is deemed to be the most cost effective and reliable means of providing water supply to meet the demands of future growth within the District's retail service area; and

WHEREAS, Government Code section 66006(b) requires that this District periodically review its Capital Facilities Fees by reviewing the estimated cost of the required capital facilities and the relationship between the need for such facilities and the impacts of the various types of development pending or anticipated within the District for which the fee is charged; and

WHEREAS, such periodic review of the water supply and conveyance component of the District's existing Capital Facilities Fees has been conducted by District staff, said review having revealed the following: (1) That the District has entered into a contract with the Kern County Water Agency (KCWA) for an additional retail and wholesale water supply, (2) That the additional retail water supply contracted for by the District is 1,000 acre-feet per year, (3) That the anticipated cost for the District's share of additional retail water supply is \$4,671 per acre-foot; and

WHEREAS, it is fair and equitable for the ongoing annual financing cost for the repayment of the District's retail share of the bonded indebtedness financed through the Kern County Water Agency, to be supplemented by the existing retail customer rate base in advance of full development and use of the additional contract water supply, in a similar manner to the then undeveloped property helping to pay for the bond repayment through their property taxes, for the original treated water supply and transmission facilities which benefited the then developed properties; and

WHEREAS, this project is statutorily exempt in accordance with Section 15273(a)(4), as the funds obtained for the construction of the Capital Facilities Projects as described in the staff report are to replace the capacity of NORMWD District Wells #1 and #2, which have become unusable for water supply to the District's existing retail service area; and

WHEREAS, a Public Hearing was held by the Board of Directors of this District at a Special Board Meeting held on **June 5, 2008**, as to the advisability of increasing the Capital Facilities Fees for water supply and conveyance facilities imposed upon new development in the District's retail service area; notice of the time and place of which in the form attached hereto as Exhibit A was duly published in accordance with section 6062a and 66001a of the Government Code, as indicated in the proof of publication attached hereto as part of Exhibit A; and

WHEREAS, in light of the foregoing, the Board of Directors finds and determines as follows:

A. After considering District's staff report of April 17, 2008, and public testimony, the Board finds that reasonably anticipated new residential development and new industrial/commercial development in the District's retail service area at build-out will require an additional water supply of 1,000 acre-feet; and

B. The District has contracted with the Kern County Water Agency to in essence construct the facilities necessary to deliver the additional 1,000 acre-foot water supply contracted for; and, to deliver such water supply; and

C. New development should contribute to the anticipated cost of future water supply and conveyance capital facilities necessary to provide water supply to such development by means of a Capital Facilities Fee imposed on all new residential, industrial/commercial, or any other development, within the District's retail service area; and

D. That it is fair and equitable that new development within the District's retail service area pay for the cost of additional water supply which must be obtained in order to meet this anticipated growth in the retail service area; and

E. That it is fair and equitable for the ongoing annual financing cost for the repayment of the District's retail share of the bonded indebtedness financed through the Kern County Water Agency, to be supplemented by the existing retail customer rate base, in advance of full development use of the additional contract water supply; and

F. The facts sets forth in the report of District staff establish that there are reasonable relationships between (a) the fees used and the type of development projects on which the fee will be imposed; (b) the contractual commitment made to acquire the additional water supply; (c) the type of development project on which the fee will be imposed; and (d) the amount of the proposed fee and the cost of the additional water supply needed to serve the new developments on which the fee is imposed; and

G. The Capital Facilities Fee to be collected pursuant to this Ordinance shall only be utilized to help fund the cost of additional water supply facilities required under the Water Supply Contract with the Kern County Water Agency, which will provide an additional 1,000 acre-feet of water supply at an estimated cost of \$4,671 per acre foot of contracted water supply treatment and transmission capability; or such other necessary water supply facilities identified by the Board of Directors upon periodic review of the Capital Facilities Fee; and

H. Developmental water demand within the District is estimated at 3.5 acre feet per gross acre for residential development and 2.0 acre feet per gross acre for commercial/industrial development; and

I. The estimated capital cost for the District's retail allocation of an additional 1,000 acre-feet is \$5,557,000, resulting in a Capital Facilities Fee of \$16,349 per gross acre for residential development and \$9,342 per gross acre for commercial/industrial development.

NOW THEREFORE BE IT ORDAINED by the **BOARD OF DIRECTORS** of the **NORTH OF THE RIVER MUNICIPAL WATER DISTRICT** as follows:

1. Definitions:
 - (a) "Retail Service Area" means the area which receives retail water service directly from North of the River Municipal Water District.
 - (b) "New Development" means construction of any residential, commercial, and industrial building, or any other project, which will require any kind of potable and/or fire water service from the District within its Retail Service Area.
2. Imposition of Fee:

A Capital Facilities Fee in the amount of \$16,349 per gross acre of residential development and \$9,342 per gross acre of commercial/industrial development is hereby imposed upon all parcels in the Retail Service Area on which any new development takes place. The fee shall be due and payable in full, at the time an application for water service is received, said activity to take place prior to the issuance of a building or grading permit, and prior to the commencement of construction and/or use. The General Manager of the District, or his designee, shall be responsible for determining the amount of such fee for any particular new development, collecting such fee, and prorating the fee among subdivided parcels.
3. Use of Fee:

The Capital Facilities Fees shall be used solely to help fund the cost of additional water supply facilities required under the Water Supply Contract with the Kern County Water Agency, which will provide an additional 1,000 acre-feet of water supply at an estimated cost of \$4,671 per acre foot of contracted water supply treatment and transmission capability; or such other necessary water supply facilities identified by the Board of Directors upon periodic review of the Capital Facilities Fee; including uses such as all attendant

legal, engineering and financing costs thereof, and to meet additional demand for water in the retail service area as determined by the Board of Directors and for no other purpose whatsoever.

4. Fee Review:
At the Board of Directors' regular meeting in August of each year, the General Manager in consultation with the District's Engineer shall provide the accounting information required by section 66006(b) of the Government Code and review the estimated cost of the described capital facilities and the reasonable relationship between the need for such facilities and the impacts for the various types of development pending or anticipated and for which this fee is charged. The General Manager shall report his findings to the Board of Directors at such meeting and recommend any adjustment to Capital Facilities Fees or other action as may be needed, including refunds as provided in subpart (e) of section 66001 of the Government Code.
5. Annual Fee Increase:
Notwithstanding the fee review described in item #4 above, effective July 1, of each succeeding year, the Capital Facilities fees shall increase by the same aggregate percentage interest rate then being paid upon the bonded indebtedness incurred by the Kern County Water Agency for the construction of the expanded water treatment and transmission facilities described within the September 2005, Water Supply Contract and the February 21, 2007 Amendment to the Contract, said contract made between the District and KCWA.
6. Unpaid Fees:
The District shall not approve any request for water service to a new development if the applicable Capital Facilities Fees are not paid.
7. Effective Date:
The effective date of this Ordinance will be July 5, 2008. An abbreviated copy of this Ordinance 2008-A be printed in the Bakersfield Californian once per week

This Ordinance was duly **PASSED** and **ADOPTED** by the **BOARD OF DIRECTORS** of the **NORTH OF THE RIVER MUNICIPAL WATER DISTRICT**, 4000 Rio Del Norte Street, Bakersfield, California, at a **Special** meeting thereof held on the **5th Day of June, 2008**.

AYES: **DIRECTORS: Townsend, Wesson, Scoles, McClure and Gage**
NOES: **None**
ABSTAIN: **None**
ABSENT: **None**

STUART TOWNSEND, PRESIDENT/BOARD OF DIRECTORS

I HEREBY CERTIFY that the above and foregoing Ordinance was **PASSED** and **ADOPTED** by the **BOARD OF DIRECTORS** of the **NORTH OF THE RIVER MUNICIPAL WATER DISTRICT**, Kern County, California on the date and by the vote above stated.

WILLIAM R. MILLER, SECRETARY/BOARD OF DIRECTORS

EXHIBIT A

Notice of Public Hearing