

ORDINANCE NO. 14

AN ORDINANCE OF THE BOARD OF DIRECTORS OF
CALLEGUAS MUNICIPAL WATER DISTRICT ADOPTING
A CAPITAL IMPROVEMENT PROGRAM, AS AMENDED

AMENDED – JULY 15, 1981	AMENDED – JULY 5, 1995
AMENDED – JULY 29, 1981	AMENDED - JUNE 21, 2000
AMENDED – FEBRUARY 3, 1982	AMENDED - JUNE 6, 2001
AMENDED – DECEMBER 18, 1985	AMENDED – NOVEMBER 27, 2002
AMENDED – DECEMBER 15, 1993	AMENDED – NOVEMBER 5, 2003
	AMENDED - JULY 19, 2006

WHEREAS, the Calleguas Municipal Water District was organized in December 1953 under the Municipal Water District Act of 1911, as amended, for the purpose of making available a water supply to that portion of Ventura County lying within the District's boundaries; and

WHEREAS, since the District became a Member Public Agency of the Metropolitan Water District of Southern California in December 1960, as mandated by the Calleguas Municipal Water District's electorate, it has, as of December 1963, and continuously since that date, provided imported potable water on a wholesale basis to its Member Agencies; and

WHEREAS, the initial financing of the District's first capital construction program was derived from the proceeds of general obligation bonds, repayable by ad valorem taxes levied upon real property within the District, a method which was then sufficient; however,

WHEREAS, for the District's future capital construction the exclusive use of the ad valorem tax as a means of funding is not deemed sufficient; and

WHEREAS, in order to continue the transmission and delivery of water to supply the increasing demands within the District's boundaries it is necessary and incumbent upon the Board to provide for the timely construction and financing of the capital facilities required to insure a reliable water supply throughout the District's service area; and

WHEREAS, the population within the District's boundaries was estimated at 138,500 in 1964, was estimated at 550,000 in 2002, and is projected to be 670,000 in 2020; and

WHEREAS, the annual amount of imported water transmitted and distributed by the District to its service area was 9,226 acre feet in 1964, was 116,432 acre feet in 2005, and is projected to be 139,881 acre feet in 2025; and

WHEREAS, the Board requested and received from its Consulting Engineers a report anticipating the need for additional capital improvements to the District's system, the Final Report on

the Water Master Plan, dated July 1999 and updated in 2002, which includes the facilities to be constructed, the estimated scheduling and costs thereof, and which constitutes the bases for the District's Capital Improvement Program; and

WHEREAS, the estimated cost of the required capital facilities for design, construction and administration expenses is \$427,000,000 (2003 dollars) of which approximately one-third, or \$148,000,000 is required to construct new facilities to satisfy water demands created by additional water users including \$47,000,000 for projects supporting water recycling; and

WHEREAS, the Board has determined that a portion of the capital improvement costs properly should be borne by the additional population and improved real property benefited, which creates the increased water demand and thereby the necessity for the Capital Improvement Program; and

WHEREAS, the Board has further determined that a charge commonly referred to as the "Capital Construction Charge" (or a "Capacity Charge") shall be levied proportionately upon new developments and improvements and newly annexing properties which generate additional water requirements in accordance with Government Code section 66013 and other applicable sections of the "Mitigation Fee Act" as appropriate, which charge, together with other sources of revenue, shall be utilized to finance the Capital Improvement Program; and

WHEREAS, the Board may, under provisions of the Municipal Water District Act of 1911, as amended, establish terms, conditions, rules, and regulations for Water Service to its Member Agencies who, in turn, and in accordance with the Subdivision Map Act and other applicable regulations, may require compliance with certain standards, rules, and fee payments as a precedent to furnishing Water Service to a tract, parcel, lot, or connection,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE CALLEGUAS MUNICIPAL WATER DISTRICT AS FOLLOWS:

SECTION 1. Definitions. The word or words used in the text of this Ordinance shall have the meaning set forth below unless a clearly different meaning is implied or stated in the text hereof:

A. "Agriculture" shall mean the production of fruit, vegetables, non-food plant products and livestock for the purpose of commerce or for the use of public correctional or educational institutions and shall be understood to exclude all industrial, commercial, residential or other public uses of land.

B. "Applicant" shall mean that individual, person, company, corporation, partnership, agency, or any organization or group, public or private, or authorized representatives thereof which propose a new development or improvement resulting in a new or increased water demand on the District's system.

C. "Board" shall mean the Board of Directors of the Calleguas Municipal Water District.

D. "Capital Construction Charge" ("Capacity Charge") shall mean the amount of money to be paid to the District, in accordance with the Rate Schedule hereinafter set forth, to discharge the obligation of a new development or improvement and newly annexing territory requiring District water, the entire quantity or any portion of which is delivered by a Member Agency or its Retail Purveyor, as a prerequisite to the supply of such water.

E. "Capital Improvement Program" shall mean those additions and/or changes to the District's water system, which shall consist of projects listed herein and in the July 1999 Water Master Plan, as updated, and such projects as may be added to, deleted from, or modified by the Board from time to time.

F. "Construction Fund" shall mean that section within the District's Chart of Accounts maintained exclusively for the purpose of recording revenues and controlling expenditures for construction projects including the Capital Improvement Program.

G. "District" shall mean the Calleguas Municipal Water District, duly organized under and by virtue of the Municipal Water District Act of 1911, as amended.

H. "Memorandum of Understanding" ("MOU") shall mean the document issued by the District which shall confirm the availability of water for a proposed project; indicate that the District has no objection to the recording of a subdivision map; and authorize the issuance by the Member Agency or its Retail Purveyor of a Will Serve Letter conditioned on payment of the Capital Construction Charge. Further, an Applicant's signature on an MOU shall acknowledge the Applicant's obligation to pay the Capital Construction Charge prior to the delivery of water to the project site for any reason including construction activities, or the issuance of building permits, whichever occurs first. Issuance of an MOU by the District shall not constitute authorization for water meter installation, but only a good faith effort by the District to enable an Applicant to proceed with certain project entitlement activities that do not in themselves provide for the physical installation of water meter(s) or delivery of water to the site.

I. "Member Agency" shall mean any City, Municipal Water District, County, County Water District, County Waterworks District, Mutual Water Company, Public or Private Utility, or any Public Corporation which receives Water Service, all or in part, directly from the District.

J. "Meter Size" shall mean the nominal pipe size a meter will accept at its outflow side without use of a bushing or adapter.

K. "Overall Equivalent Meter Size" shall mean the size of a single meter that would theoretically satisfy the expected water demand of a development (as determined by the applicable Member Agency or Retail Purveyor) that will be served by both potable and non-potable meters for which the combined capacity of those meters exceeds the expected demand.

L. "Proof of Payment" shall mean the document issued by the District which shall confirm payment of the Capital Construction Charge by the Applicant; authorize the issuance of an

unconditional Will Serve Letter; authorize the installation of water meters by the Retail Purveyor, and the issuance of building permits by the Member Agency.

M. "Planning Permit Procedures" shall mean that system and process through which any City or County planning and/or permit authority controls compliance with its General Plan or legislation applicable within the District, including land use zoning and permit issuance.

N. "Retail Purveyor" shall mean any Public or Private Utility, Mutual Water Company, or other organization which receives Water Service, all or in part, from a Member Agency.

O. "Water Availability Letter" shall mean a letter from the District confirming that its distribution, storage and treatment facilities presently have the capacity to deliver sufficient water to the retail agency that will serve a project to allow that agency to supply the proposed development.

P. "Water Service" shall mean any delivery of potable or non-potable water by a Member Agency or its Retail Purveyor to an Applicant for any purpose whatsoever, including but not limited to initial grading, individual residential use, commercial, or industrial use.

Q. "Will Serve Letter" shall mean that document or its equivalent issued by a Member Agency or its Retail Purveyor committing to serve a specific property with water.

SECTION 2. Adoption of Capital Improvement Program. The Capital Improvement Program shall be in accordance with the District's Master Plan as amended from time to time.

SECTION 3. Additional Rules and Regulations. The rules and regulations contained in this Ordinance relating to Water Service and other matters within the District shall be applicable to all Member Agencies and shall be in addition to and not in lieu of those rules and regulations set forth in the District's Ordinance No. 12, as amended, and other related District legislation.

SECTION 4. Development Review. Projects involving excavation, grading or construction within or proximate to a District right-of-way are subject to engineering review by the District to ensure that those activities do not damage or compromise the integrity of District facilities. Notwithstanding receipt of the Capital Construction Charge, the District will issue a MOU and a Proof of Payment authorizing the issuance of building permits for projects subject to development review by the District only after the developer has fully complied with all of the District's engineering requirements. Those requirements include, but are not limited to: providing proposed grading and improvement plans for review on or before the date they are submitted to a public works agency for permit review; delivering a cash deposit in an amount determined by the Manager of Operations and Maintenance from which the District and consultants will be paid for field support, engineering, legal and right-of-way services necessary to protect District facilities from the proposed project; and completion of grading and excavating operations in compliance with supplemental construction procedures and details the developer shall be obligated to use or install to protect District pipelines or other facilities.

SECTION 5. Applicability. The Capital Construction Charges shall be payable commencing with the effective date of this Ordinance and, in accordance with the Rate Schedule set forth below, in a

uniform manner throughout the District. Except as provided herein, the Capital Construction Charge shall be applicable to all new developments and improvements of any nature whatsoever regardless of the existence of a water meter at the proposed site, which may require, all or in part, an initial or increased quantity of water, all or any portion of which is supplied through the District's system. Newly annexing properties with existing improvements shall bear the charge calculated in the same manner as new development except that those properties on which improvements were constructed prior to April 6th, 1980, shall not bear the Capital Construction Charge.

SECTION 6. Procedures.

A. The District's basic general procedures as they relate to the application and collection of the Capital Construction Charge are stated in this section. The Capital Construction Charge shall be a "one-time" payment made by an Applicant in accordance with the Rate Schedule set forth in Section 7 for the purpose of providing a portion of the funds to pay for construction of the projects included in the District's Master Plan.

B. At such time during the Planning Permit Procedures when an Applicant requests a Water Availability Letter the District shall issue a MOU as described above.

C. At such time during the Planning Permit Procedures when an Applicant requests a unconditional Will Serve Letter from a Member Agency or its Retail Purveyor, the Member Agency or its Retail Purveyor shall, before issuing such unconditional Will Serve Letter, refer the Applicant to the District for the purpose of obtaining a MOU or Proof of Payment. The District shall then determine, pursuant to this Ordinance, the amount of the Capital Construction Charge applicable to the new development or improvement proposed. After payment of the Capital Construction Charge by the Applicant to the District, the District shall issue to the Applicant a Proof of Payment, which shall constitute District authorization for issuance of an unconditional Will Serve Letter to the Applicant by the Member Agency or its Retail Purveyor. Each Member Agency or its Retail Purveyor shall refuse to issue an unconditional Will Serve Letter to any Applicant without first having in its possession a Proof of Payment, embossed with the District seal, or alternately, transmitted directly from the District electronically.

In the event that a Member Agency or its Retail Purveyor does not, as a regular or routine practice, issue written Will Serve Letters either because its governing entity consists of the same governing body serving both the Planning Permit Procedure and the retail water service functions, or for any other reason, then it shall be considered, for purposes of this Ordinance, that a Will Serve Letter or its equivalent shall have been issued by the Member Agency or its Retail Purveyor as a required precedent to the approval of the Applicant's final development plan.

D. Payment of the Capital Construction Charge to the District shall be made by the Applicant before issuance of a building permit for the development or improvement and prior to installation of water meter(s) to serve the development, whichever occurs first. In the same manner, newly annexing territories on which there are existing improvements requiring Water Service may connect to the Member Agency distribution system only after payment of the Capital Construction Charge.

E. Each Retail Purveyor shall be subject to the provisions of this Ordinance through imposition of such provisions by the Member Agency as a condition of Water Service to such Retail Purveyor by the Member Agency.

SECTION 7. Capital Construction Charge – Rate Schedule and Application. The Capital Construction Charge schedule of rates, as calculated in the District-approved 2002 Nexus Study, shall be uniformly applicable to the following Water Meter Sizes throughout the District (“Rate Schedule”):

Meter Size (inches)	Capital Construction Charge
5/8"	\$2,235
3/4"	\$2,235
1"	\$4,649
1.5"	\$9,321
2"	\$14,908
3"	\$32,588
4"	\$55,878
6"	\$116,406
8"	\$167,635
10"	\$270,072
12"	\$400,469

A. In the event that a given parcel of land is to be served by multiple water meters, the applicable charge shall be the sum of the individual meter fees for the meters installed.

B. Meters installed exclusively to provide fire flow will not be subject to the Capital Construction Charge.

C. **Meters Oversized for Fire Flow:** The District recognizes that some Member Agencies require installation of oversized meters on individual residential units, and as master meters serving large projects, for the purpose of providing additional capacity for fire sprinklers and hydrants.

1. When a Member Agency or its Retail Purveyor certifies that the meter to be installed at a particular residence is oversized for fire flow, the District will apply the fee for the next smaller Meter Size per the schedule herein. In the event two meters are to be installed for a single residence to provide reserve capacity for fire flow, neither is designated exclusively for fire flow, and the Member Agency certifies that the combined capacity of the meters is oversized for fire flow, the charge will be determined as follows:

a) If both meters are 1" or larger, one meter will be charged at the scheduled rate and the second meter will be charged as if it were one size smaller.

b) If either of the dual meters is ¾" or smaller, one meter will be charged at the scheduled rate and no charge will be applied to the smaller meter.

2. In the event a single master meter is to be installed to serve a large residential, commercial, industrial or public complex, and it will also supply fire flow, the District will apply the fee for the next smaller Meter Size per the schedule herein.

D. Changes in Meter Sizes: Should a larger meter replace a smaller meter at a given property, the charge shall be determined by subtracting the charge appropriate for the smaller meter that is removed, from the charge for the larger meter to be installed. When an additional meter is installed at a parcel with existing service, the charge for the new meter will be the same as if it were a new service connection. The District will require written confirmation of the new and existing Meter Sizes from the Member Agency. The District will not refund the charge in the event a smaller meter is installed.

E. Properties that contributed to the District's infrastructure by paying the charge for all existing improvements in full between April 6, 1980 and December 31, 2002, according to the rates then stated in Ordinance No. 14 are subject to the following exception: When a larger meter is requested and no additional improvements, alterations or change of use of existing improvements are made, no charge will be imposed.

F. Newly annexing properties on which there is existing development constructed after April 6th, 1980, shall bear the Capital Construction Charge upon annexation.

G. Recognition of Water Service to Previous Development: When previous development on a particular parcel of real estate is documented by public records as described below, the District will recognize it as existing demand. In such cases, the District will deduct from the fees due for proposed redevelopment an amount equal to the charges that would be levied if the previous development were constructed today. Should the credit available from previous development exceed the amount due for new development, the District will not issue a refund. The existence of a water meter alone, without evidence that the meter served development on a parcel will not be recognized as existing demand. The District will accept legible copies of the following documents as verification of previous development:

1. A building permit issued by a Member Agency clearly identifying the location and character of a building.
2. A demolition permit issued by a Member Agency clearly identifying the location, the existence of a structure and its removal.
3. Documentation from a Member Agency clearly identifying the parcel in question, and verifying water deliveries over a period of twelve months or longer.
4. The Ventura County Assessor's record of assessed valuation for the parcel in question indicating building improvements existed on the land.
5. Documentation from the appropriate Fire Department clearly describing the location and date of a fire destroying a building.

H. Parcels Receiving Potable and Non-Potable Water through Dual Meters: Calleguas recognizes that certain parcels on which dual meters are installed may have greater total flow

capacity than necessary to serve the needs of the property. Therefore, when dual meters delivering potable and non-potable water serve the same parcel the Capital Construction Charge will be determined by the overall demand of the parcel as indicated on the Statement of Meter Size by the Retail Purveyor, as the Overall Equivalent Meter Size, rather than the sum of the individual meters. In no event will the Overall Equivalent Meter Size be smaller than the potable meter(s) serving the property.

I. It shall be the responsibility of the Applicant to determine the size(s) of the meter or meters necessary to serve a proposed project before arranging for payment of the Capital Construction Charge. Sizes and quantities of meters to be installed must be certified by the applicable Member Agency or Retail Purveyor.

J. There shall be no fee for water meters installed exclusively to serve Agriculture. If an Applicant elects to convert to domestic use a meter previously delivering agricultural water, the charge shall be paid prior to conversion.

K. All Capital Construction Charges shall be levied and administered in accordance with the rules and regulations of this Ordinance (and the Government Code, as applicable). These rules and regulations may be amended by addition, deletion, or modification by the Board. This "Capital Construction Charge – Rate Schedule" shall be amended by the Board only after a noticed Public Hearing.

SECTION 8. Responsibility of Member Agency. If, for any reason, a Member Agency or its Retail Purveyor should issue an unconditional Will Serve Letter to an Applicant without first having a Proof of Payment embossed with the District seal or digitally signed and electronically transmitted directly from the District in its possession, or; install a meter without first having a Proof of Payment, similarly certified in a similar manner in its possession, the amount of the Capital Construction Charge which is required by the District but not yet remitted to the District shall become the obligation and responsibility of that Member Agency, provided that the Member Agency will not be obligated or responsible for any amount not remitted to the District as a result of any carelessness, omission, or negligence on the part of the District or any of its employees, agents, officers, or directors. Such amount due the District shall be placed on the Member Agency's current billing for water and treated in all respects as a part of the water bill, including delinquency provisions, pursuant to the District's Ordinance No. 12, as amended. The foregoing shall in no manner preclude the District from holding the Applicant directly responsible for payment of the Capital Construction Charge. Member Agencies shall cooperate fully with the District in any effort to collect the Capital Construction Charge from the Applicant. It shall be the responsibility of each Member Agency to maintain accurate records of all service connections in the Member Agency's service area, including Meter Sizes, and to promptly comply with any and all reasonable requests from the District for service records and verifications of Meter Size or other related information.

SECTION 9. Interest on Delinquent Capital Construction Charge Payments: Until such time as a delinquent Capital Construction Charge is paid or placed on a Member Agency's water bill, it shall bear interest from the initial due date at the same rate as the District's funds deposited with the Ventura County Pool, compounded quarterly. The initial due date shall be the date of grading permit

issuance, the date of building permit issuance, or the date of installation of a water meter, whichever occurred first.

SECTION 10. Commitment of Funds. All Capital Construction Charge payments collected by the District shall be deposited in the District's Construction Fund and shall be used only for payment of Capital Improvement Program costs.

SECTION 11. Appeal.

A. **Amount Charged.** In the event that the determination by District staff in administration or application of the Rate Schedule set forth herein above shall result in a Capital Construction Charge, the amount of which is disputed by the Applicant, then the Applicant may elect to file a written protest and appeal directed to the General Manager of the District. Such filing shall clearly state the basis for the disputed Capital Construction Charge and the Applicant's proposed rectification thereof and its basis therefore. The General Manager shall, within ten (10) working days of receipt of the protest and appeal, review and render in writing his/her determination of the matter. In the event that the Applicant elects to dispute the General Manager's determination, Applicant may, within no longer than ten (10) working days, elect to file written protest and appeal with the Board, which shall review and render its determination of the matter within twenty (20) working days thereafter. The Board's determination shall be binding and final.

B. **Ordinance.** Any judicial action or proceeding to attack, review, set aside, void, or annul this Ordinance shall be commenced within 120 days of the effective date of this Ordinance pursuant to Government Code section 66022.

SECTION 12. Refunds. The Capital Construction Charge is a non-refundable fee. Only in the event that a duplicate payment is made for the same land and development thereon, will the Capital Construction Charge be refunded. The burden of proof of duplicate payments shall rest on the Applicant.

SECTION 13. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the Ordinance. The Board hereby declares that it would have passed this Ordinance by section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 14. Notices. All notices, protests, appeals, or other communications from Applicants, agencies, persons and organizations, relating to the Capital Construction Charge or the administration of these regulations by the District, shall be submitted in writing and shall be addressed to the General Manager of the District, 2100 Olsen Road, Thousand Oaks, California 91360-6800.

SECTION 15. Effective Date. This Ordinance, as amended, shall become effective on August 18th, 2006.

Adopted this 19th day of July, 2006.




Ted Grandsen, President
Board of Directors

ATTEST:



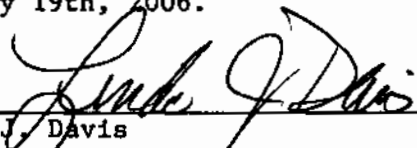
Donald G. Hauser, Secretary
Board of Directors

APPROVED AS TO FORM:



Douglas E. Kulper
Ferguson, Case, Orr, Paterson &
Cunningham LLP
Legal Counsel for the District

I certify that this is a true and correct copy of the original Ordinance No. 14. Adopted at a regular Board of Directors meeting held on July 19th, 2006.



Linda J. Davis
Administrative Assistant

Adopted this 19th day of July, 2006.



Ted Grandsen, President
Board of Directors

ATTEST:



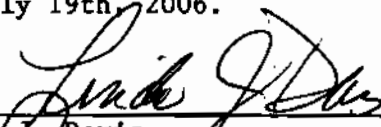
Donald G. Hauser, Secretary
Board of Directors

APPROVED AS TO FORM:



Douglas E. Kulper
Ferguson, Case, Orr, Paterson &
Cunningham LLP
Legal Counsel for the District

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Linda J. Davis
Administrative Assistant