Yucaipa Valley Water District

Workshop Memorandum 12-071

Date: **April 10, 2012**

Subject: **Regional Water Allocation Agreement for Water Imported by the San Gorgonio Pass Water Agency**

On April 5, 2012, the water retail agencies in the Pass Area conducted a meeting to discuss an allocation plan for water imported by the San Gorgonio Pass Water Agency. During the meeting, the overall allocation plan was discussed and comments were provided by some of the water retailers.

The purpose of this agenda item is to obtain comments from the board of directors to further develop and improve the proposed allocation plan.

Draft Document - March 20, 2012

REGIONAL WATER ALLOCATION AGREEMENT FOR WATER IMPORTED BY THE SAN GORGONIO PASS WATER AGENCY

This Agreement, by and between, the San Gorgonio Pass Water Agency, a State Water Contractor (hereinafter referred to as "SGPWA"); the City of Banning, a California municipal corporation; Banning Heights Mutual Water Company, a California mutual water company; Beaumont Cherry Valley Water District, a California irrigation district; Cabazon Water District, a California water district; High Valley Water District, a California water district; South Mesa Mutual Water Company, a California mutual water company; and Yucaipa Valley Water District, a California county water district; each individually referred to or collectively referred to in this Agreement as "Party" or "Parties".

The term Water Retailers refers to the following Parties to this Agreement: City of Banning; Banning Heights Mutual Water Company; Beaumont Cherry Valley Water District; Cabazon Water District; High Valley Water District; South Mesa Mutual Water Company; and Yucaipa Valley Water District.

RECITALS

A. California's water law and policy, Article X, Section 2 of the California Constitution requires that all uses of the State's water be both reasonable and beneficial. Specifically, this section of the Constitution states in part, "It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use of unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.

B. On November 16, 1962 the State of California, acting by and through the Department of Water Resources, and the San Gorgonio Pass Water Agency entered into a Water Supply Contract pursuant to the provisions of the California Water Resources Development Bond Act and the State Central Valley Project Act and other applicable laws.

C. The Water Supply Contract between the Department of Water Resources and the San Gorgonio Pass Water Agency has been amended eighteen times, with the latest amendment dated December 26, 2007. The Water Supply Contract provides a Maximum Annual Table "A" Allocation of 17,300 acre feet per year of imported water from the State Water Project to the San Gorgonio Pass Water Agency.

D. The San Gorgonio Pass Water Agency Law codified as Chapter 101 of the California Water Code specifically provides for the San Gorgonio Pass Water Agency to "...sell water under the control of the agency to cities, and to other public corporations and public agencies within the agency…for use within said agency without any preference…".

E. The Urban Water Management Planning Act (California Water Code Section 10610 et. seq.) requires California's urban water suppliers to ensure adequate water supplies are

available to meet existing and future water demands. Every urban water supplier that either provides over 3,000 acre-feet of water annually or serves more than 3,000 or more connections is required to assess the reliability of its water sources over a 20-year planning horizon considering normal, dry, and multiple dry years. Therefore, the implementation of reliable and prudent long-term water resource management plans require Water Retailers within the service area of the San Gorgonio Pass Water Agency, regardless of size or number of customers, to be able to anticipate a given quantity of imported water to meet the water demands within the service area of each retail water customer.

F. The Parties recognize that an Agreement allocating imported water from the San Gorgonio Pass Water Agency will: (1) provide certainty for Water Retailers thereby enabling better water resource planning in the future; (2) support the ability for each Water Retailer to establish community specific policies and goals based on uniform and consistent rules pertaining to the delivery of imported water; (3) promote improved water management since an imported water allocation will enable each Water Retailer to implement and directly benefit from specific policies related to sustainability, dual plumbing and conjunctive use; and (4) improve coordination and confidence between the Water Retailers and the San Gorgonio Pass Water Agency.

AGREEMENT

1. **Allocation of Water from the State Water Project.** The Parties acknowledge that the following provision of the San Gorgonio Pass Water Agency Law, codified as Chapter 101, Section 15.5 of the Appendix to the California Water Code, is integrated within this Agreement to ensure the allocation of imported water is consistent with the intent of the Legislature. "It is the intent of the Legislature that, in allocating water received from the State Water Project pursuant to this act, the highest priority shall be given to eliminating groundwater overdraft conditions within any agency or district receiving the water."

2. **Boundaries of the Parties.** The service area of the San Gorgonio Pass Water Agency encompasses a portion or the entire service area of each Water Retailer that is a Party to this Agreement.

   2.1. The Parties agree to utilize that portion of the sphere of influence of each Water Retailer within the boundary of the San Gorgonio Pass Water Agency as the basis of the imported water allocation methodology provided herein. The Sphere of Influence boundary is utilized since this boundary line represents the reasonable planning boundary of each Water Retailer's legal boundary and designates the Water Retailer's ultimate service area.

   2.2. The Parties acknowledge that the Local Agency Formation Commission of Riverside County will periodically review the Sphere of Influence of each Water Retailer and adjust these boundaries based on factors such as current and future land use, current and future need and capacity for service, municipal service reviews, and any relevant communities of interest. Any such change in the Sphere of Influence shall also change the baseline allocation of water as provided in Section 4.5.

2.3. The Sphere of Influence boundary area for each Water Retailer within the boundary of the San Gorgonio Pass Water Agency is as follows:

Table 1 - Boundary Summary

Water Retailer	Sphere of Influence Boundary Area (Acres)	Percentage of Area for Each Water Retailer
Banning Heights Mutual Water Company	876	1.2%
South Mesa Mutual Water Company	974	1.4%
High Valley Water District	5,287	7.4%
Cabazon Water District	7,990	11.1%
Yucaipa Valley Water District	17,388	24.2%
City of Banning	19,644	27.3%
Beaumont Cherry Valley Water District	19,693	27.4%
Morongo Band of Mission Indians	34,611	Not Applicable
Unincorporated Riverside County	34,043	Not Applicable
Unincorporated San Bernardino County	1,910	Not Applicable
SGPWA Service Area	**142,416**	**100.0%**
Total Area of Water Retailers	71,852	

Source: San Gorgonio Pass Water Agency Supplemental Water Supply Planning Study, Albert A. Webb Associates, October 2009.

3. **State Water Project Reliability.** For planning purposes, the availability of water from the State Water Project is based on a long-term average reliability. The California Department of Water Resources routinely prepares a *State Water Project Delivery Reliability Report* to describe current and future deliveries from the State Water Project.

3.1. The Water Retailers understand the annual fluctuations in the availability of water deliveries from the State Water Project and further acknowledge that these fluctuations will create variations in the actual quantity of water available to the region from the State Water Project.

3.2. The Parties agree that any increase or decrease of the reliability of the State Water Project will be reflected in the annual allocation of imported water available to each Water Retailer.

3.3. Prior to the completion of the East Branch Extension of the State Water Project, the San Gorgonio Pass Water Agency and the California Department of Water Resources agreed to a reduction in the Maximum Annual Table "A" Allocation of 17,300 acre feet. In the future, the San Gorgonio Pass Water Agency agrees not

to reduce the current Maximum Table "A" Allocation of 17,300 acre feet without prior consent from the Water Retailers.

4. **Baseline Water Resource Allocation.** The San Gorgonio Pass Water Agency maintains a contract with the California Department of Water Resources for a Maximum Table "A" Allocation of 17,300 acre feet per year from the State Water Project.

4.1. The Parties agree to use the Sphere of Influence of each Water Retailer in the service area of the San Gorgonio Pass Water Agency to calculate the Baseline Water Resource Allocation as follows:

Table 2 - Baseline Water Resource Allocation

Water Retailer	Percentage of Area for Each Water Retailer (Table 1)	Baseline Water Resource Allocation (Acre Feet)
Banning Heights Mutual Water Company	1.2%	211
South Mesa Mutual Water Company	1.4%	235
High Valley Water District	7.4%	1,273
Cabazon Water District	11.1%	1,924
Yucaipa Valley Water District	24.2%	4,187
City of Banning	27.3%	4,730
Beaumont Cherry Valley Water District	27.4%	4,742
Morongo Band of Mission Indians	Not Applicable	Not Applicable
Unincorporated Riverside County	Not Applicable	Not Applicable
Unincorporated San Bernardino County	Not Applicable	Not Applicable
Maximum SGPWA Table "A" Allocation		**17,300**

4.2. The Baseline Water Resource Allocation for each Water Retailer represents the maximum quantity of imported water from the San Gorgonio Pass Water Agency that each Water Retailer shall use for planning purposes unless augmented with additional imported water supplies as provided herein. Using the quantity of imported water allocated as the Baseline Water Resource Allocation for planning purposes will insure that the Water Retailers do not oversubscribe the Maximum Table "A" Allocation of 17,300 acre feet provided by contract to the San Gorgonio Pass Water Agency.

4.3. The purchase of any additional water supplies or rights by the San Gorgonio Pass Water Agency shall be automatically added to the existing Maximum Table "A" Allocation amount of 17,300 acre feet and distributed to the Water Retailers resulting in an increase of the Baseline Water Resource Allocation for all Water Retailers based on the Percentage of Area for Each Water Retailer. The quantity, quality and reliability of additional water supplies purchased by the San

Gorgonio Pass Water Agency shall be combined with the existing Maximum Table "A" Allocation of 17,300 acre feet in a manner that benefits or impacts all Parties equally without preference.

4.4. No portion of the Baseline Water Resource Allocation can be sold, traded, exchanged or transferred between the Parties except as provided below.

4.5. The Parties acknowledge that any adjustment of the Sphere of Influence boundary of any Water Retailer after the effective date of this Agreement will result in a recalculation of the Baseline Water Resource Allocation.

4.5.1. Any proposed administrative action by the Local Agency Formation Commission that will change the Sphere of Influence boundary of any Water Retailer shall be distributed to the Parties 60 days prior to the scheduled action by the Local Agency Formation Commission.

4.5.2. A merger or consolidation of a Party to this Agreement will result in an adjustment to the Sphere of Influence boundary that will necessitate a recalculation of the Baseline Water Resource Allocation.

4.6. The Baseline Water Resource Allocation will not be amended to provide any portion of the existing Maximum Table "A" Allocation of 17,300 acre feet from the State Water Project to any existing retail water agency, new retail water agency, or other entity not a Party to this Agreement.

4.6.1. The San Gorgonio Pass Water Agency agrees that a retail water agency, or other entity not a Party to this Agreement shall be required to purchase a sufficient quantity of physical water rights and complete pipeline improvements to the existing conveyance and delivery system(s) such that no Party to this Agreement is damaged, impacted, or subordinated with respect to additional expenses, water conveyance, water supply, water quality, or other any other matter under the authority, ability and discretion of the San Gorgonio Pass Water Agency.

4.7. Any improvement to the capital assets owned, operated or controlled by the San Gorgonio Pass Water Agency or the California Department of Water Resources that provides additional imported water resources or improves reliability will be reflected in the Baseline Water Resource Allocation and distributed to the Parties.

4.8. The San Gorgonio Pass Water Agency will only provide imported water to Water Retailers and no other entity within or outside of the boundary of the San Gorgonio Pass Water Agency.

5. Adjusted Baseline Water Resource Allocation. The Baseline Water Resource Allocation amount allocated to each Water Retailer can be further adjusted at any time as follows:

5.1. Purchase of Additional Sources of Supply. Each Water Retailer may elect, at the sole and absolute discretion of each entity, to purchase additional imported water

sources of supply that will be added to the Baseline Water Resource Allocation amount.

5.1.1. The purchase of additional imported water source of supply or water rights by a Water Retailer(s) shall increase the amount of imported water delivered above the Baseline Water Resource Allocation amount to the specific Water Retailer(s) purchasing the additional supply or rights. The additional source of supply will be added to the quantity of water used for planning purposes and identified as a separate quantity of imported water from the Baseline Water Resource Allocation.

5.1.2. The quantity, quality and reliability of any water purchased as an additional source of supply shall be identified independently from the Baseline Water Resource Allocation such that any degradation of water quality, reliability or other parameter shall not impact any other Party to this Agreement. The additional source of supply will be considered to be generally equivalent to the quantity and quality of imported water delivered as part of the Maximum Table "A" Allocation of 17,300 acre feet if the supply originates from the same location and conveyed using the same facilities. In this case, the quantity, quality and reliability shall be considered equal to the Baseline Water Resource Allocation.

5.1.3. A Water Retailer shall not be restricted from using funds collected by the San Gorgonio Pass Water Agency as a component of the imported water rate for the purchase of additional water supplies and rights at any time.

5.1.4. No portion of the annual amount of water delivered as the Adjusted Baseline Water Resource Allocation can be sold, traded, exchanged or transferred between the Parties except as provided below.

6. **Annual Water Resource Allocation.** The Annual Water Resource Allocation is the total amount of water available to each Water Retailer from the Baseline Water Resource Allocation and the Adjusted Baseline Water Resource Allocation each year based on the actual and independent availability of the specific source of supply.

6.1. The Parties acknowledge that the annual amount of imported water available from all sources of supply are variable based on factors such as seasonality, climatic changes, precipitation, snowpack, and drought. These changes will cause variability in the amount of water available to each Water Retailer on an annual basis.

6.2. The amount of water available from the State Water Project is adjusted throughout each water year based on notices issued by the California Department of Water Resources. Any notice issued by the California Department of Water Resources that changes the Maximum Table "A" Allocation amount shall be effective on the date of issuance of the notice from the Department of Water Resources.

6.3. Baseline Water Resource Allocation. The Annual Water Resource Allocation for water available from the Baseline Water Resource Allocation shall generally be

based upon the availability of imported water from the State Water Project as determined by the California Department of Water Resources.

6.3.1. The Baseline Water Resource Allocation for each Water Retailer shall also be adjusted throughout the water year based on notices issued by the California Department of Water Resources and shall include other water quantities provided to the San Gorgonio Pass Water Agency such as the Turn-Back Water Pool Program and the Article 21 Program. These programs will be allocated on the same percentage basis as provided in Section 4 above (Baseline Water Resource Allocation).

6.4. Adjusted Baseline Water Resource Allocation. The Annual Water Resource Allocation for imported water allocated from the Adjusted Baseline Water Resource Allocation shall be based upon the availability of each specific source of supply.

7. **Unused Annual Water Resource Allocation.** In the event a Water Retailer is unable to make use of their specific Annual Water Resource Allocation as provided herein, then the amount of unused imported water shall be reallocated proportionally to the other Water Retailers using the total amount of water allotted to each Water Retailer pursuant to the Adjusted Baseline Water Resource Allocation amount.

8. **Prohibitions to Exchange, Transfer or Sale (Secondary Market).** The Parties agree that any water made available to the San Gorgonio Pass Water Agency pursuant to this Agreement shall be used by the Water Retailer within their respective Sphere of Influence and not assigned, exchanged, transferred or sold to create or support a secondary water market, speculation, or similar activity for any public or private entity, developer, investor, agricultural interest or speculator.

9. **Excess Conveyance Capacity in State Water Project Facilities.** During times of water shortages, there will be excess pipeline conveyance capacity in the State Water Project. The Parties agree to cooperate and maximize the use and availability of excess State Water Project conveyance facilities to augment the water supplies within the service area of the San Gorgonio Pass Water Agency based on the rate schedule utilized for routine deliveries of imported water.

General Provisions

10. **General Provisions.** The following General Provisions have been incorporated herein:

10.1. Effective Date. This Agreement shall become effective and binding upon the Parties on the first day of the month following the approval of the Agreement by Water Retailers with a collective total combined land area of more than 75% of the 71,852 acres within the Sphere of Influence boundary of the Water Retailers as provided in Table 1.

10.2. Termination. This Agreement shall terminate immediately upon a vote of the Parties consisting of a collective total combined land area of more than 75% of the total acreage at the time of termination within the Sphere of Influence of all Water Retailers in the service area of the San Gorgonio Pass Water Agency.

10.2.1. The Baseline Water Resource Allocation of Water Retailers electing not to execute this Agreement shall be maintained pursuant to the methodology provided in Section 4. The Annual Water Resource Allocation for a Party electing not to execute the Agreement shall be considered unused and distributed to the Parties pursuant to Section 7.

10.3. Notices. All notices and demands which any Party is required or desires to give to the others pursuant to this Agreement shall be given in writing by certified mail, return receipt requested with appropriate postage paid, by personal delivery, by facsimile or by private overnight courier service to the business address of the other Party.

10.4. Entire Agreement. This Agreement, together with all Exhibits and documents referred to herein, constitutes the entire Agreement among the Parties with respect to the subject matter hereof, and supersede all prior understandings or agreements.

10.5. Amendments. This Agreement may be modified or amended only by agreement of those Parties that form a consensus of more than 66% of the total amount of water allotted to each Water Retailer pursuant to the Adjusted Baseline Water Resource Allocation amount.

10.6. No Assignments. This Agreement and the rights, duties and benefits given in it, may not be assigned.

10.7. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the Parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

10.8. Governing Law. This Agreement shall be governed by the laws of the State of California.

10.9. Attorneys' Fees. Each Party shall bear its own attorneys' fees and expenses in the preparation and review of this Agreement. In the event that any party hereto institutes an action or proceeding for a declaration of the rights of the Parties under this Agreement, for injunctive relief, for an alleged breach or default of, or any other action arising out of, this Agreement, or the transactions contemplated herein, or in the event any party is in default of its obligations pursuant thereto, whether or not suit is filed or prosecuted to final judgment, the non-defaulting party or prevailing party shall be entitled to its actual attorneys' fees and to any court costs incurred, in addition to any other damages or relief awarded by the court.

10.10. Successors and Assigns; No Assignment. This Agreement shall inure to the benefit of and be binding on the parties to this Agreement and their respective successors and assigns.

10.11. Covenants, Conditions or Remedies. The waiver by one Party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The remedies set forth in this Agreement are cumulative and not exclusive to any other legal or equitable remedy available to a party. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

10.12. Exhibits. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement whether or not actually attached. The following exhibits are attached to this Agreement:

- Exhibit "A" - San Gorgonio Pass Water Agency Aerial Boundary Map.
- Exhibit "B" - San Gorgonio Pass Water Agency Map of Major Water Retailers.

10.13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

10.14. Legal Advice. Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon preparation of the document, or any attribution of such party as the sole source of the language in question.

Draft Document - March 20, 2012

SAN GORGONIO PASS WATER AGENCY

By: _____
President, Board of Directors

Attest:

_____
Secretary, Board of Directors

Approved as to form:

_____
Counsel, San Gorgonio Pass Water Agency

BEAUMONT CHERRY VALLEY WATER DISTRICT

By: _____
President, Board of Directors

Attest:

_____
Secretary, Board of Directors

Approved as to form:

_____
Counsel, Beaumont Cherry Valley Water District

CITY OF BANNING

By: _____
Mayor

Attest:

_____
City Clerk

Approved as to form:

_____
Counsel, City of Banning

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YUCAIPA VALLEY WATER DISTRICT

By: _____
President, Board of Directors

Attest:

_____
Secretary, Board of Directors

Approved as to form:

_____
Counsel, Yucaipa Valley Water District

CABAZON WATER DISTRICT

By: _____
President, Board of Directors

Attest:

_____
Secretary, Board of Directors

Approved as to form:

_____
Counsel, Cabazon Water District

HIGH VALLEY WATER DISTRICT

By: _____
President, Board of Directors

Attest:

_____
Secretary, Board of Directors

Approved as to form:

_____
Counsel, High Valley Water District

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SOUTH MESA MUTUAL WATER COMPANY

By: _____
President, Board of Directors

Attest:

_____
Secretary, Board of Directors

Approved as to form:

_____
Counsel, South Mesa Mutual Water Company

BANNING HEIGHTS MUTUAL WATER COMPANY

By: _____
President, Board of Directors

Attest:

_____
Secretary, Board of Directors

Approved as to form:

_____
Counsel, Banning Heights Mutual Water Company

Exhibit "A"

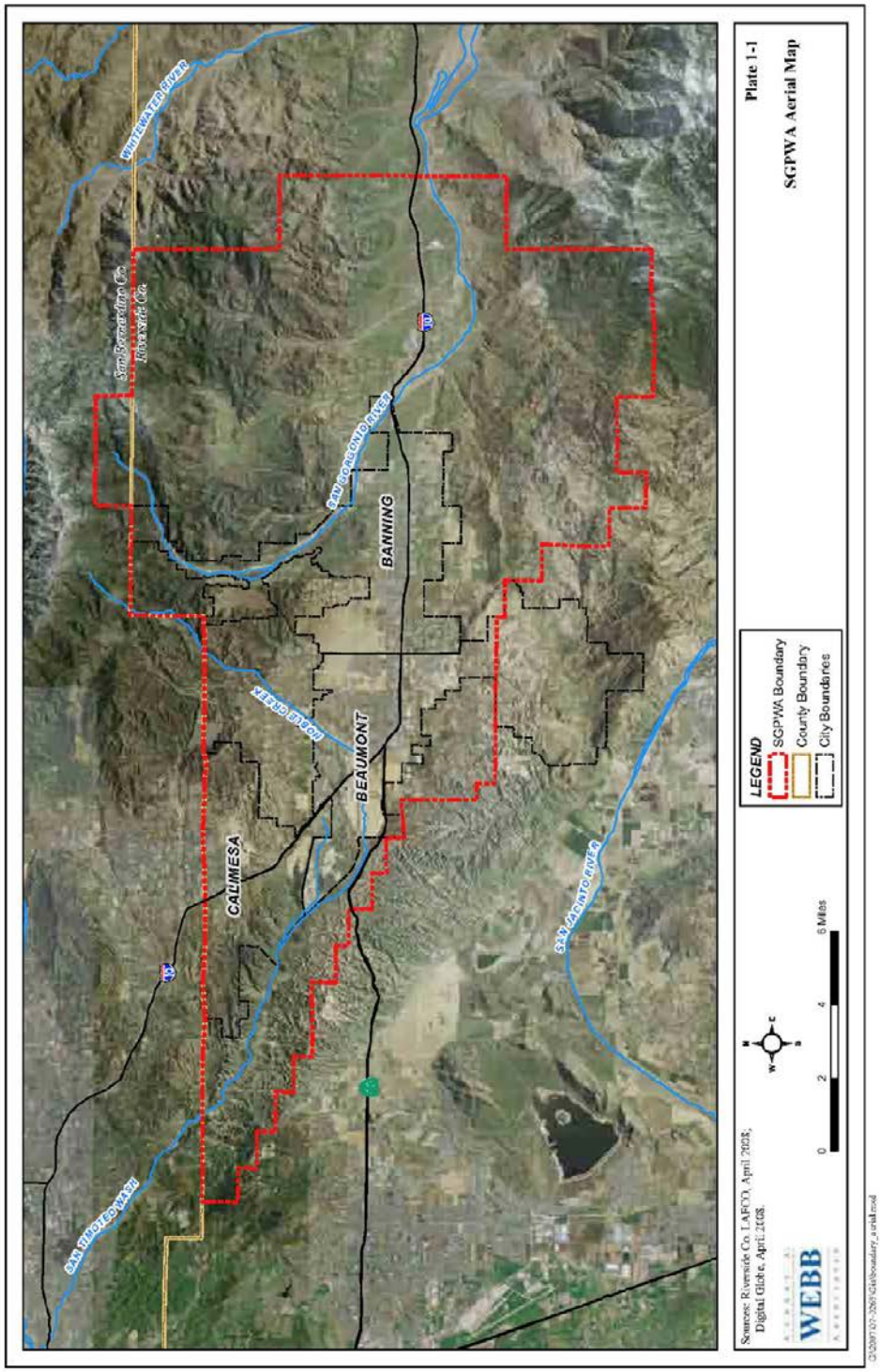
WHITEWATER RIVER
San Bernardino Co.
Riverside Co.
SAN TIMOTEO WASH
CALIMESA
BEAUMONT
BANNING
MOJAVE RIVER
SAN GORGONIO RIVER
SAN JACINTO RIVER
10
Plate 1-1
SGPWA Aerial Map
LEGEND
SGPWA Boundary
County Boundary
City Boundaries
Sources: Riverside Co. LAFCO, April 2008;
Digital Globe, April 2008.
WEBB
0
2
4
6 Miles

Exhibit "B"

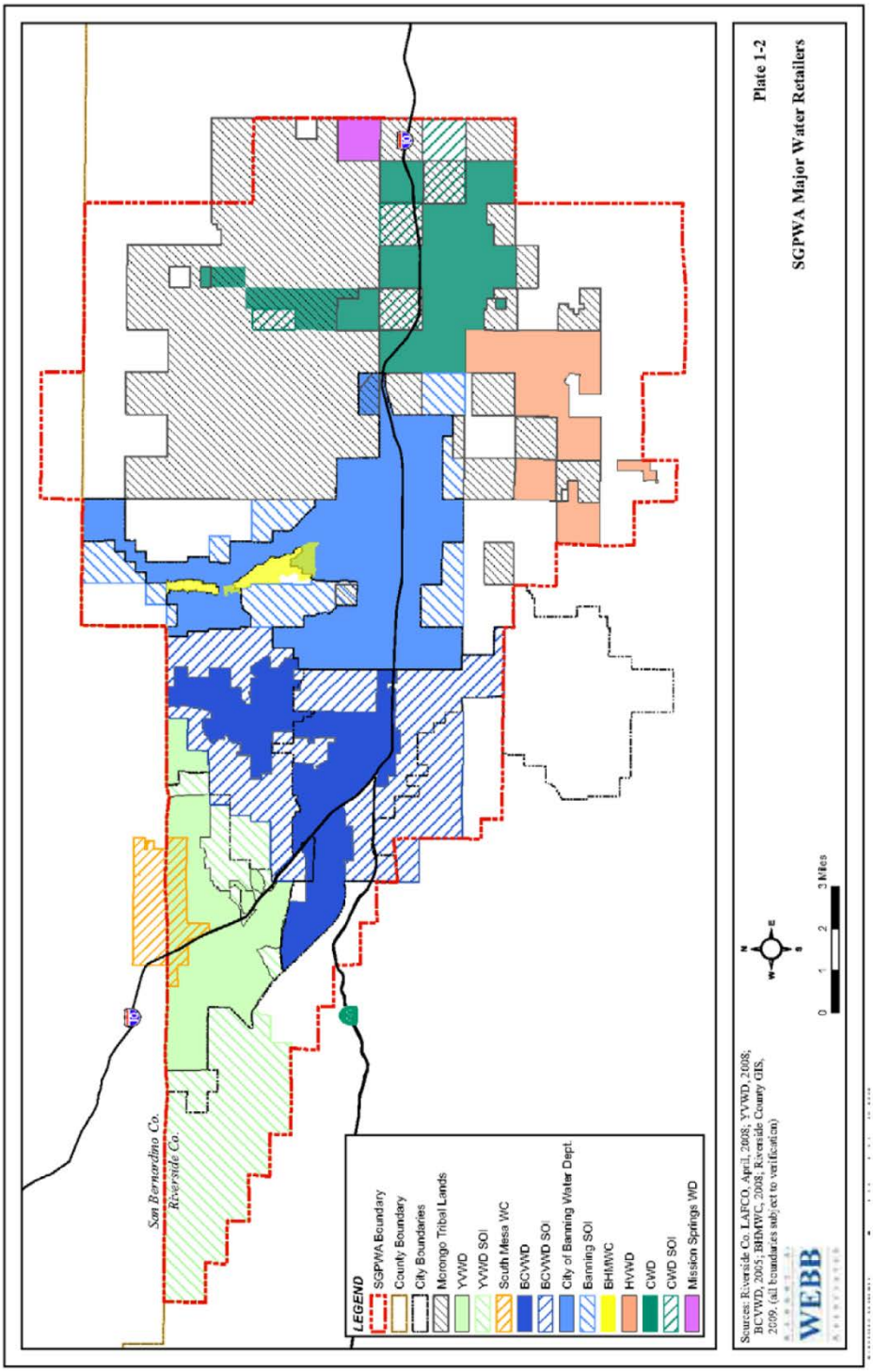
Plate 1-2
SGPWA Major Water Retailers
Sources: Riverside Co. LAFCO, April, 2008; YVWD, 2008; BCVWD, 2005; BHMWC, 2008; Riverside County GIS, 2009. (all boundaries subject to verification)
WEBB
0 1 2 3 Miles
N
E
S
W
LEGEND
SGPWA Boundary
County Boundary
City Boundaries
Morongo Tribal Lands
YVWD
YVWD SOI
South Mesa WC
BCVWD
BCVWD SOI
City of Banning Water Dept.
Banning SOI
BHMWC
HVWD
CWD
CWD SOI
Mission Springs WD
San Bernardino Co.
Riverside Co.
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