



Agenda

CITY CLERK'S OFFICE

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PUBLIC UTILITIES COMMITTEE MEETING

WEDNESDAY, MARCH 1, 2017

City Hall

City Council Chambers

200 Lincoln Avenue

Regular Meeting – 5:00pm

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. APPROVAL OF CONSENT AGENDA
5. APPROVAL OF MINUTES FROM THE FEBRUARY 1, 2017 PUC MEETING

INFORMATIONAL ITEMS

6. Financial Update for Water Division, Wastewater Division and Environmental Services Division. (Jason Mumm of MWH/Stanec)
7. Monthly Update of Capital Projects. (Nick Schiavo)
8. WWM Metering Agreement with the Office of the State Engineer to continually measure discharge into the Santa Fe River from the City of Santa Fe Waste Water Treatment Plant. (Shannon Jones)
9. Resolution 2016-90 Feasibility and Fiscal Impact Report. (Shannon Jones)
10. Recommendations for the Santa Fe River Target Flow for a Living River Ordinance. (Melissa McDonald) **10 Min.**
11. City's Water & Living River Report Update (Councilor Ives, Alan Hook) **10 Min.**
12. Santa Fe River Acequia Associations Update. (Alex Puglisi) **10 Min.**

CONSENT – ACTION CALENDAR

13. Update on Current Water Supply Status. (Alex Puglisi)
14. Wastewater Management Division Monthly Update. (Shannon Jones)
15. Request for approval of a One-Year Term Extension to the PSA Item # 14-0153 with Service Line Warranties of America. (Nick Schiavo)

Public Utilities Committee – 3/1/2017

Finance Committee – 3/20/2017

City Council – 3/29/2017

16. Request for approval of Award of Bid # '17/08/B to Dukes Root Control, Inc. for Sewer Line Root Control Services in the amount of \$75,818.75 per year for a period of four (4) years for a contract total of \$303,725.00 exclusive of NMGR. (Jerry Tapia)

Public Utilities Committee – 3/1/2017

Finance Committee – 3/20/2017

City Council – 3/29/2017

17. Request for approval of a Professional Services Agreement with B&D Industries, Inc. through the Cooperative Educational Services procurement guidelines for Phase I of the Canyon Road Water Treatment Plant Security Systems Improvements Project for the amount of \$256,762.69 inclusive of NMGR. (Alex Gamino)

Public Utilities Committee – 3/1/2017

Finance Committee – 3/20/2017

City Council – 3/29/2017

MATTERS FROM THE PUBLIC

MATTERS FROM THE CITY ATTORNEY

MATTERS FROM STAFF

MATTERS FROM THE COMMITTEE

NEXT MEETING: Wednesday, April 5, 2017

ADJOURN

PERSONS WITH DISABILITIES IN NEED OF ACCOMMODATIONS, CONTACT THE CITY CLERK'S OFFICE AT 505-955-6520, FIVE (5) WORKING DAYS PRIOR TO THE MEETING DATE.

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PUBLIC UTILITIES COMMITTEE MEETING
Wednesday, March 1, 2017**

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ITEM**ACTION****PAGE****CONSENT DISCUSSION**

REQUEST FOR APPROVAL OF A ONE-YEAR TERM
EXTENSION TO THE PSA ITEM #14-0153 WITH
SERVICE LINE WARRANTIES OF AMERICA

Approved

12-14

DISCUSSION AND ACTION ITEMS

None

14

MATTERS FROM THE PUBLIC

MATTERS FROM THE CITY ATTORNEY

None

14

ITEMS FROM STAFF

None

14

MATTERS FROM THE COMMITTEE

Information/discussion

14-15

NEXT MEETING: WEDNESDAY,
WEDNESDAY, APRIL 5, 2017

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ADJOURN

15

**MINUTES OF THE
CITY OF SANTA FE
PUBLIC UTILITIES COMMITTEE
Wednesday, March 1, 2017**

1. CALL TO ORDER

A meeting of the Public Utilities Committee was called to order by Councilor Christopher M. Rivera, Chair, at approximately 5:00 p.m., on Wednesday, March 1, 2017, Environmental Services Division, 114 Siler Road, Building A, Santa Fe, New Mexico.

2. ROLL CALL

MEMBERS PRESENT:

Councilor Christopher M. Rivera, Chair
Councilor Signe I. Lindell
Councilor Joseph M. Maestas
Councilor Ronald S. Trujillo
Councilor Renee D. Villarreal

OTHERS PRESENT:

Nick Schiavo, Public Utilities Director
Stephanie Lopez, Public Utilities
Marcos Martinez, Assistant City Attorney
Melessia Helberg, Stenographer

There was a quorum of the membership present for conducting official business.

NOTE: All items in the Committee packet for all agenda items are incorporated herewith to these minutes by reference. The original Committee packet is on file in the Public Utilities Department.

3. APPROVAL OF AGENDA

MOTION: Councilor Maestas moved, seconded by Councilor Trujillo, to approve the Agenda as presented.

VOTE: The motion was approved unanimously on a voice vote.

4. APPROVAL OF CONSENT AGENDA

MOTION: Councilor Trujillo moved, seconded by Councilor Maestas, to approve the following Consent Action Calendar as amended.

VOTE: The motion was approved unanimously on a voice vote.

CONSENT – ACTION CALENDAR

- 13. UPDATE ON CURRENT WATER SUPPLY STATUS. (ALEX PUGLISI)**
- 14. WASTEWATER MANAGEMENT DIVISION MONTHLY UPDATE. (SHANNON JONES)**
- 15. *[Removed for discussion by Councilor Lindell and Councilor Villarreal]***
- 16. REQUEST FOR APPROVAL OF AWARD OF BID #17/08/B TO DUKES ROOT CONTROL, INC., FOR SEWER LINE ROOT CONTROL SERVICES IN THE AMOUNT OF \$75,818.75 PER YEAR FOR A PERIOD OF FOUR (4) YEARS FOR A CONTRACT TOTAL OF \$303,725, EXCLUSIVE OF NMGR. (JERRY TAPIA) Committee Review: Public Utilities Committee 03/01/17; Finance Committee 03/20/17; and City Council 03/29/17.**
- 17. REQUEST FOR APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH B & D INDUSTRIES, INC., THROUGH THE COOPERATIVE EDUCATIONAL SERVICES PROCUREMENT GUIDELINES FOR PHASE I OF THE CANYON ROAD WATER TREATMENT PLANT SECURITY SYSTEMS IMPROVEMENTS PROJECT FOR THE AMOUNT OF \$256,762.69 INCLUSIVE OF NMGR. (ALEX GAMINO) Committee Review: Public Utilities Committee 03/01/17; Finance Committee 03/20/17; and City Council 03/29/17.**

5. APPROVAL OF MINUTES FROM THE FEBRUARY 1, 2017 PUC MEETING.

MOTION: Councilor Maestas moved, seconded by Councilor Trujillo, to approve the minutes of the meeting of February 1, 2017, as submitted.

VOTE: The motion was approved unanimously on a voice vote.

INFORMATIONAL ITEMS

6. FINANCIAL UPDATE FOR WATER DIVISION, WASTEWATER DIVISION AND ENVIRONMENTAL SERVICES DIVISION. (JASON MUMM OF MWH/STANEC)

A copy of a power point presentation prepared by MWH/SCANTEC, is incorporated herewith to these minutes as Exhibit "1."

Jason Mumm, MWH/Stanec, presented information via power point. See Exhibit "1," for specifics of this presentation.

The Committee commented and asked questions as follows:

Councilor Maestas said it seems that the O&M projections are a primary factor in requiring us to take action in 2020/2021, but there is no O&M projection in the packet. He thinks that would be helpful to get a greater understanding as to why the trend line for O&M is increasing.

Mr. Mumm said two new O&M costs came in the last 12 months, of which they were not aware last year when they were talking about this. The Buckman Direct Diversion allocation increased significantly, which they didn't have last year. Two engineering contracts were awarded that factor into the operating expenses. These are good contracts that will help staff execute capital projects on time and on schedule. However, these are new costs that weren't anticipated, which are now included in the projections moving forward, noting that is approximately \$1.5 million of additional costs.

Councilor Maestas said his issue is the concept behind the PILOT. He said he asked Mr. Rodriguez when he was in Finance that perhaps we should do some kind of realistic cost allocation to quantify what the franchise fee should be, instead of 4% of rate revenues. He thinks is we have a realistic cost allocation study to justify the PILOT or franchise fees, that could set the stage for adopting it permanently. He said it is part of the cost of doing business. He said our policy decision is somewhat arbitrary because of the public backlash, in terms of our reason for sunseting it. We need to look at the business case for the franchise fee, and he thinks a Cost Allocation Study could give us that reality check and the freedom to institutionalize it as part of doing business. He doesn't know this can be answered now, but thinks we should focus on that, instead of saying that was our policy, it was a political decision, perhaps somewhat reactive to sunset it, and maybe we should look at more realistic approach to institutionalizing it and using it.

Councilor Maestas said his second concern is rate shock. He said we had said no rate increases until 2020, but 6% is substantial, given the nature of them now. He asked why isn't the rate stabilization fund helping to ease that jump in all scenarios. He asked if it is having an elasticity effect on the water fund to look a financial model where we start low and increase them over several years rather than going straight to a 6-7% increase.

Mr. Mumm said "this" chart is about your cash balance, and this is all the cash for the Water Fund, so it's all combined – the stabilization fund and everything is included here. It is helping the City, by forestalling rate increases for a few years. The goal for the 365 days cash on hand is driving everything right now, or we risk losing some credit rating as a result, commenting he isn't recommending we change that. He said the cash Councilor Maestas is talking about is allowing the City to get a few years down the road without having to do anything immediately, and that is the intent of the fund.

Councilor Maestas said there is a debt service requirement of 1.5 times the debt service, and asked if that is a bond requirement or City policy.

Mr. Mumm said the statutory level for the City, based on the bond ordinance is 1.25, but we target a higher level of coverage because your financial advisor and the markets will tell you they are expecting higher levels of credit rating. He said 1.50 is on the low end of the medians we see in the market, noting a lot are closer to 2.0, which is really high. He said neither he nor the financial advisor advised anybody to go to 2.0. It is a management target.

Councilor Maestas asked how prevalent is indexing in utility rates – is it rare, in big cities only, is it something we should be considering to prevent these rate jumps.

Mr. Mumm said he assumes he is talking about setting rates so they adjust automatically by inflation, and Councilor Maestas said yes.

Mr. Mumm said it's less common than you would think, mostly because most jurisdictions would like to have a review of what is going to happen there before they do it. He said he has very few clients that does it.

Councilor Maestas said then there is no real correlation to the increase in projection of O&M costs to the Cost of Living index, and it is more "higher Buckman responsibilities and not so much the cost of living.

Mr. Mumm said there is no automatic indexing in the City, and every time an increase is needed, we have this forum for it. And the Council can approve it or not. The increases we see are partly because of inflation, because inflation is factored into all projections. He said the real issue you're seeing is the erosion of cash from the fund and what is driving those needs right now.

Councilor Maestas said some cities have two rate structures – one in the City and one for out of the City limit residents. He said there is no one dealing directly with the City, and Mr. Schiavo said that is correct.

Councilor Maestas asked how those water rates stack-up against ours.

Mr. Schiavo said at this point the County has its own system, and the City is not serving any County customers. We are wholesaling water to Santa Fe County, commenting wastewater is probably what he was indicating.

Councilor Maestas said the loan was from the investment portfolio of the utility fund, and not a direct loan from the utility enterprise.

Mr. Mumm said they modeled the loan as if the Utility Fund is writing a check, and sending it to the General Fund, and the Utility Fund will be repaid. He said this is a conservative approach and there no impact as a result.

7. MONTHLY UPDATE OF CAPITAL PROJECTS. (NICK SCHIAVO)

A copy of a *Public Utilities Project Status Report FY 16-17 Water Division*, is incorporated herewith to these minutes as Exhibit "2."

Mr. Schiavo highlighted information in Exhibit "2." Please see Exhibit "2," for specifics of this presentation.

8. WWM METERING AGREEMENT WITH THE OFFICE OF THE STATE ENGINEER TO CONTINUALLY MEASURE DISCHARGE INTO THE SANTA FE RIVER FROM THE CITY OF SANTA FE WASTEWATER TREATMENT PLANT. (SHANNON JONES)

Mr. Shannon said this is to advise the Committee that the State Engineer has approached Wastewater Manager, requesting to install a data logging and communication device to our existing effluent weir that would allow the full reading of the plant to be available on their website, streamlining the process. He said the proposed agreement attached to his memo has been sent to the Legal Department, and their comments were received and accepted by the OSE. He said this is the final signature which will be sent through for signature.

Councilor Maestas asked if this serves as the basis for monitoring our effluent if we get the effluent pipeline to the main stem of the Rio Grande and setting the stage to give us an actual credit instead of an arbitrary credit.

Mr. Jones said no, it doesn't do that. It is taking information already available that could be requested and making it more readily available. It doesn't put us in a better or worse position in regard to any future allocation, or not.

Maestas Maestas said then it couldn't help any formal recognition of what we're returning.

Mr. Jones said, "No more than we already have. The gauging station is already there and available, so we already would have that argument."

Councilor Ives asked, regarding the concept of bypass water, is anything that comes from the Water Treatment Plant and goes back into the Santa Fe River considered to be bypass water under State law.

Marcos Martinez, Assistant City Attorney, said, "I guess I would like to know what you mean by bypass water before I answer that question."

Councilor Ives said, "I'm looking at a memo done in connection with issues relating to the Santa Fe River. And there is a phrase in here that says, '*As we will see, bypass water is water that passes unused beyond the City's domain and becomes public water subject to appropriation.*' And by saying unused, I'm just, I supposed, begging the question as to whether or not any water treated in the Water Treatment Plant could be considered to be unused, even though it is allowed to flow past the City's jurisdiction."

Mr. Martinez said, "I would say that we, the City Attorney's Office at least, considers this water to be artificial water and we did request there be a provision in the Agreement recognizing that it's artificial water. And the purpose behind that, is we didn't want someone to make the argument on the road that the City would have an obligation to continue the supply of water. So I would answer your question by saying, once it does leave the City's domain it does become sort of water, public water, subject to appropriation. But the other side of that is that the City has no obligation to continue that supply for other people and that no one gains a right against the City. And the State Engineer was amenable to recognizing that statute that already exists, the Artificial Water Statute, and included it in this agreement."

Councilor Ives thanked Mr. Martinez for the clarity.

Chair Rivera asked Mr. Jones if this is already being measured and communicated, why we need a separate way to get them the information that they need.

Mr. Jones said for two reasons. One is that we have been approached by the OSE, so a lot of the information is available, it's a request. When they would contact us, staff would compile the data and submit it to them. So really what this would do would be to streamline the process where, if that information was requested, they could go to the OSE's website, download it as a gauging station and have the data available.

Chair Rivera asked how often they have requested this information in the past.

Mr. Jones said most of the requests come from the Water Division, noting Water Resources uses that information. So he's actually compiling that data and sending it to Water Resources, so if there is a benefit to Wastewater, it would be streamlining information to the Water Division for use.

Chair Rivera said, "Then Marcos, it doesn't sound like there is anything we should be cautious of with this agreement. I guess what you just said, in some way it kind of changes our position."

Mr. Martinez said, "Yes. I was a little bit curious as to why the OSE was requesting this. I think that Shannon is right, it's really just to facilitate the provision of information on their website. We ask that we be given access to any information they obtain from this meter that they will be installing, and again, that the recognize that is water that belongs to the City if the City chooses to do something with it in the future."

Chair Rivera asked what is the next step.

Mr. Jones said this is an informational item to let the Committee know we're been approached, and "where we were." At this point, we now have the finalized agreed-to contract, which will be sent back to the Office of the State Engineer. If approved, signed and approve as to form, it would come back and go to the City Manager for signature and finalizing.

Chair Rivera asked Mr. Martinez if this is the proper procedure or does it have to go through the committee and Council process.

Mr. Martinez said, "The City Manager can sign this because there is no fiscal impact, but I thought it was wise just to bring it to the attention of this Committee, to see if there were questions this Committee would have, and just to let the City decision-makers know that this is happening."

9. RESOLUTION 2016-90 FEASIBILITY AND FISCAL IMPACT REPORT. (SHANNON JONES)

Shannon Jones, Director, Wastewater Management Division, presented information from his Memorandum of February 8, 2017, with attachments, which is in the Committee packet. Please see this Memorandum for specifics of this presentation.

Councilor Trujillo said he appreciates the evaluation. He said we are looking at the site on Airport Road.

Mr. Jones said one other site evaluated was the Wastewater Treatment Plant on Paseo Rael at the end of Airport Road.

Councilor Trujillo said to him, that would be the most feasible place and the reason he wanted it assessed. He said the reason he brought this brought forward is that he had been contacted by many people in the City that own RV's, who now travel to Pojoaque to dump over there, which is free. He was hoping there would be a place we could do this, and possibly have a revenue stream. However, Mr. Jones said it would take 24 years to get a return on this, and he understands that.

Councilor Trujillo asked if we are taking action on this.

Chair Rivera said no, it's informational.

Councilor Trujillo said he will share this information with people who asked about it. He said perhaps there is another place where this can be done. He thanked Mr. Jones for the work on this issue.

Councilor Villarreal said it was interesting for her to understand what is involved in this, and what it would take for us to be a partner. She thanked Mr. Jones for taking the time to do this.

Chair Rivera said he would echo what he just heard everyone else say, and thanked Mr. Jones for the work he put into this very thorough report.

10. RECOMMENDATIONS FOR THE SANTA FE RIVER TARGET FLOW FOR A LIVING RIVER ORDINANCE. (MELISSA McDONALD)

A copy of Presentation to the Public Utilities Commission – March 1, 2017, Dale Doremus, Santa Fe River Committee, is incorporated herewith to these minutes as Exhibit "3."

Chair Rivera said each of the parties will be given 10 minutes to speak to the issue. He will hold everyone strictly to the 10 minutes. He said if you don't need the 10 minutes, you don't need to take it, but you will be stopped at 10 minutes.

Melissa McDonald, River and Watershed Coordinator, said we are here tonight to present the River Commission's recommendations.

Gail, Member Santa Fe River Commission, on behalf of John Buscher, Chair, Santa Fe River Commission, reviewed the information in John Buchser's Memorandum of February 13, 2017, with attachments, to the City of Santa Fe Public Utilities Committee, which is in the Committee packet. Please see this Memorandum for specifics of this presentation.

11. CITY'S WATER & LIVING RIVER REPORT UPDATE. (COUNCILOR IVES, ALAN HOOK)

A copy of The City's Water and the Living River, dated December 14, 2016, is incorporated herewith to these minutes as Exhibit "4."

Alan Hook, Water Resources Coordinator Assistant, presented information via power point, noting that the City's Water Division and Public Works Department have met the obligations for irrigation deliveries to the acequias, specifically Acequias Cero Gordo and upper and lower Acequias Madre to enhance and further the objective of restoring the Santa Fe River as a Living River. Please see Exhibit "4," and Mr. Hook's Memorandum for specifics of this presentation.

Councilor Ives said they held a 2 hour public hearing at the Public Utilities Committee in February, 2017, with a broad representation of the community, and the players in the upper watershed mentioned by Mr. Hook, with Commissioner Hansen representing those further down the River as an advocate and voice of what can be done throughout the entire River channel as opposed to the upper watershed. He said it was clear there were differences of opinion between the folks involved in the preserve, getting water in there as opposed of getting water to the acequias. He said he believes everyone left that meeting with the desire to work together to find solutions that will work for everyone along the River, which is a noble and good purpose.

Councilor Ives continued, saying he is pleased the City and staff are involved in the seepage study which will help inform some of the issues related to what water currently goes into the preserved. He understands, from staff, that although the gate may be shut, i.e. off the River and no water coming from the River into the preserve, there is seepage below two-mile dam, indicating some flow of water "through that course in any event."

Councilor Ives continued, saying in terms of trying to deliver 0.3 cfs, that is something that can be done and is happening as a matter of all that's happened in the very heavily engineered section of the River currently. It will take some time to really study what is needed to accomplish that, if that is the direction in which the Council decides to go. He said we also heard significant amounts were released into the River to get water to the headgates for the acequias to accomplish our delivery obligations, noting two of those involve rights with priority dates prior to the City's rights in the River.

Councilor Ives continued, saying from the water conservation perspective, because we have a River that is probably over-subscribed to begin with, we need to figure ways to meet our legal obligations to the acequias and that as much water as possible is conserved for the people of Santa Fe. He said once we have decided what the City wants to do, we will have the opportunity to talk about what it would cost to accomplish that, noting we have preliminary estimates in the Chart Mr. Hook mentioned, under Item #11. We need to decide if others could share in that, or if it is something the City should do itself. Or if we allow the 0.3 cfs, but only if we see a return flow of 0.3 cfs below Two-Mile Dam. There are many issues that play into a sensible decision. He said he looks forward to engaging with everyone in the community who has indicated their desire to engage further in these discussions in finding a path forward that accommodates as many as possible, doesn't compromise the City's water rights or our flexibility in using those water rights that allows to be a good neighbor along the course of the Santa Fe River.

Councilor Ives continued, saying it was a long but very productive meeting. He thinks all those voices needed to be heard as part of the discussion, which is valuable from his perspective, and hopefully to the other Councilors in attendance.

Councilor Maestas said he read through the recommendations from the Commission which he thinks are very good. He said this scenario seems right for some kind of NEPA type environmental assessment, and it has financial impacts. He said there is no federal mandate to require an environmental assessment. However the context is so broad, and we're looking at distinct options, he would suggest we look into some kind of NEPA environmental assessment and look at the viable options vs. the status quo –

considered the do-nothing. He said we may need the seepage study prior to an environmental assessment. He said all the recommendations are post-environmental assessment. He has done many NEPA type environmental assessments. It would be a voluntary process, and could really help to ensure that in ensuring all the criteria for what we want, that we're giving each and every option an objective opportunity to be compared against another viable option. An environmental assessment would be a little more extensive and that would be his recommendation.

Councilor Lindell said Item #6 in the chart indicates the City has released an RFP for the hydrogeologic services, which includes this monitoring with fast tracking. She asked the status of that.

Mr. Hook said a contractor has been chosen, so the next step is to draft the contract for the PUC's consideration in April, then to Finance and then to the Governing Body for approval. The contract then will be signed and executed if approved.

Councilor Lindell asked if we are on track for completion by the end of August 2017.

Mr. Hook said once the contractor is in place, it will be at least a one-year contract, so it is a possibility, but they would have to work with the contractors to see if that goal can be obtained. He said they would want to see the low flows occurring in September/October to be more inclusive of data, to get more information. He said the Living River Ordinance and Administrative Procedures call for the 0.3cfs during winter months. It may be a possibility, but it's premature at this point to say that target date could happen.

12. SANTA FE RIVER ACEQUIA ASSOCIATIONS UPDATE. (ALEX PUGLISI)

Alex Puglisi said there are representatives of two acequias who participated in the Public Works Committee meeting on this subject who presented information in this matter who were asked to speak here tonight. He said the irrigation season is coming which is where the mid-March date came from, because some of our acequias call for water March, although most start April 1st.

Phil Bové, Commissioner, Acequias Madre de Santa Fe Community Acequias Association, 923 Acequias Madre, said he has been a Commissioner since 1983, and a member of the River Commission since 2009. He said the Acequias Madre is preparing for it's 407th Irrigation Season. He believes the Acequias Madre is probably the oldest piece of history in Santa Fe.

Mr. Bové presented information in this matter. For specifics of this presentation, please see Mr. Bové's letter of February 14, 2017, to the Public Utilities Committee and the Santa Fe River Commission, which is in the Committee packet.

Bruce Reitz, 1662½ A Cerro Gordo, Cerro Gordo Ditch Association, said he and his wife have lived on Cerro Gordo for 8 years, noting he and his wife are both professional geologists, with 70 years of subsurface experience, and 35 years of GIS between them. They have looked at a lot of alternative scenarios for water delivery in the area. Cerro Gordo Acequia, established in the late 1700's/early 1800's, is the 3rd oldest of the 4 ditches currently operating in Santa Fe, and predates the Old Stone Dam and the Two Mile Dam.

Mr. Reitz presented information in this matter. For specifics of this presentation, please see Mr. Reitz's letter of March 1, 2017, to the Public Utilities Committee, which is in the Committee packet. He said they are very supportive of the proposed studies discussed by the River Commission, and are happy to provide some of the information to the contractor they have gathered over the past few months.

Councilor Ives said one thing that has been discussed is piping water to the acequias to ensure the City's capacity to meet its legal obligations to the acequias. He asked how the Acequia associations feel about that policy.

Mr. Reitz said currently, their position is that the City is required to deliver 11 cfs of the Acequia Cerro Gordo obligation to our headgate, and how it gets there is not their concern. If it is a pipe, that's fine. He said he would point out that a lot of the bypass ditch infiltration is helping the riparian zones along the bypass ditch and it is ultimately getting into the nature preserve. It is through seepage and you prefer to have a flow, but overall "we've got a living water table up there that is attached to the Living River, and we're very fortunate to live along a perennial portion of that stream because of that. Having that water table there is critical and that feeds that water table."

Councilor Ives said he has no disagreement. He said the acequia is like any other water user and the parciantes along the Acequia have that water dedicated for certain beneficial uses. He asked if they do studies as to whether or not water is being dedicated to those beneficial uses.

Mr. Reitz said, "Well, I can look over the fence and see that my neighbor has apple trees, and we've got apples, peaches and plums, so I can assure that we, ourselves, are using it for beneficial use. And I know that at least 2-3 of our neighbors are as well. How do you define beneficial use. Is it just keeping a lawn green or is it growing a fruit tree, or growing alfalfa. I think all of those can be considered to be a beneficial use in one form or another."

Councilor Ives agreed, saying generally the rights are for specific beneficial uses, and the State Engineer has complicated processes for changing those beneficial uses.

Mr. Puglisi said it was brought up to him earlier that many of you may not know a lot of what we're speaking about when we talk about the bypass channel, the diversion gate, the [inaudible], the channel the restoration of the channel. He would be happy at some point in time if you would like to go up there they could do a tour of the sites, taking you in from the site of the old filter plant and take you to the diversion gate and by TNC's preserve as long as it doesn't object. We could show you all of these structures and explain them as we go along.

Chair Rivera said that would be good for a field trip. He thanked everyone attending and helping us to understand, as well as the need to get out there.

Chair Rivera asked if we need to do anything in the short term with regard to decisions prior to the start of runoff.

Mr. Schiavo said it might be helpful for him to get with staff and update the initial options presented, and add the option presented by Councilor Maestas for a NEPA or environmental assessment. He can have that for the next PUC meeting. In terms of the upcoming releases, he will defer to Mr. Hook to go through anything that is time sensitive or any decisions that need to be made now.

Chair Rivera said we can discuss this at the next meeting, and if anything needs to be decided quickly, we get that on the agenda sooner rather than later.

CONSENT DISCUSSION

15. **REQUEST FOR APPROVAL OF A ONE-YEAR TERM EXTENSION TO THE PSA ITEM #14-0153 WITH SERVICE LINE WARRANTIES OF AMERICA. (NICK SCHIAVO) Committee Review: Public Utilities Committee 03/01/17; Finance Committee 03/20/17; and City Council 03/29/17.**

A copy of *Service Line Warranty Program*, provided by Utility Service Partners, Inc., through the National League of Cities, is incorporated herewith to these minutes as Exhibit "5."

Councilor Lindell asked if this is put out for to bid.

Mr. Schiavo said 3 years ago they went out for an RFP and Service Line Warranty of America was the only one who submitted a proposal.

Councilor Lindell asked if there is a reason to look for someone else in the future.

Mr. Schiavo said he met with them and spoke with them on the phone. They provided some information – the number of claims broken down by water and wastewater and how much they paid out. He said one of the big things is that they haven't denied any claims. He said the challenge has been when they send out the Spring and Fall campaign, the City has given them permission to use the City seal which is what has unnerved several individuals in Santa Fe. He gets calls every time this happens. He's talked with them about putting the City seal as well as the Service Line Warranties of America logo side by side, which has helped some. He has asked to pull it, and this Committee and/or the City Council can make the decision to not have them use it at all. He said they told him without that seal, the number of people who sign up is greatly reduced. He has had to weigh that against the value of this. Initially, he was somewhat skeptical, but over the last few years he has worked with them and homeowners, they have made good on every claim. If there is an issue and he's involved, he has called them, even on the

weekend, and they get right on it – contact the homeowner and move forward to get the issue addressed.

Councilor Lindell noted there were 447 claims last year, and Mr. Schiavo said, "That's how I also see it."

Councilor Lindell asked the number of complaints we get on them every year.

Mr. Schiavo said between 6-12 complaints with each campaign.

Councilor Lindell asked if those are complaints about the City Seal, and Mr. Schiavo said that is correct.

Councilor Lindell said then you're saying they have paid every claim made and they have denied no one.

Mr. Schiavo said that is correct.

Councilor Villarreal asked, "Did you say the number of people that purchased this.... it's kind of like an insurance coverage in case something happened, but how many of our water customers have this."

Mr. Schiavo said in the second bullet under External Sewer Line Warranty, it talks about the active warranties of 1,648, and under Water it is 1,641, so there is just a handful of individuals that haven't signed up for wastewater that have signed up for water.

Councilor Villarreal said then they are the same people that sign up for both, for the most part, with the exception of 7 people and Mr. Schiavo said that is correct.

Councilor Lindell said it looks like a profitable program for them. She asked if we get a good customer discount in the future, reiterating it has been very profitable for them, commenting perhaps they could charge a little bit less although they probably would say that they can't.

Mr. Schiavo said one thing they offer is to provide 10% of the annual fee to the City. He said we refused that 10% and it's passed on to the customers. So these numbers are 10% less than what is shown.

Councilor Lindell said it is interesting that in putting this to bid, in one year there wouldn't be more people that would want to bid on this. She said after claims are paid, they had \$500,000 to administer the program, which is a lot.

Councilor Trujillo asked if the company puts out an RFP to solicit Roto Rooter and Santa Fe Express Plumbing.

Mr. Schiavo said they actually reach out to the different local contractors doing this kind of work and asked if they are interested in being on this list.

Councilor Trujillo said there are only 2 in Santa Fe, and asked if it goes out to every such business in Santa Fe. He wants to be sure that outreach has been made to give them that opportunity.

Mr. Schiavo said he will follow up with them to make sure that has been done.

MOTION: Councilor Lindell moved, seconded by Councilor Trujillo, to approve this request.

VOTE: The motion was approved unanimously on a voice vote.

DISCUSSION AND ACTION ITEMS

There were no Discussion and Action Items.

MATTERS FROM THE PUBLIC

Andy Otto, Executive Director, Santa Fe Watershed Association, said, for the record, he wanted to say 3 things. The first is that today is the 5th anniversary of Living River Ordinance. Secondly, he said they think it is an excellent Report and of great pride to the staff and City to have this incredible document. He said the vetting that has been happening with it is as it should be. He said, thirdly, they join with the River Commission recommendations, and feel they are excellent and aligned with theirs, which is a good thing. He said this isn't a River vs. Acequia situation, we're working on the same side, and there are no water wars in Santa Fe of which he is aware.

MATTERS FROM THE CITY ATTORNEY

There were no Matters from the City Attorney.

ITEMS FROM STAFF

There were no Items from Staff.

MATTERS FROM THE COMMITTEE

Councilor Trujillo said he wants to bring up the Fishing Derby. He said last year we had the portable dam which was fabulous. He said we placed it at the bottom of the River. He would like to put

another one at the top of the River, it would create two pulls, noting the last was phenomenal and we didn't lose any fish. He doesn't know the cost of the dam, but would really like to have another. He got a lot of comments from people about how good the fishing was this past year.

Mr. Puglisi said they will look into this, and probably will look at a smaller dam. He said smaller dams were available and they used those on the Nichols Dam project. He said he can check into the price of a smaller dam, saying he thinks it is several thousand dollars, but it does have a number of other uses, such as for a fish recovery program.

Councilor Ives thanked the Chair and Committee for allowing him to participate tonight. He said in one of the reports there was a reference to a meeting on March 14th at the Petroleum Storage Bureau to discuss PNM's initial investigation and findings and future requirements for investigation and remediation of the site. He said he would be very interested to hear how that goes, commenting he is happy to go to those meetings with Mr. Puglisi,

Mr. Puglisi said he said as you may recall, the MOU was terminated and the site was turned over to the Petroleum Storage Bureau for investigation and cleanup is now under the Corrective Action Fund. So this is the new preliminary investigation under the Corrective Action Fund. It has yielded a lot of good information, noting he is still waiting for the nitrate values which was a concern. He said he will let Councilor Ives know about the meetings, and if Councilor Ives wants to attend, he is sure the NMED would not be adverse to having him there.


NEXT MEETING: WEDNESDAY, WEDNESDAY, APRIL 5, 2017

Chair Rivera said the next meeting will be at the Water Company on San Mateo at 4:00 p.m., beginning with a tour of the facility.

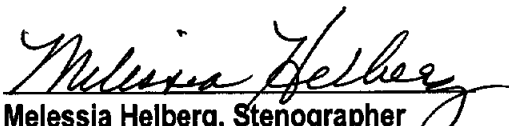
Mr. Schiavo said if people could come to the other side of the building, he will make sure the gate is open so you can park back there.

ADJOURN

There was no further business to come before the Committee, and the meeting was adjourned at approximately 7:00 p.m.



Christopher M. Rivera, Chair



Melessia Helberg, Stenographer

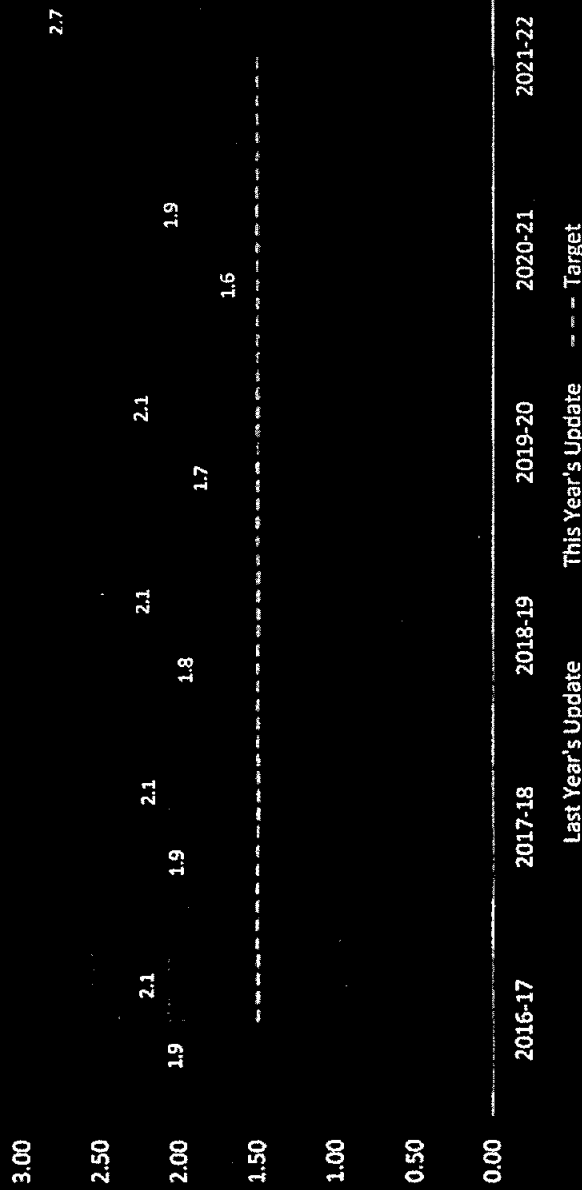
Water Financial Plan Comparison

	Last Plan	This Update	Difference
O&M Expenditures In 2016 (Budget vs. Actual)	\$22,524,920	\$28,522,945	\$5,998,025
Grants and Services	3,494,597	7,096,136	3,601,539
BDD - source of supply	3,143,955	4,377,608	1,233,653
Total O&M Projected (2017-2021)	\$96,256,105	\$119,546,537	\$23,290,432
-\$4.7M Credit Adjustment	Included	Eliminated	
Rate Increases	0%	Required*	

*Increase in O&M results in lower fund balances in future years and rate increases are required to maintain 365 days of operating reserve.

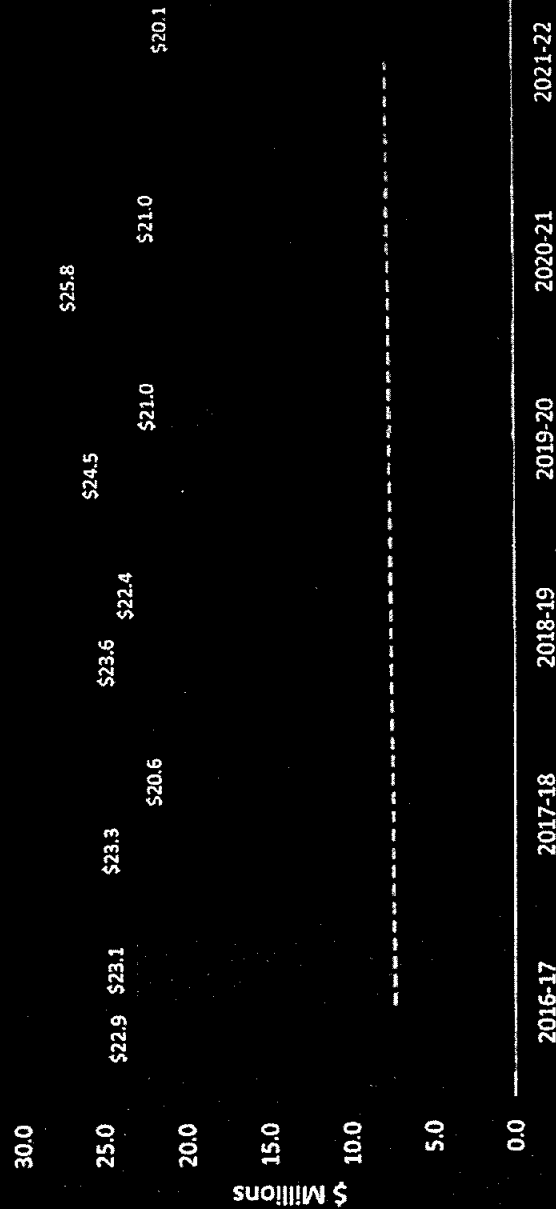
Exhibit "1"

Wastewater Division: Debt Coverage



Higher revenues in this year's projections lead to greater net income available for debt service coverage

Wastewater Division: Fund Balance



Higher capital project costs lead to lower reserves in the outer years as compared to last year's update

Water, Wastewater and Environmental Services Financial Plans

March 1, 2017



Agenda

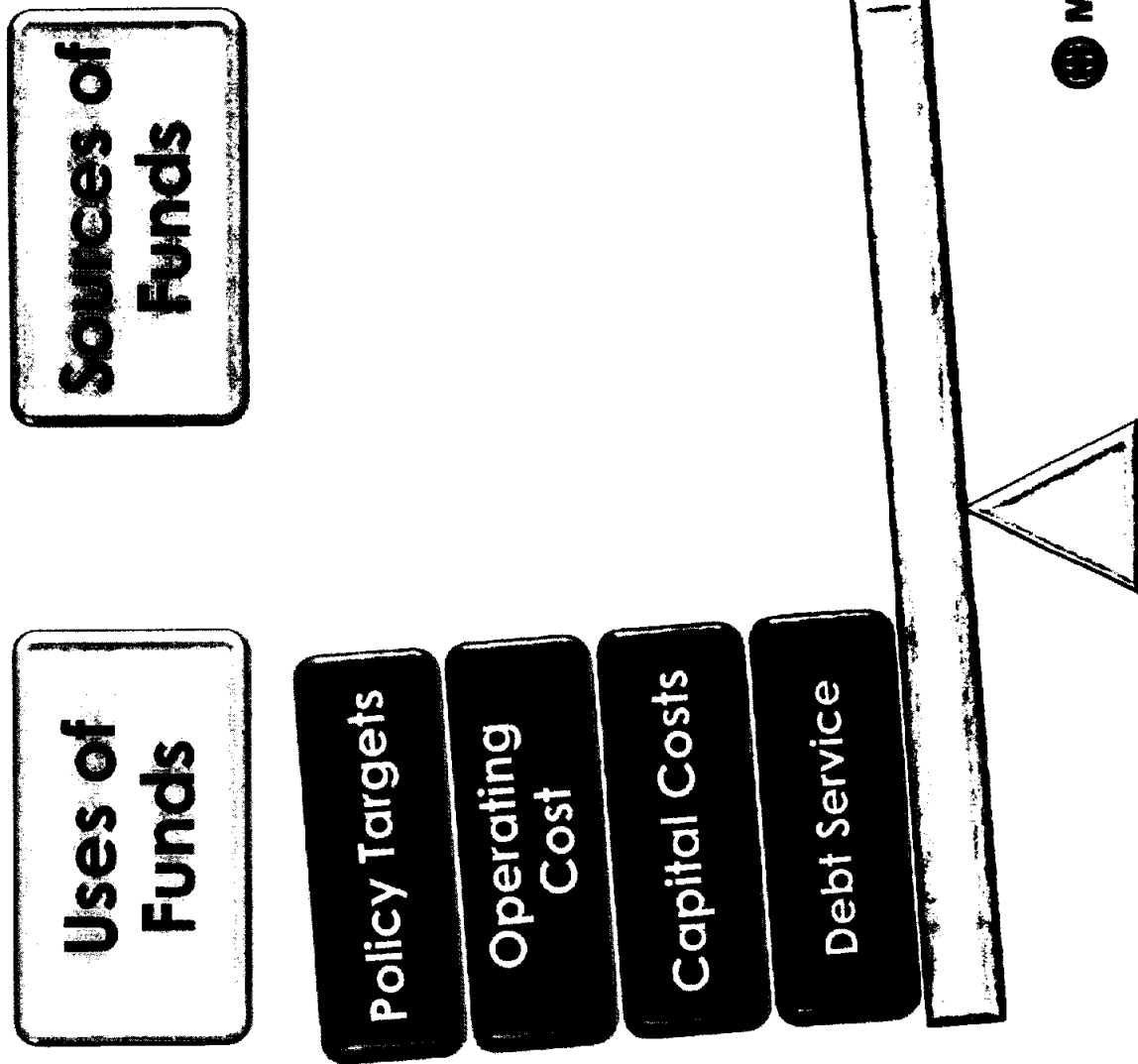
1 Financial Planning 101

2 Water Division

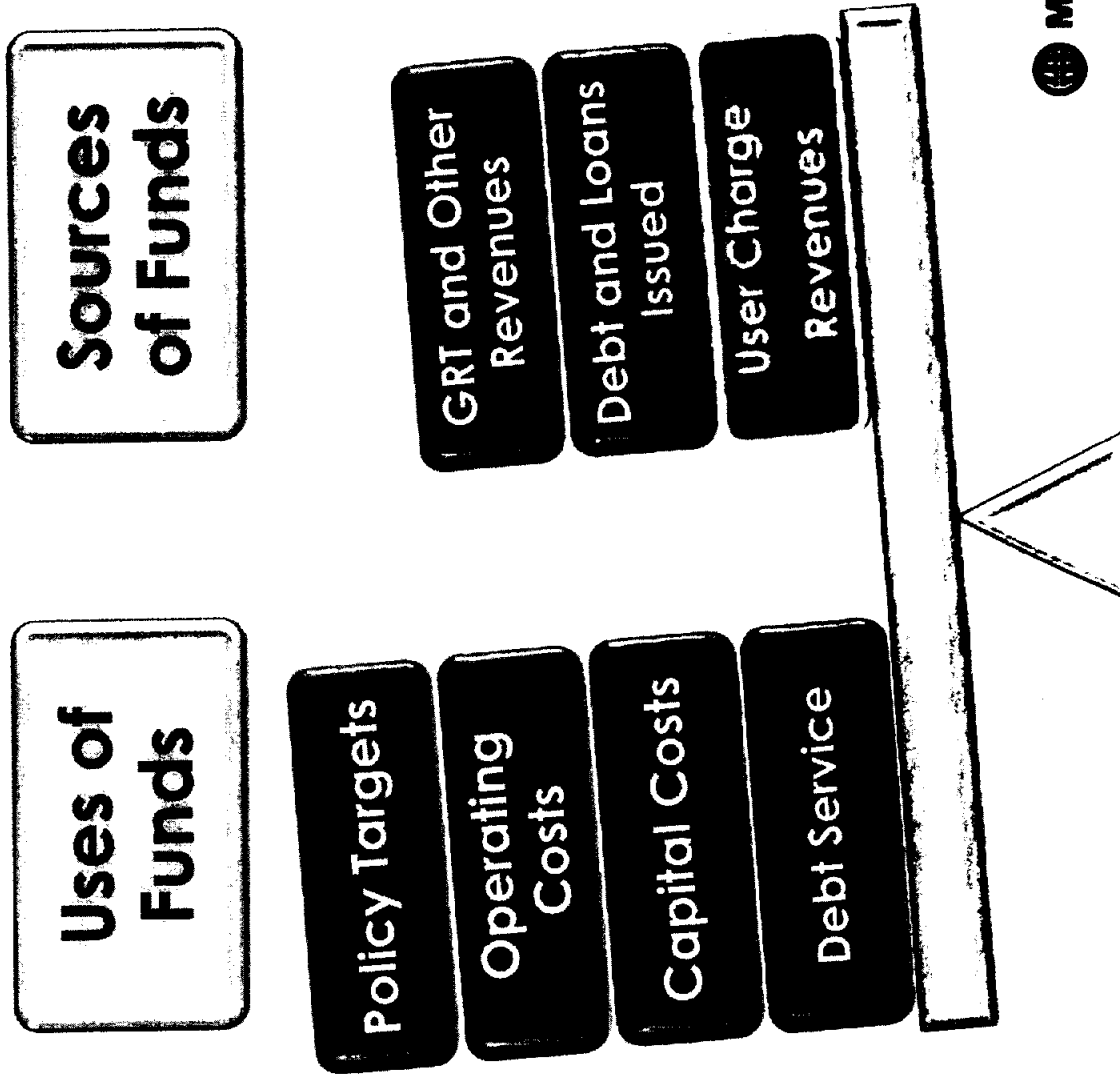
3 Wastewater Division

4 Environmental Services Division

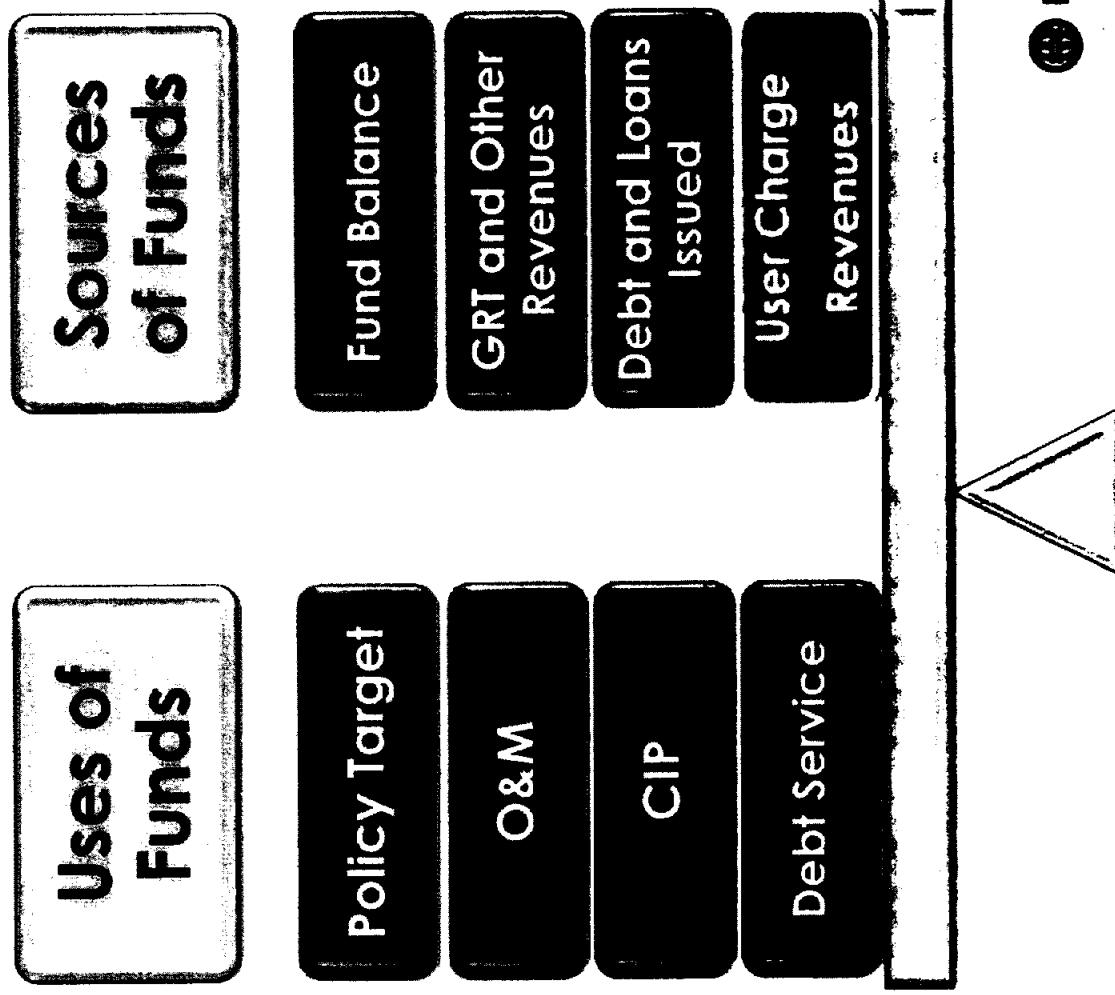
The Utilities financial plans balance sources and uses of cash



The primary purpose is to determine the level of user charges needed



When we balance the plan we can show future costs and rates, and impacts from policies



Utilities' financial goals

- Maintain debt service coverage at target levels
- Maintain management target of 1.50x Debt Coverage
- Maintain adequate reserve requirements
 - Water – 365 days cash on hand to maintain bond ratings
- Minimize revenue increases
- Find the optimal combination of debt and rate increases to fund capital improvements

Financial Plan Policy Decision Parameters

- Revenue increases
- Use of reserves
- Debt issuance

Water Financial Plan

Water Fund Activities

- Defeasance of 2009A and 2009B in FY2016 (\$55M)
- Issuance of Refunding Revenue Bonds, Series 2016 in FY2016 (\$37M)
- Initiation of Franchise Fee Transfer-out (4% of rate revenues) Starting in FY2016
- Elimination of GRT Revenue Stream to Water Fund Starting Jan 1st 2017
- Maintenance of 365 days Cash on Hand for Operating Reserve

Water Financial Plan

Water Scenario Summary

- **Scenario 1 (Least rate increases required)**
PILOT through 2018, solve for rate increases in FY2019-2022
- **Scenario 2 (Most rate increases required)**
PILOT through 2022, solve for rate increases in FY2019-2022
- **Scenario 3**
PILOT through 2018, solve for rate increases in FY2020-2022

Water Financial Plan

Water Scenarios Summary

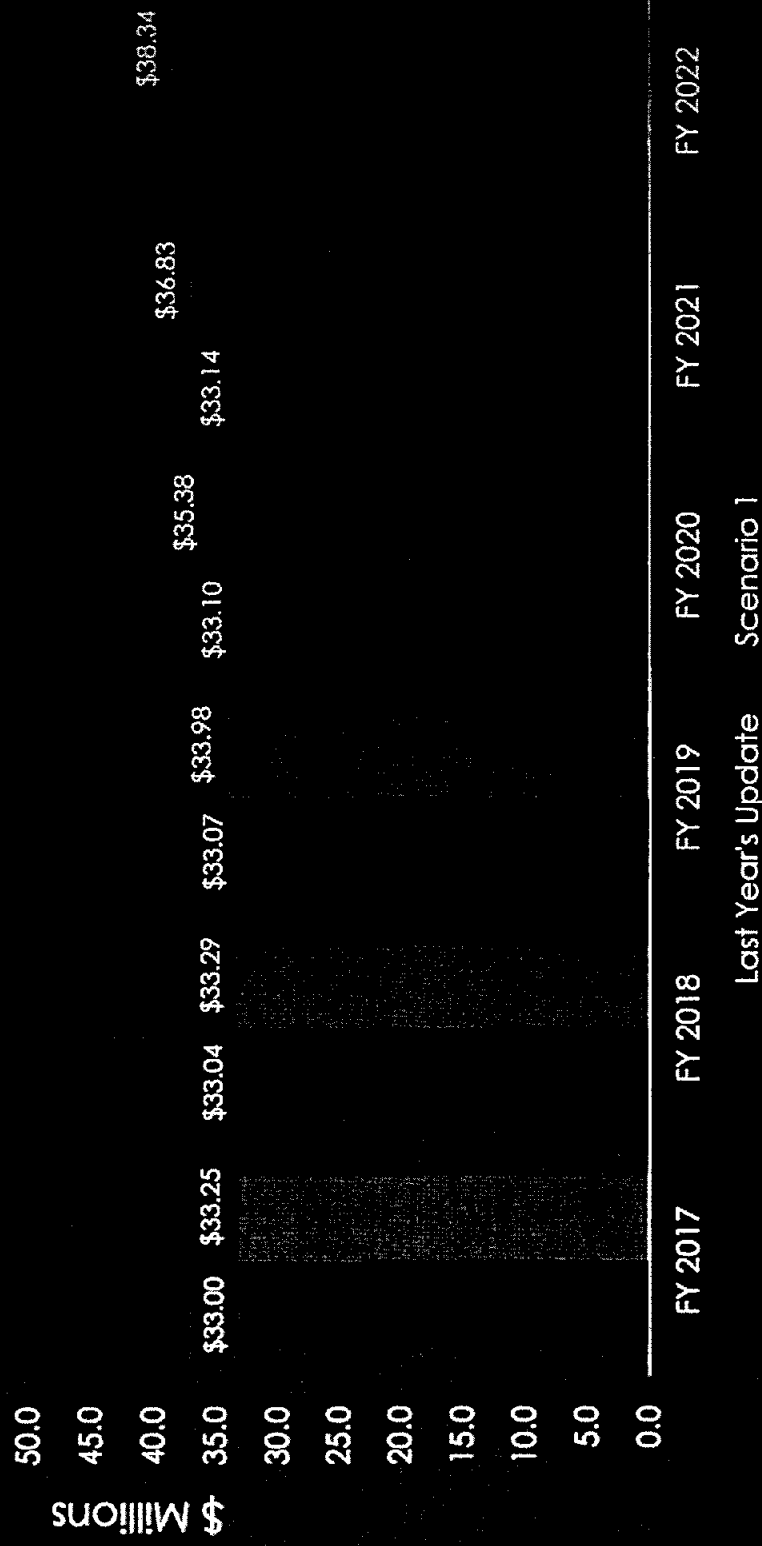
Rate Increases Proposed Under Each Scenario

Scenarios	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Cumulative Rate Increase
Scenario 1	0%	0%	4%	4%	4%	4%	17%
Scenario 2	0%	0%	6%	6%	6%	6%	26%
Scenario 3	0%	0%	0%	7%	7%	7%	23%

Scenario 1 PILOT through 2018, solve for rate increases in FY2019-2022
 Scenario 2 PILOT through 2022, solve for rate increases in FY2019-2022
 Scenario 3 PILOT through 2018, solve for rate increases in FY2020-2022

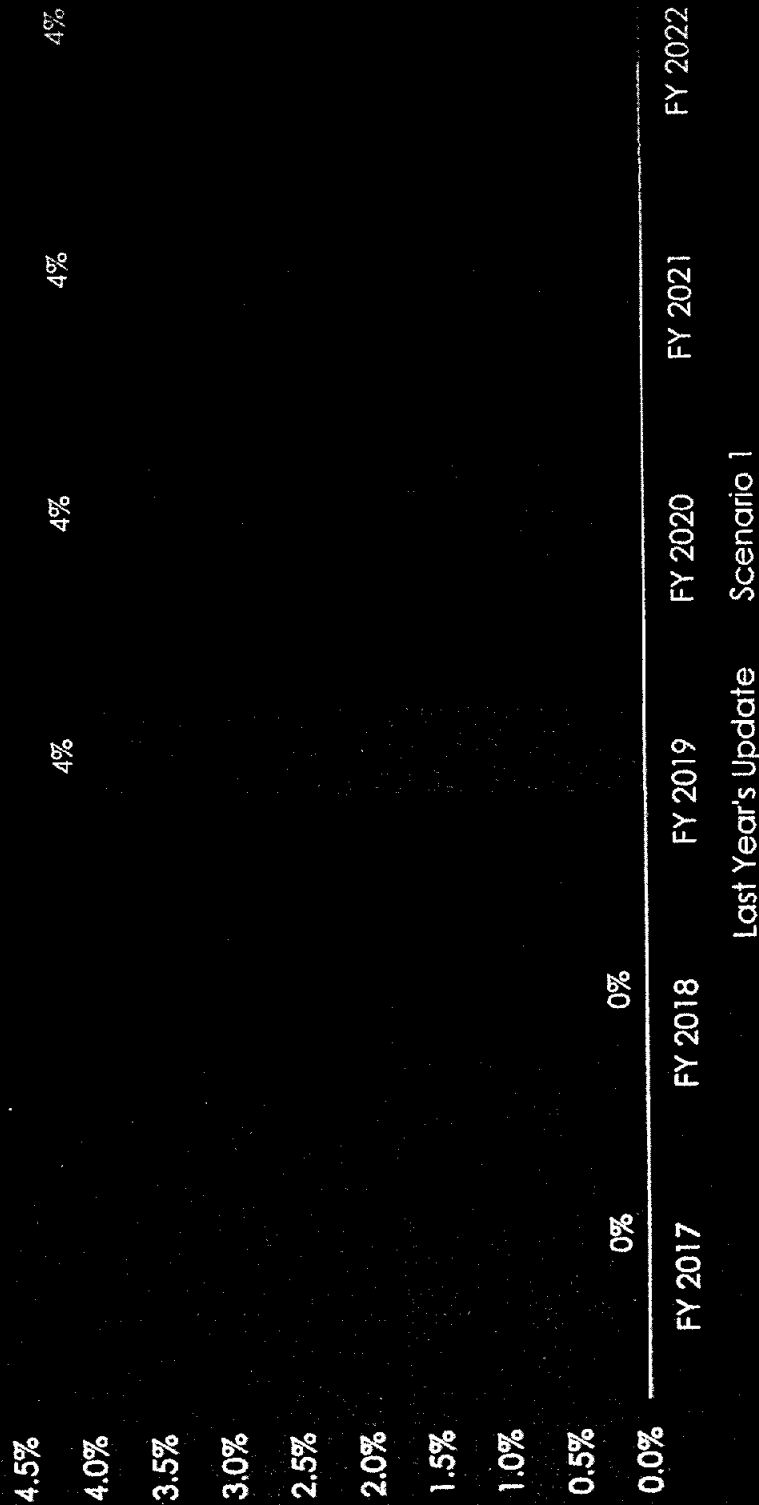
Water Division: Scenario 1

Rate Requirements



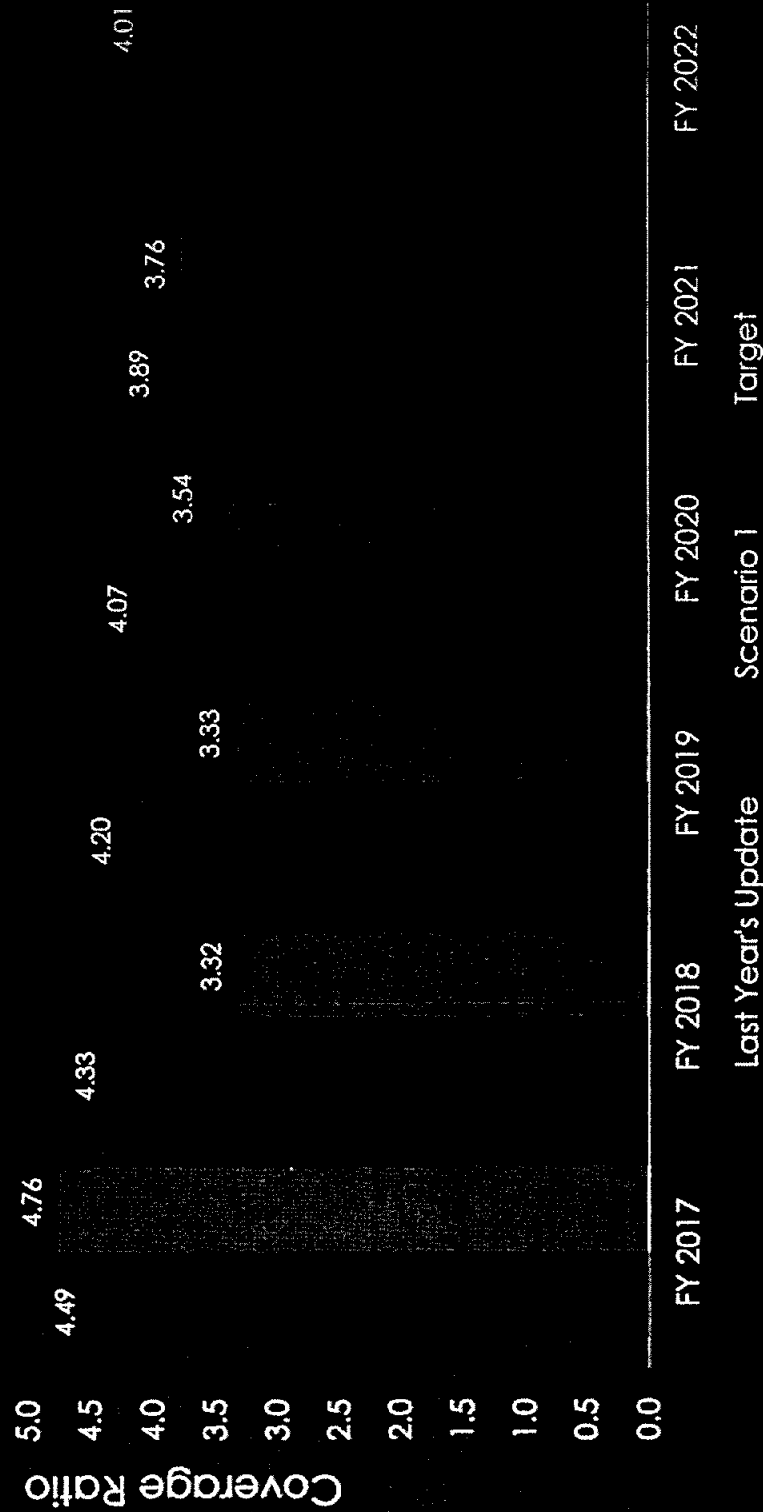
Water Division: Scenario 1

Rate Increases



Rate increase proposed from FY2019- FY2022 due to significant increases for O&M expenditures. Franchise fee transfer out will be eliminated starting FY2019

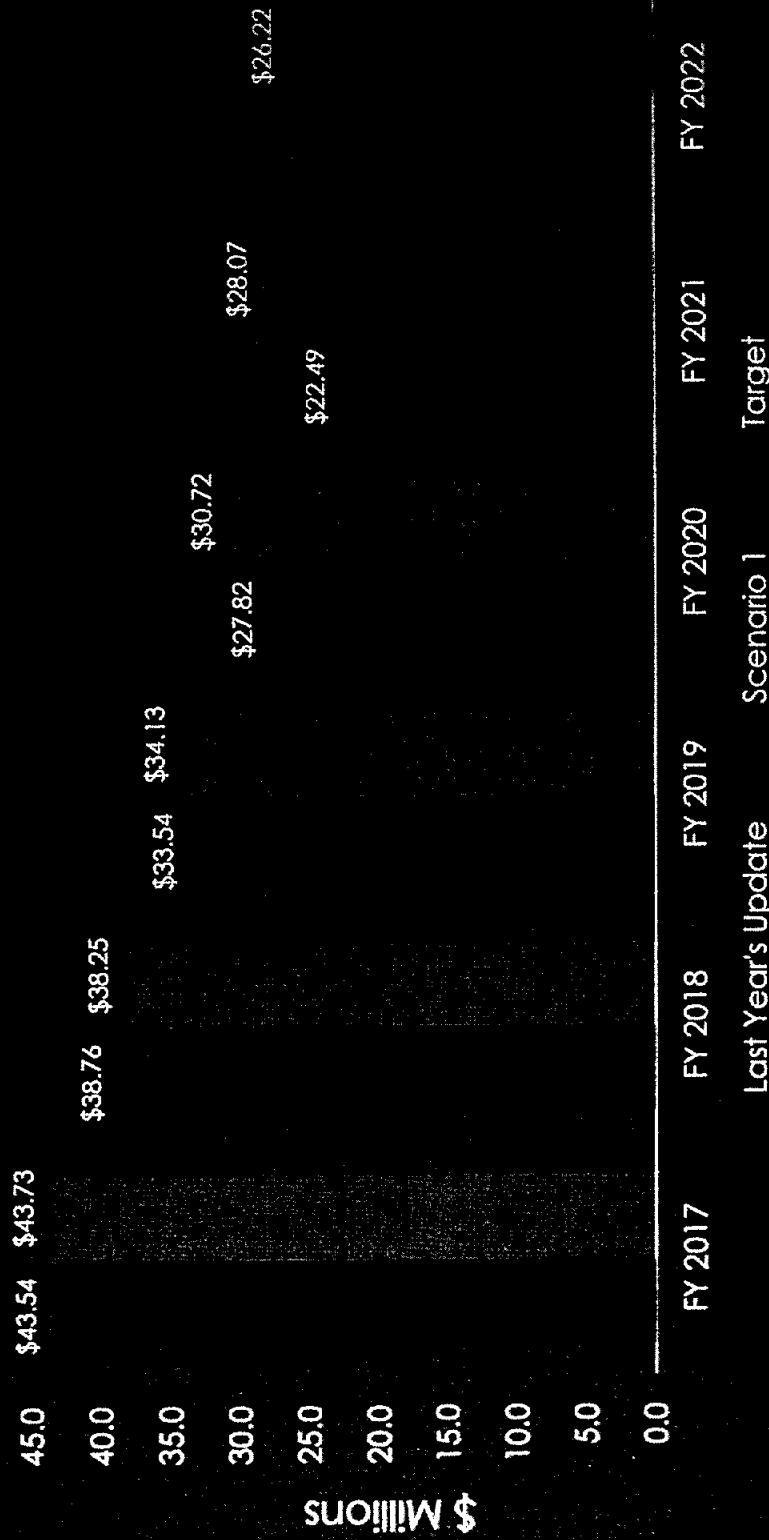
Water Division: Scenario 1 Debt Service Coverage



Projected DSC has improved due to the proposed rate increases in FY2019-2022. Elimination of GRT results in a significant drop in DSC in FY2018

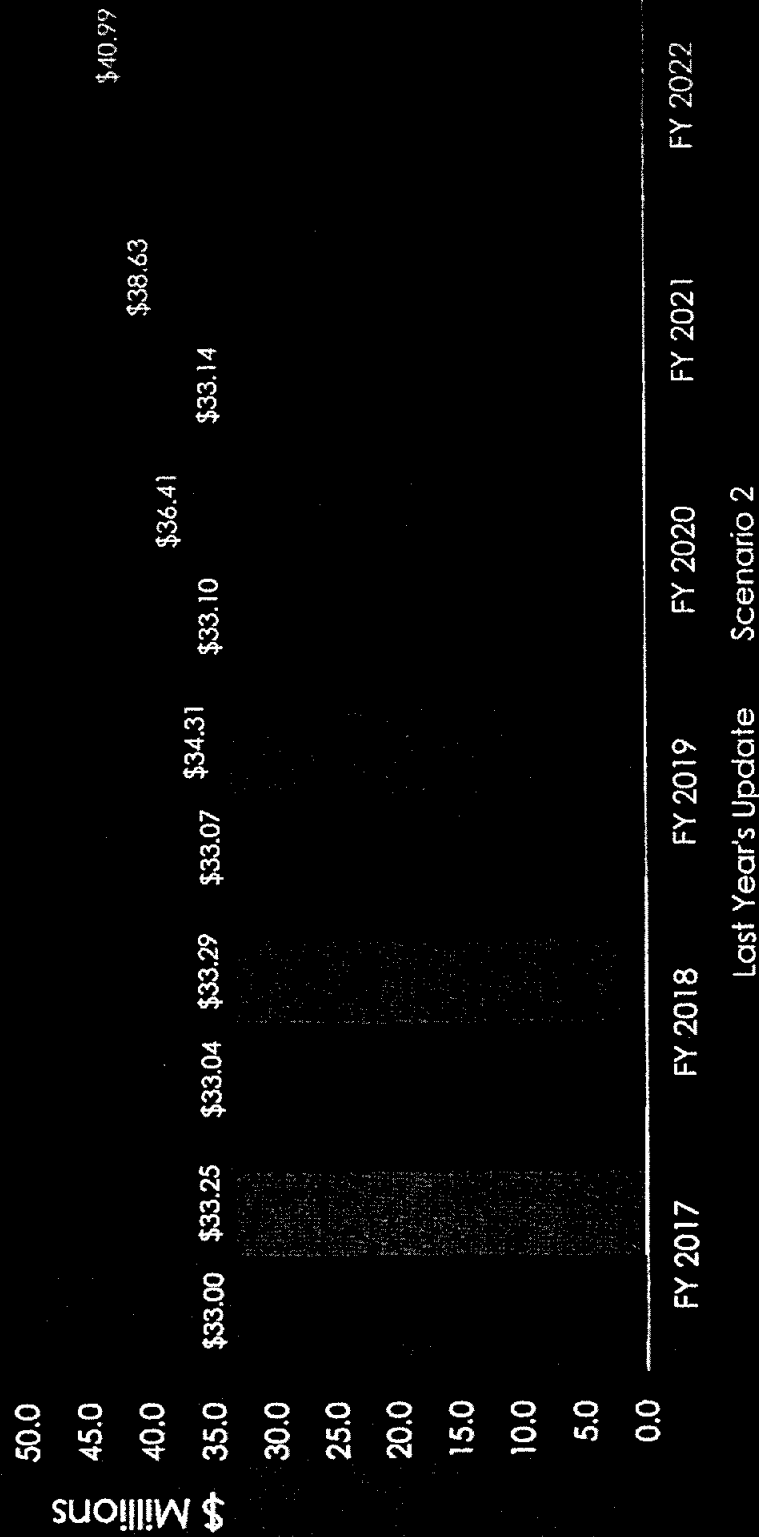
Water Division: Scenario 1

Fund Balance



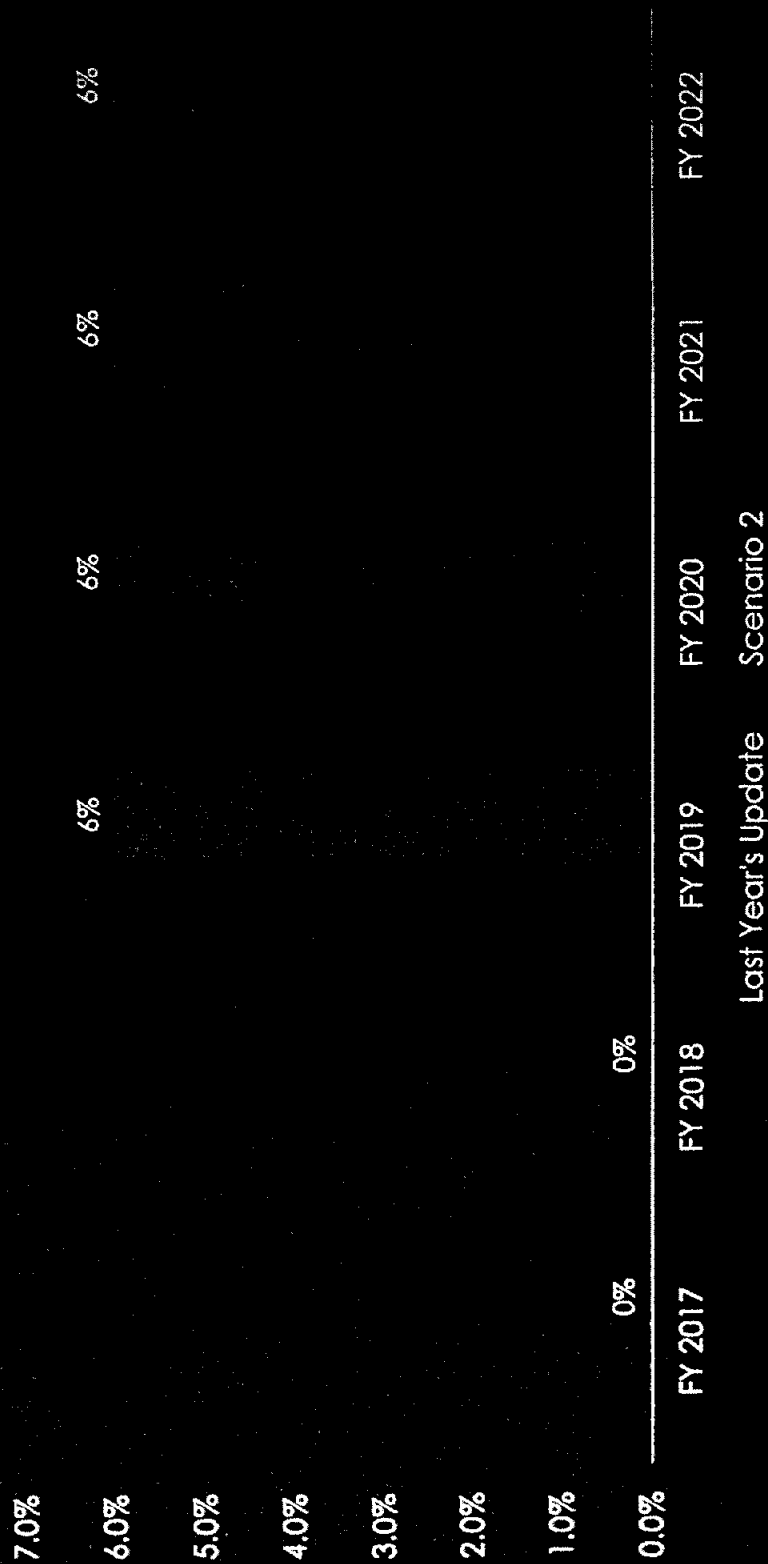
Due to a significant increase in O&M Projection, remaining 365 days of operating reserves becomes the limiting factor for water fund, which results in multi years of rate increases.

Water Division: Scenario 2 Rate Requirements



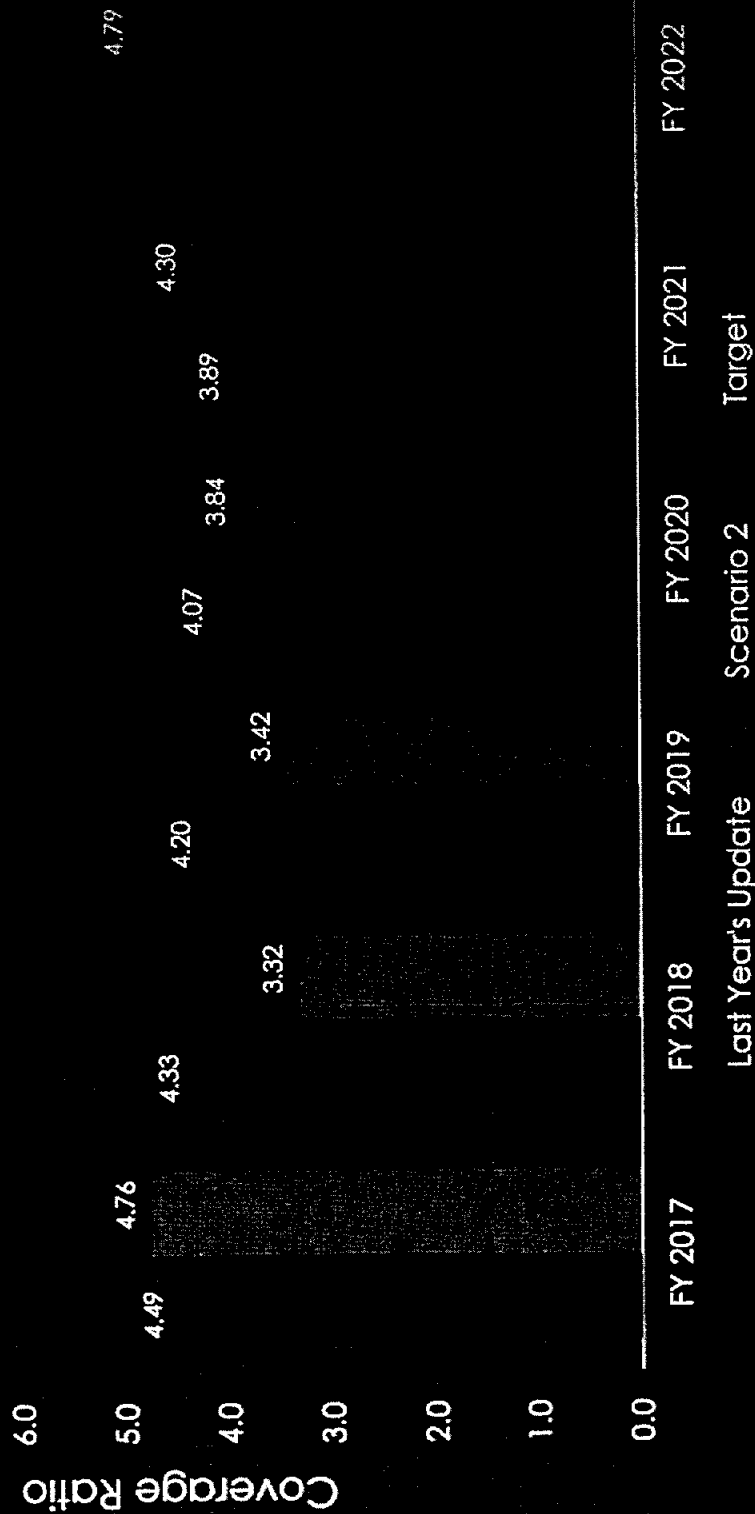
Water Division: Scenario 2

Rate Increases



Higher rate increases are required in order to continue charging a franchise fee transfer out through FY2022

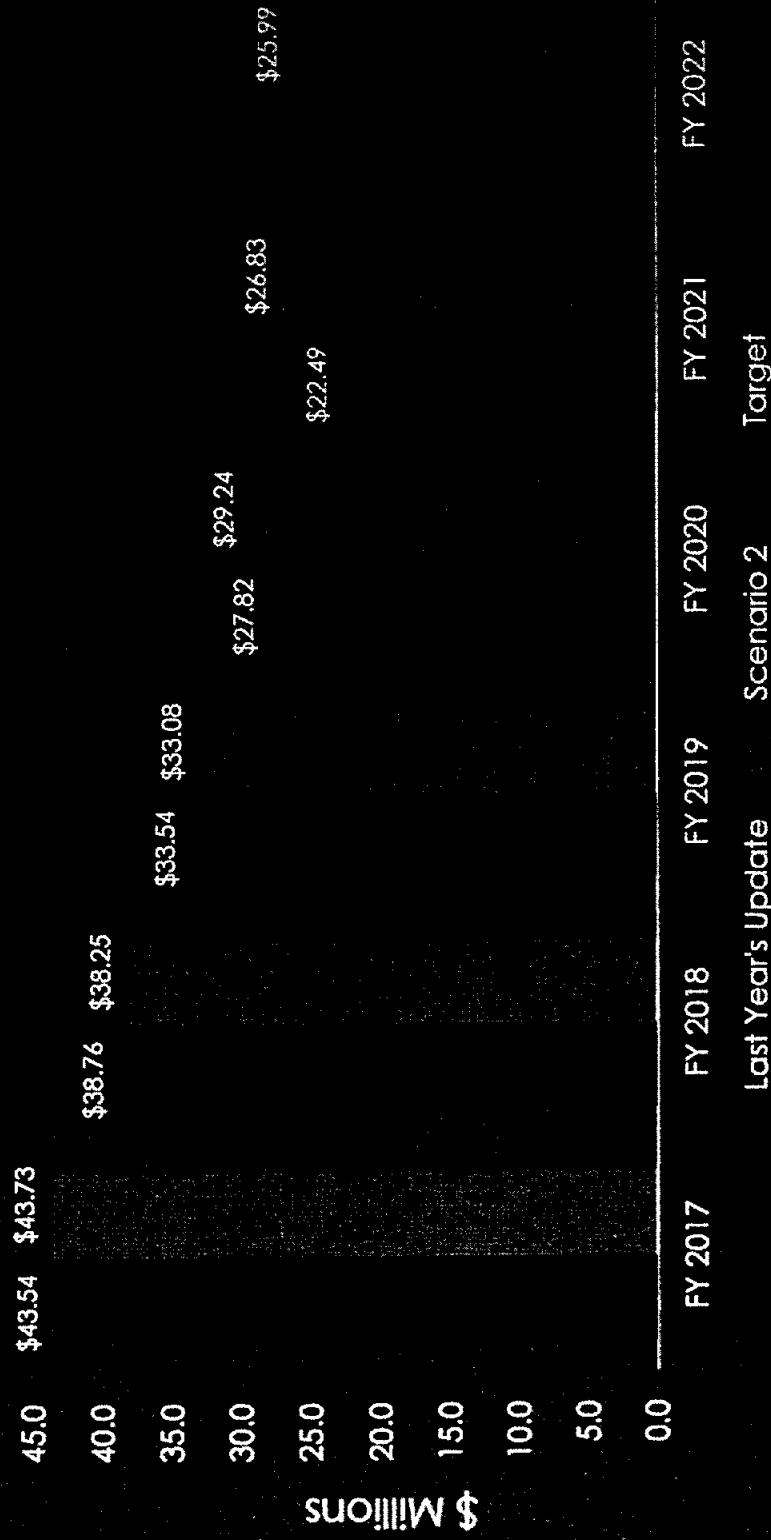
Water Division: Scenario 2 Debt Service Coverage



Projected DSC has improved due to the proposed rate increases in FY2019-2022

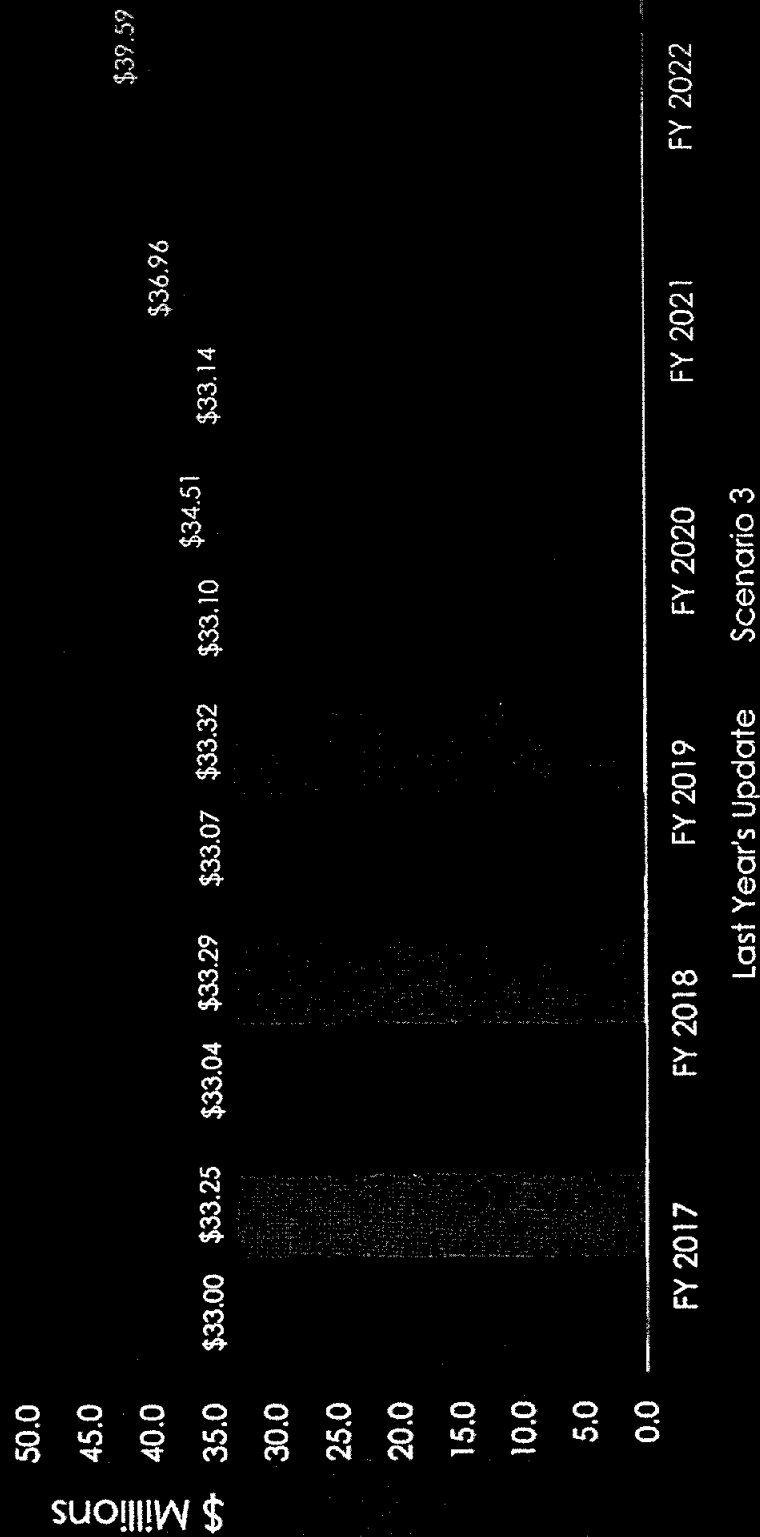
Water Division: Scenario 2

Fund Balance



Due to a significant increase in O&M Projection, remaining 365 days of operating reserves becomes the limiting factor for water fund, which results in multi years of rate increases.

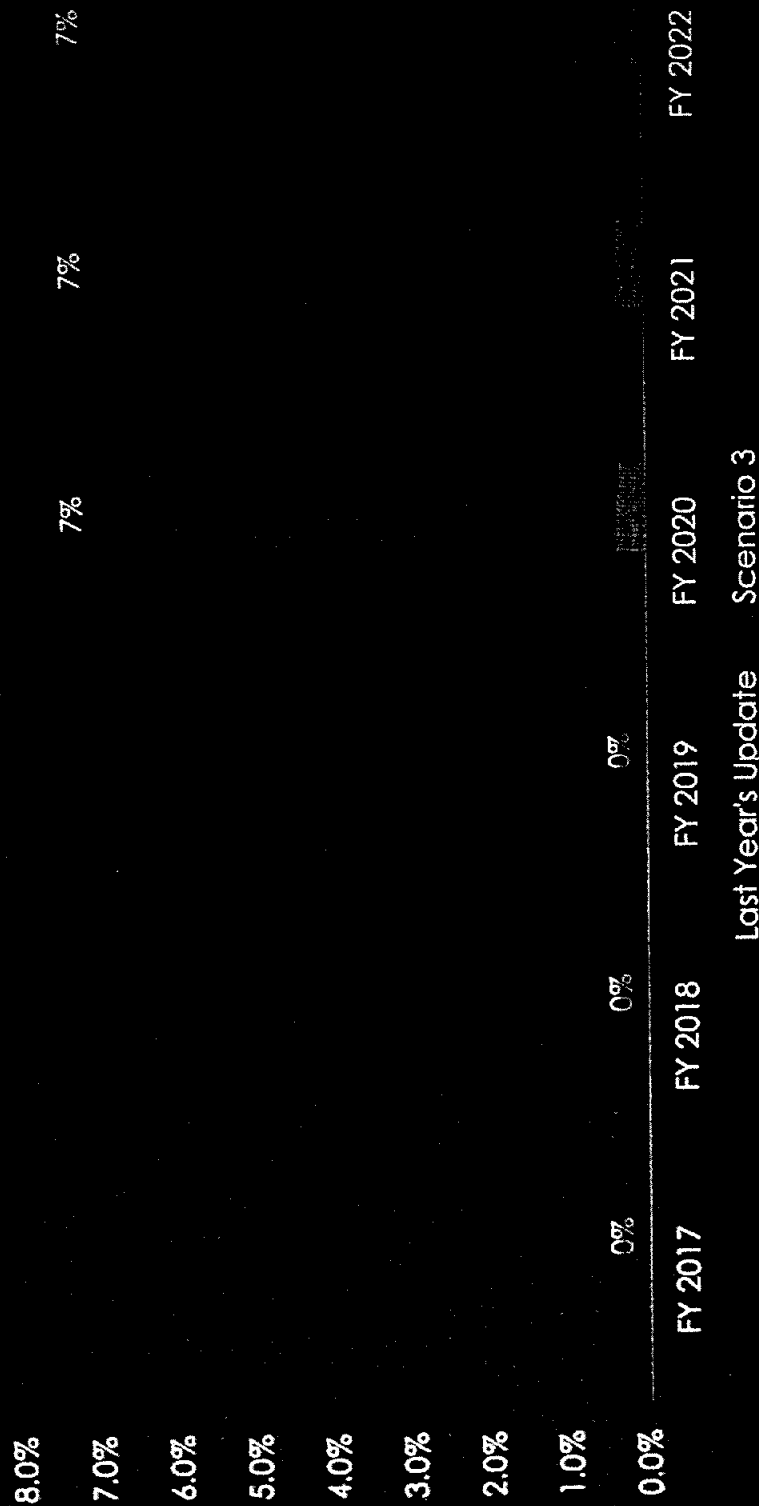
Water Division: Scenario 3 Rate Requirements



Increase in rate requirement projected from proposed rate increases to meet DSC and 365 days of operating reserves

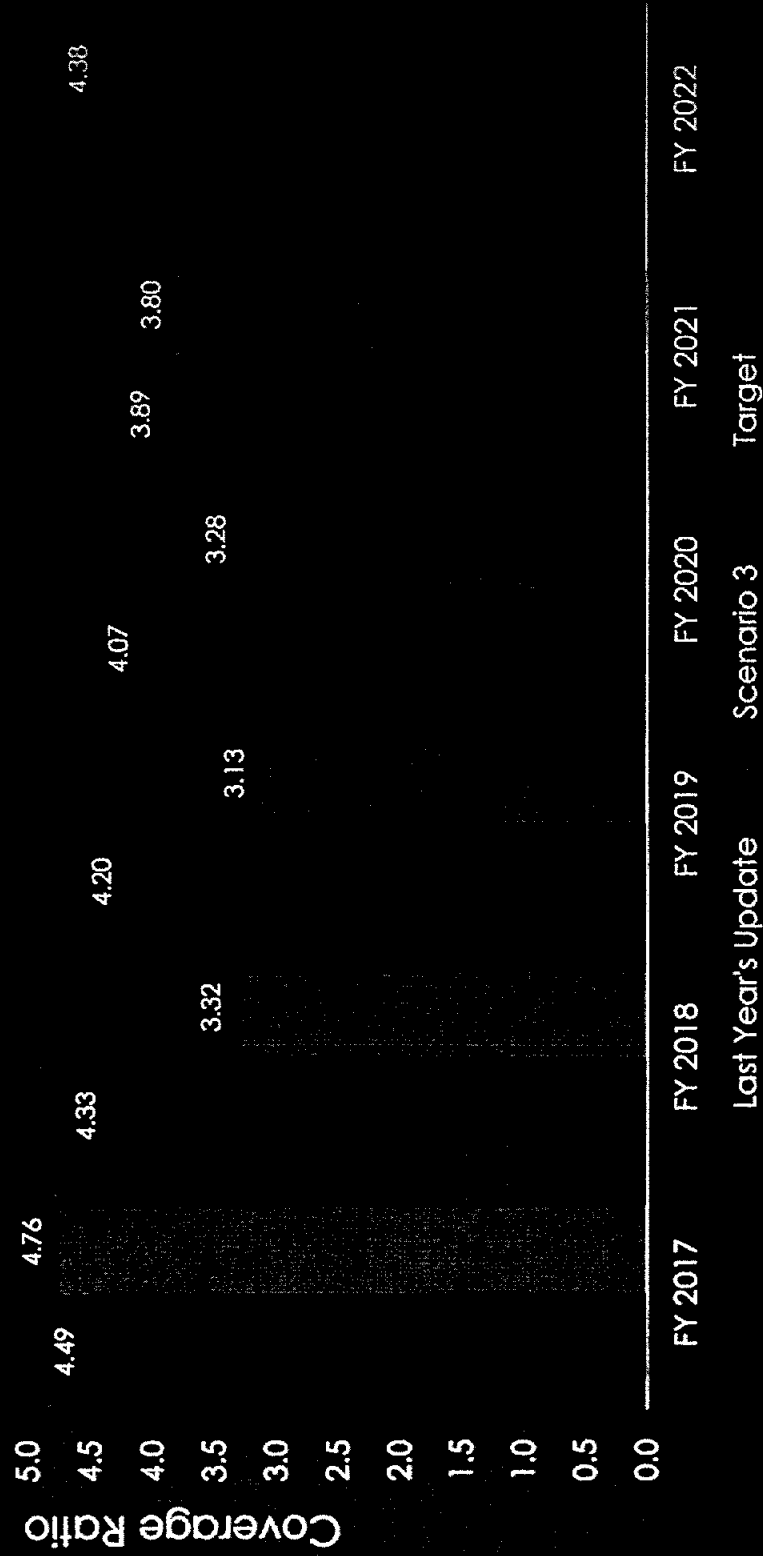
Water Division: Scenario 3

Rate Increases



Rate increase proposed from FY2020- FY2022 due to significant increases for O&M expenditures. Higher rate increases are required if rate increases will not start until FY2020.

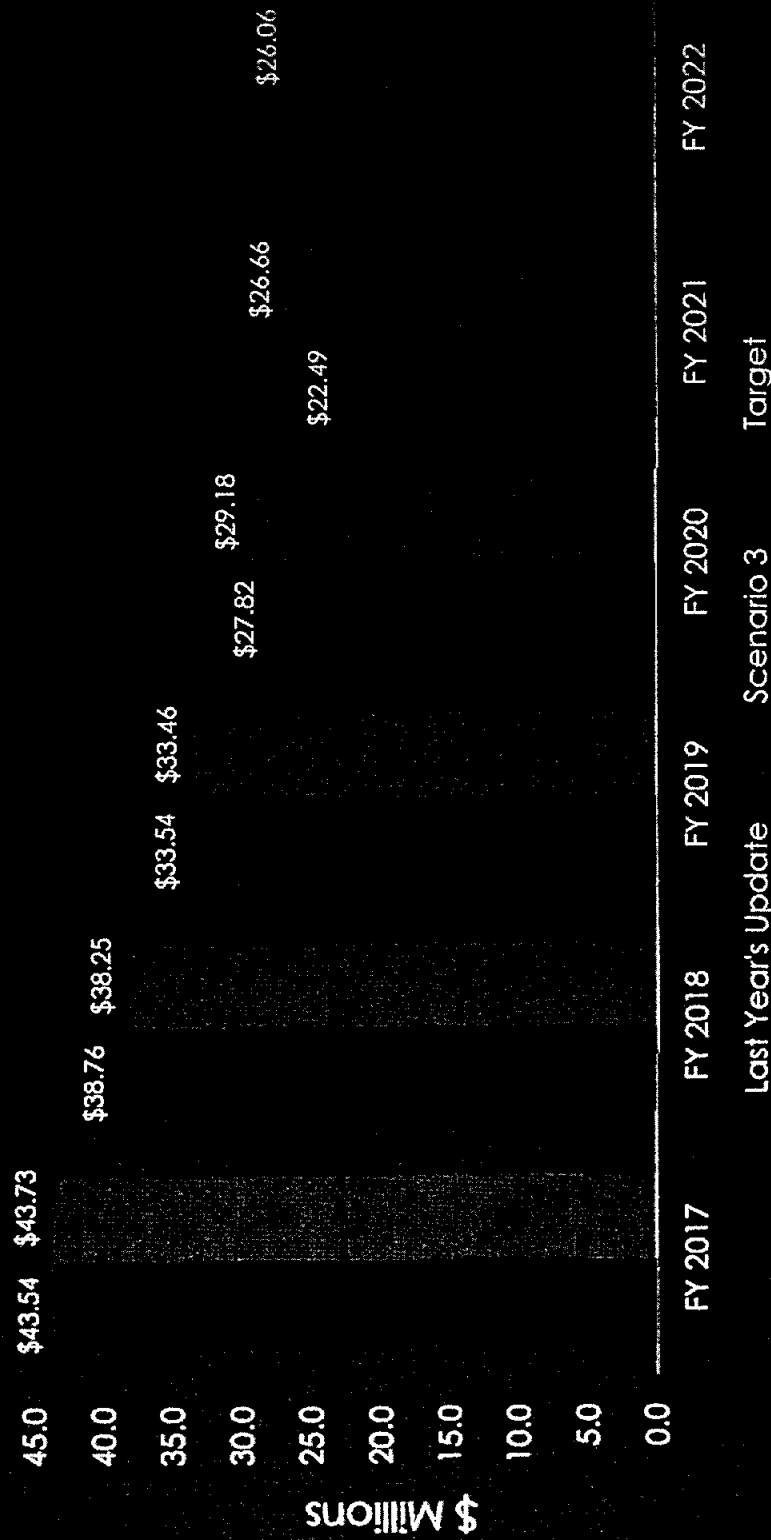
Water Division: Scenario 3 Debt Service Coverage



Projected DSC has improved due to the proposed rate increases in FY2020-2022

Water Division: Scenario 3

Fund Balance



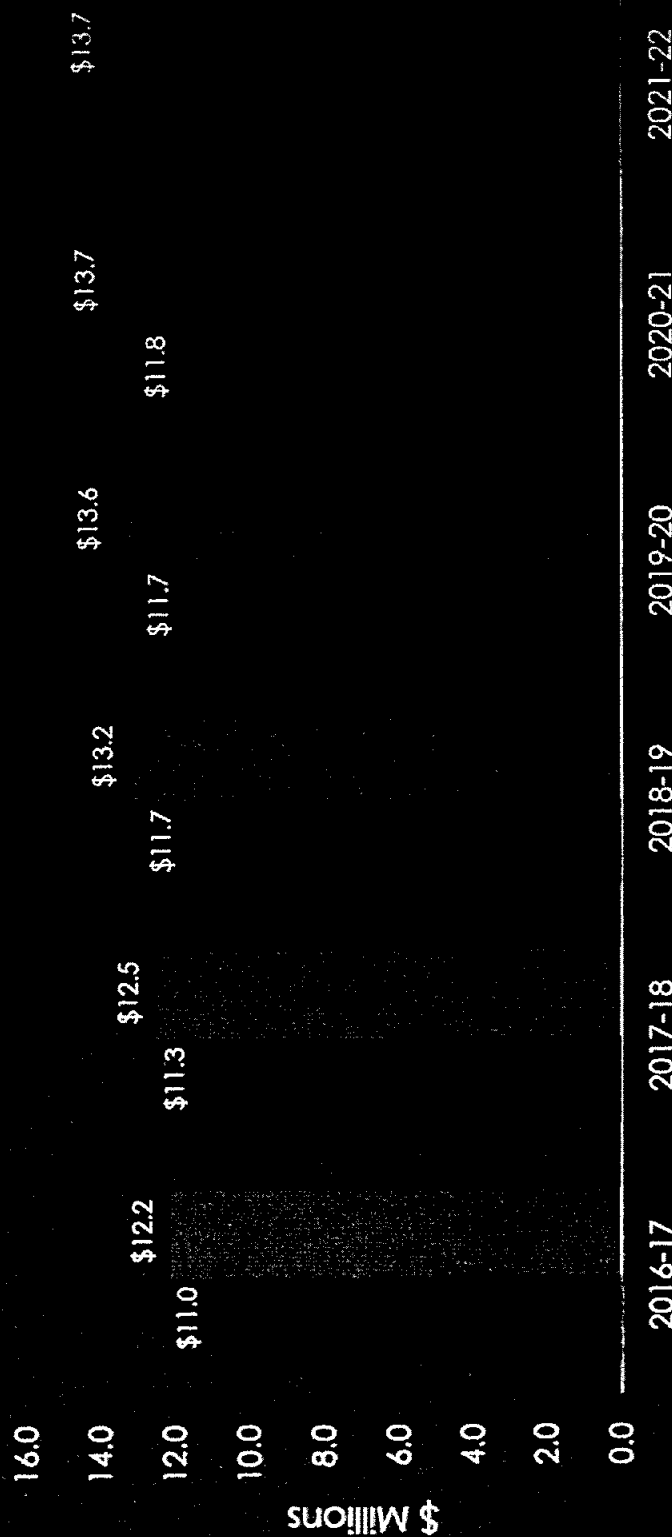
Due to a significant increase in O&M Projection, remaining 365 days of operating reserves becomes the limiting factor for water fund, which results in multi years of rate increases.

Wastewater Financial Plan

Wastewater Fund Activities

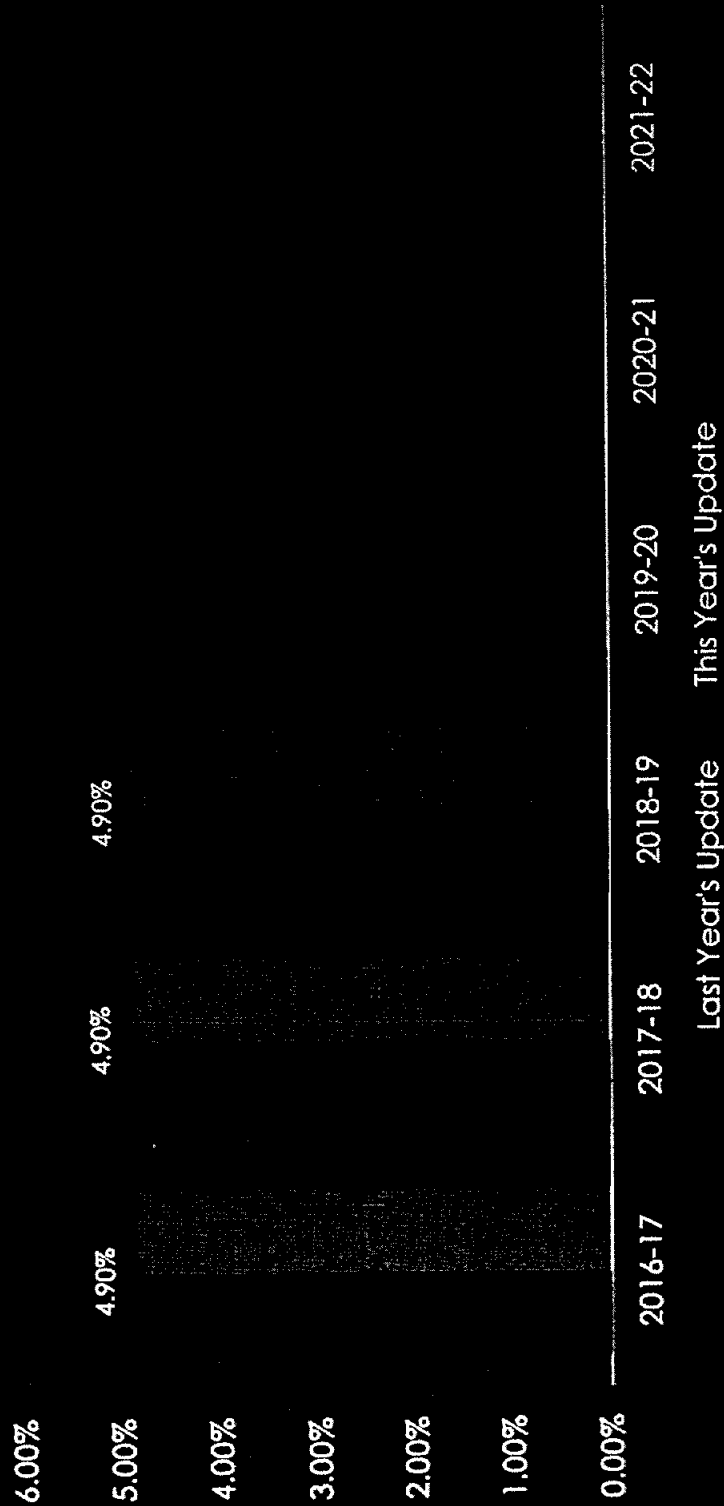
- Included the previously approved five years of 4.9% rate increases that began in Fiscal Year 2014/15 and ends in Fiscal Year 2018/19
- Operating Reserve maintains 120 days of cash, \$3M for Capital Reserve and \$2M for Rate Stabilization
- \$6.2M Loan to General Fund for defeasance of 2008 GO Bond and Railyard Phase I and II bond is incorporated into Wastewater fund, based on fund capacity

Wastewater Division: Rate Requirements



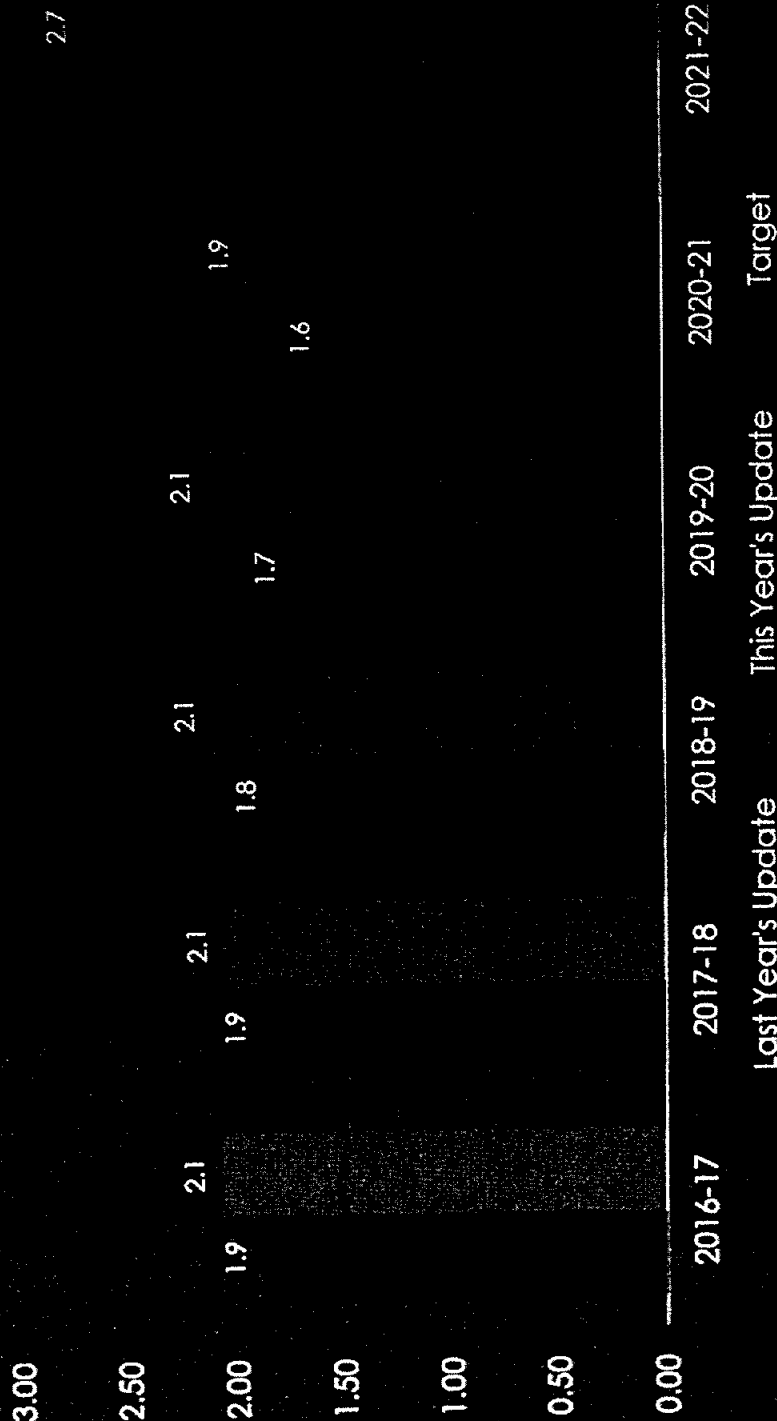
Increase in O&M and Capital Projects leads to higher Rate Requirements as compared to last year's update

Wastewater Division: Rate Increases



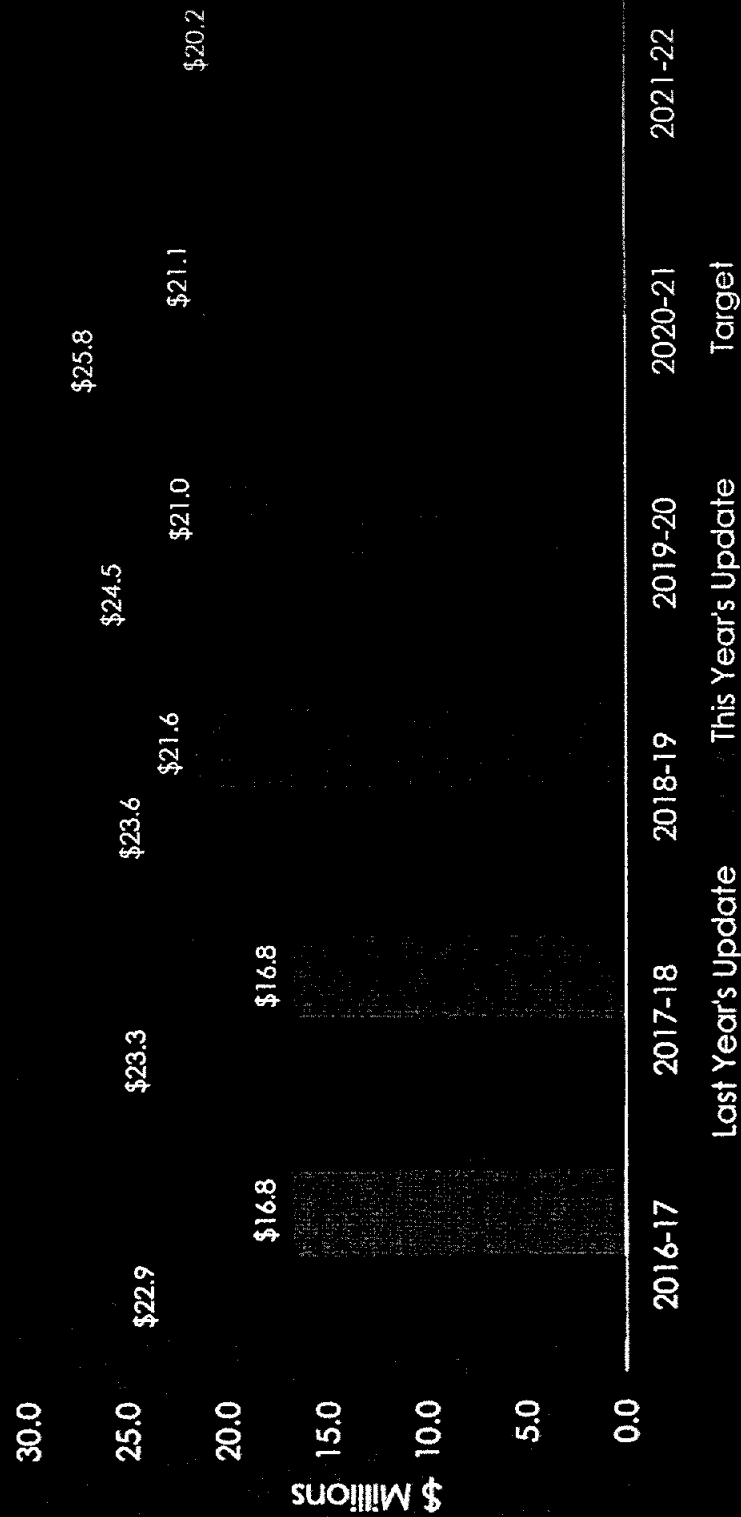
Rate increases are unchanged as fund reserves are sustainable throughout plan's years

Wastewater Division: Debt Coverage



Higher revenues in this year's projections lead to greater net income available for debt service coverage

Wastewater Division: Fund Balance



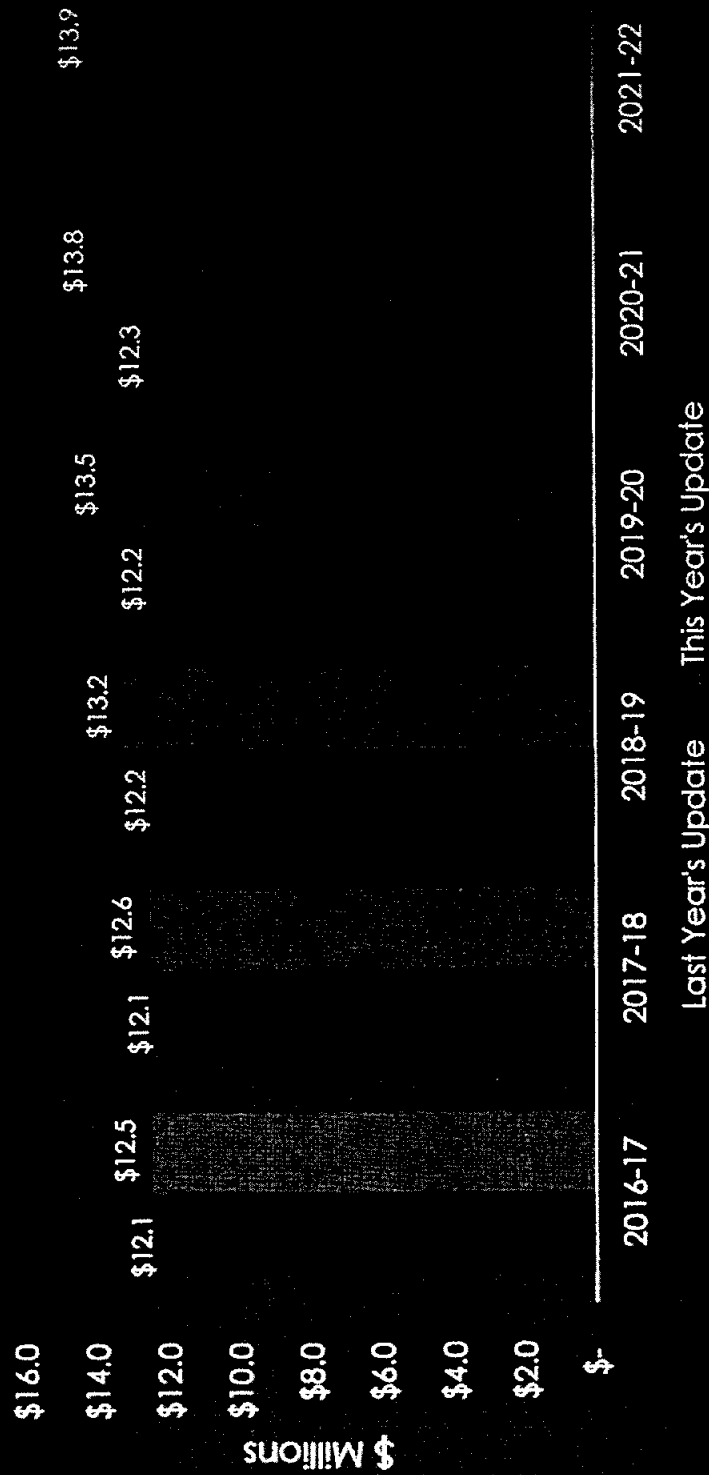
3-year, \$6M loan to General Fund (bond loan defeasance) in the near term and higher capital projects in the outer years leads to lower reserves throughout the projection

Environmental Services Financial Plan

ES Fund Activities

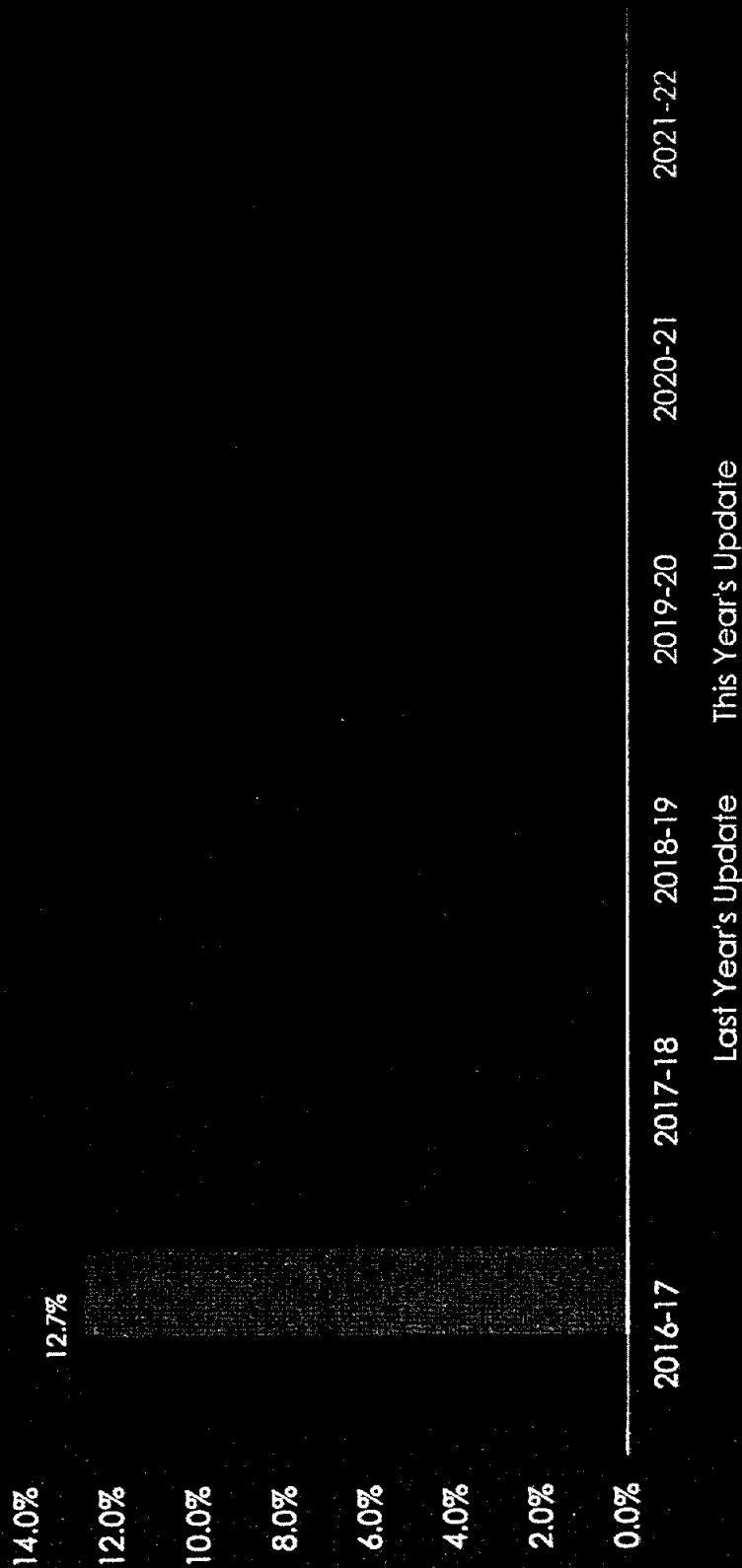
- Includes \$1.3M loan from NMFA for acquiring equipment for ES Services
- Does not include \$2M Bridge Loan from the Water Fund
- Currently, using a 4-year CIP projection and an average capital expenditure thereafter

Environmental Services: Rate Requirements



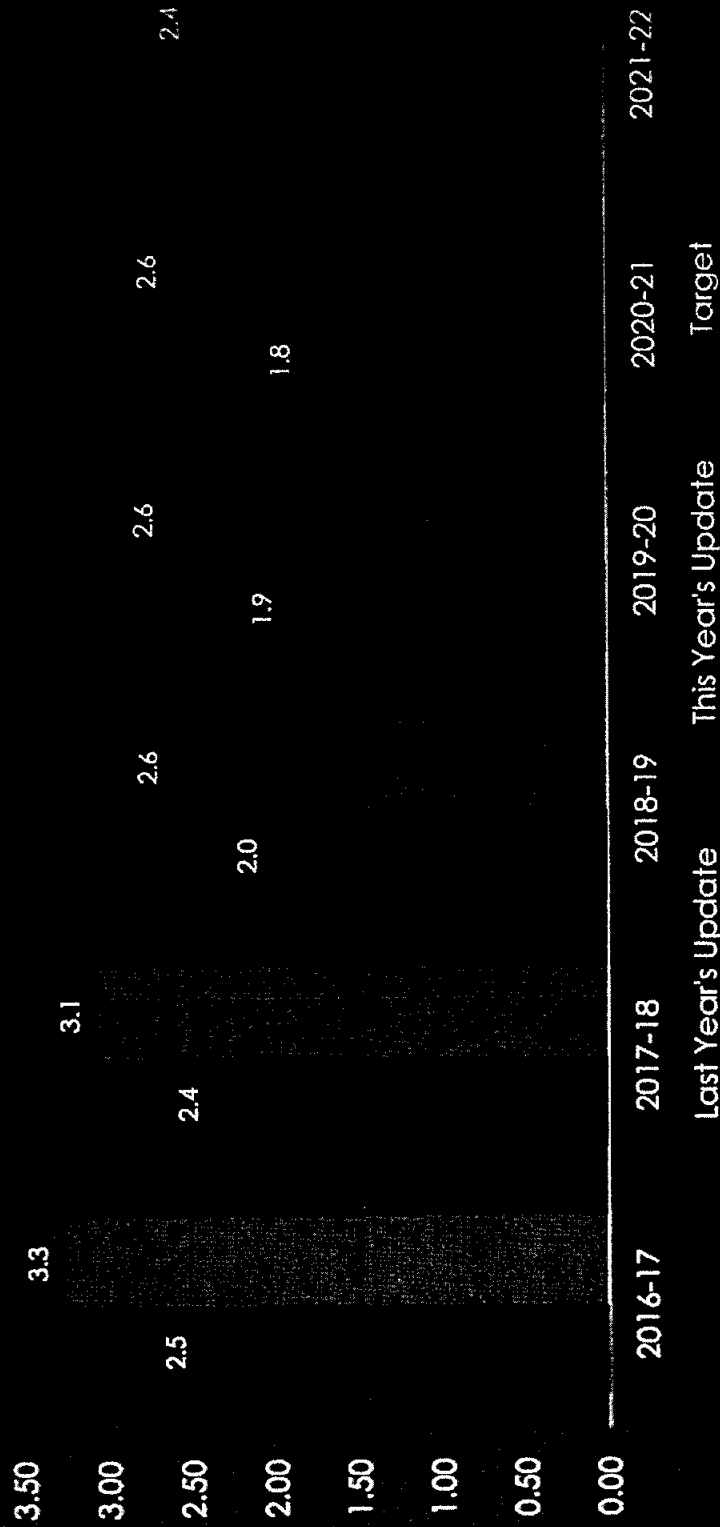
Increasing O&M projections throughout the study and lower capital project cost leads to a revenue requirement similar, but faster escalating than previous year's study

Environmental Services: Rate Increases



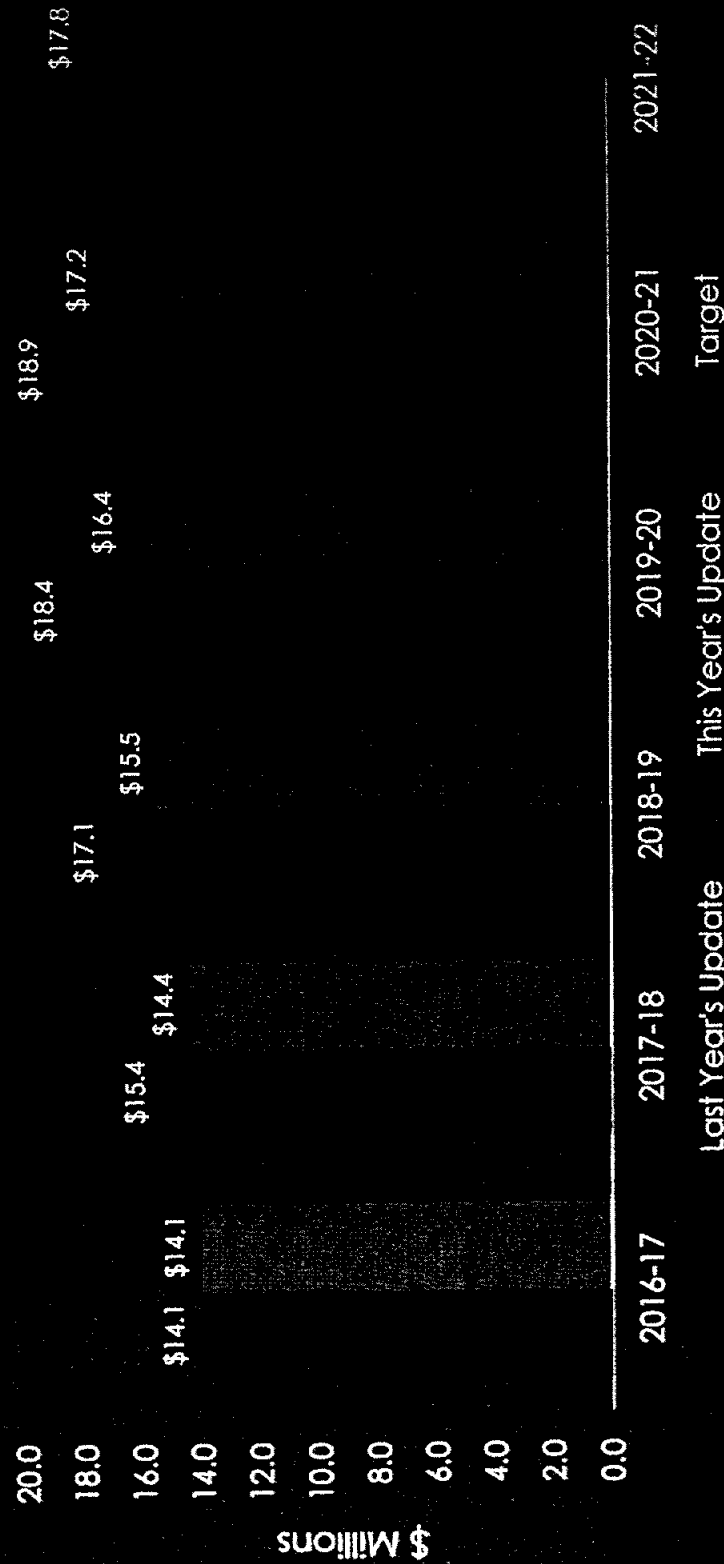
Rate increases are unchanged as fund reserves are sustainable throughout plan's years

Environmental Services: Debt Coverage



A decrease in O&M and Capital Project spending leads to a higher Debt Service Coverage

Environmental Services: Fund Balance



A decrease in O&M and Capital Project spending leads to a higher Fund Balance through the projected period

Questions?

Thank You!

Exhibit "7"

Presentation to the Public Utilities Commission – March 1, 2017

Dale Doremus, Santa Fe River Committee

Good evening Chairman Rivera and Members of the Committee. Thank you for this opportunity to speak to you tonight. My name is Dale Doremus and I am member of the Santa Fe River Commission (SFRC). I am a Hydrogeologist by training and my career has been primarily in water quality and water resources with the NM Environment Department, the City of Santa Fe Water Division and most recently the NM Interstate Stream Commission. I am presenting tonight on behalf of the SFRC and our Chairman, John Buchser, who could not attend this evening's meeting.

In your packet (Item #10) you have a cover memo and a brief report with recommendations from the SF River Commission regarding the Santa Fe River Target Flow Ordinance and the Administrative Procedures. The focus of these recommendations is on concerns surrounding living river bypass flows in the vicinity of the former Two-Mile Reservoir and the Nature Conservancy's River Preserve. These recommendations were also presented at a fairly lengthy public hearing of the Public Works Committee on February 6th.

The concerns regarding living river flows and the Santa Fe Canyon Preserve came to the attention of the River Commission during the summer of 2016. Over the last several months the River Commission has received significant input on various options for managing Living River bypass flows to the Preserve from River Commissioners, City staff, Acequia Madre, Acequia Cerro Gordo, the Santa Fe Watershed Association, local water experts, and other stakeholders. In addition, the December 14, 2016 report prepared by City staff titled "City's Water and Living River Report" describes several options for river flows below Nichols Dam that could help address concerns regarding Living River bypass flows to the Preserve (Item 11, pages 19-24). The River Commission has concluded that all these options need to be evaluated in a comprehensive way that includes a legal analysis, a cost/benefit analysis and a thorough review of the potential impacts of various alternatives including impacts to downstream reaches of the river.

As a result of valuable input the River Commission has received over the past several months we have developed 6 recommendations to be implemented over the next 2 to 3 years (page 2 and 3 in Item 10 of your packet). I want to emphasize that these recommendations are intended to build on previous and ongoing studies by the City and the recommendations lay out a process to reach a resolution that is effective and allows input from stakeholders and the community.

Our first recommendation is a near-term solution to address flows to the Preserve while further analysis of options can be considered with input from stakeholders and the public.

Recommendation 1a is to Direct Living River bypass flows to the Preserve via the historic channel at the rates provided for in the Administration Procedures adopted pursuant to Ordinance No. 2012-10 and seek to maintain a minimum flow of 0.3 cfs year round through the Preserve restoration channel.

Exhibit "3"

This recommendation is time critical for the upcoming irrigation season. 2016 was the first irrigation season after the completion of the the newly constructed outlet works for Nichols Reservoir. As a result of this more efficient infrastructure, the seepage from the Dam has been considerably reduced. In the past, these seepage flows from Nichols have benefited the riparian ecosystem of the SF Canyon Preserve. The reduction in Dam seepage has introduced the unintended consequence of making it more difficult to maintain the biologically diverse area above the remnants of Two-Mile Dam within the Preserve. This is of particular concern during irrigation season when flows are diverted through the by-pass channel to meet acequia headgate deliveries. The River Commission understands the difficulty with current infrastructure for the City to precisely regulate flows to the Preserve; therefore our recommendation uses the language: “seek to maintain a weekly average of 0.3 cfs” flowing to the River Preserve year-round.

Our second short term Recommendation 1.b. is for the City of Santa Fe to pursue an agreement with The Nature Conservancy to allow The Nature Conservancy the option to purchase or lease raw (untreated) water from the City to augment the Preserve during periods when Living River bypass flows are unavailable.

Recommendation 2: The City Water Division is currently planning a seepage/water balance study of the Santa Fe Canyon Preserve area. The River Commission’s Recommendation 2 supports this study that will, in part, evaluate the interaction between the bypass channel and the Preserve and will help inform future water management decisions for the area.

Recommendation 3: the SFRC is recommending and offering assistance to the City in soliciting public input on the impact of current hydrologic conditions on Living River bypass flows and possible options to maintain the objectives of the Target Flow Ordinance. We feel that this community outreach effort should be ongoing throughout this process.

Recommendation 4: Upon completion of the City’s seepage/water balance studies in recommendation #2 above, and in conjunction with further feedback from the community, the River Commission recommends that an alternatives analysis and feasibility study be conducted to assess the various options in a comprehensive manner.

The River Commission recommends that the City initiate a Request for Proposals (likely in early FY-19) to study the feasibility and options associated with restoration of the historic river channel and infrastructure improvements to accommodate all river flows, including flood flows, through the historic channel. The study should include a legal analysis and cost analysis of various options, and an evaluation of operational, environmental, ecological, agricultural, and recreational impacts to the Preserve and to downstream reaches of the river.

Recommendation 5: The SFRC supports an analysis of the feasibility of aquifer storage and recovery, and the effect of Living River bypass flows on groundwater levels along the Santa Fe River. I note that aquifer storage and recovery option is included in table of options in the City’s Living River Report in item 11 in your packet.

Recommendation 6: The Santa Fe River Commission recommends making necessary revisions to the Administrative Procedures for Santa Fe River Target Flows that are based on results of

the water balance and seepage studies and existing data combined with input from the public, stakeholders, City staff, and the Santa Fe River Commission.

Finally the River Commission wishes to thank the PUC for your consideration of these recommendations. We also want to thank and recognize all those who have provided assistance and input to our recommendations over the past several months: Melissa McDonald, City River and Watershed Coordinator, City of Santa Fe Water Division; the Santa Fe Watershed Association; Acequia Madre and Acequia Cerro Gordo; The Nature Conservancy; Watershed West; Previous SF River Commissioners; and members of the public.

The City's Water and the Living River

December 14, 2016

Introduction

In 2016 the Governing Body addressed a number of questions relating to the City's water resources. While these kinds of questions are not unusual, and many are routine, the Governing Body has recognized that changing conditions require heightened scrutiny of how City water is used, as the threats posed by climate change challenge existing policies and practices and call for innovation and community engagement to reach viable solutions. It is now generally understood that the City must adapt to the likelihood that water will be a diminishing resource as weather patterns change.¹ While the City has local water resources, like the Santa Fe River and Buckman and City well-fields, it also obtains a significant proportion of its water from Colorado via the federal Bureau of Reclamation (BOR) San Juan – Chama Project (SJCP)². As a result, changing climate conditions in Colorado and upstream along the Rio Grande will also affect our water supply. Projected changes to the SJCP water supply include a decrease in flows by one-quarter overall, decreased flows in summer and increased flows in spring, reductions in Heron Reservoir storage, increased evaporation and a reduced availability of full allocations to SJCP contractors.³ In fact, those changes are already occurring. As an example, in 2016 the City received only 95% of its SJCP water right of up to 5,230 acre feet/year (AFY) due to an overall reduction in available water, and in 2015, the City received only 93% of its SJCP allocation. Now more than ever, it is critical for the City to focus on understanding how water supply and demand may change in conjunction with climate changes and which adaptation options are most viable.

This summary report has been prepared at the request of the Governing Body as one step on the continuing path toward that goal. The request was precipitated by an incident earlier this year when a City facility was vandalized, diverting River water from its intended course. While staff anticipates supplementing this report over time to add new information and update stale material, the competition between the acequias and the living river for inflowing Santa Fe River water can be viewed as a precursor of the kinds of challenges the City will likely increasingly face in the future.

Whatever the challenges that climate change poses to the City, the primary goal of the Water Division remains unchanged: to ensure that the City's water resources are managed and protected in an efficient and responsible manner to provide the community with clean, reliable and safe drinking water.

¹“Over the past 50 years across most of the Southwest, there has been less late-winter precipitation falling as snow, earlier snowmelt, and earlier arrival of most of the year's streamflow. Streamflow totals in the Sacramento-San Joaquin, the Colorado, the Rio Grande, and in the Great Basin were 5% to 37% lower between 2001 and 2010 than the 20th century average flows. Projections of further reduction of late-winter and spring snowpack and subsequent reductions in runoff and soil moisture pose increased risks to the water supplies needed to maintain the Southwest's cities, agriculture, and ecosystems.” Ch. 20: Southwest. *Climate Change Impacts in the United States: The Third National Climate Assessment*. See Appendix A.

² The SJCP diverts water from the Navajo River in Colorado, which flows from Colorado into New Mexico, then back into Colorado to join the San Juan River, a tributary of the Colorado River. Diverted water is carried through tunnels under the Continental Divide to Heron Reservoir, which is located on a small tributary of the Rio Chama. The Rio Chama flows into the Rio Grande. The City's SJCP water is delivered via the Rio Grande to the Buckman Direct Diversion (BDD) facility, a project developed jointly with Santa Fe County and Las Campanas.

³ P. ES-17 of the Executive Summary, *Santa Fe Basin Study: Adaptations to Projected Changes in Water Supply and Demand*, August 2015, prepared for the BOR, the City of Santa Fe and Santa Fe County, attached as Appendix B.

Background

The City has multiple sources of water, including SJCP water delivered to the BDD facility via the Rio Grande, Santa Fe River water, which is stored in two reservoirs east of the City, McClure and Nichols Reservoirs (the Reservoirs), water from the Buckman well-field, a cluster of 13 active wells located northwest of the City in proximity to the Rio Grande, and from the City well-field, another cluster of 7 active wells located in proximity to the Santa Fe River within the City.

Source	Water Right	Appropriation
Santa Fe River	5,040	License No. 1677 for 3,500 AFY with a 1925 priority date; and Declaration No. 01278 for 1,540 AFY with apre-1907 priority date
SJCP	5,230	Contract No. 05-WC-40-540; October 19, 2006
Buckman Well Field	10,000	Permit No. RG-20516
City Well Field	4,865	Permit No. RG-1113 et al.

Copies of License No. 1677 and Declaration No. 01278 are attached as Appendices C and D respectively.

License No. 1677 also grants the City the right to store up to 3,500 AF of Santa Fe River water in the Reservoirs.

The City can also store "relinquishment credit water" in the Reservoirs when the Rio Grande Compact⁴ (the Compact) would otherwise limit the City's right to store Santa Fe River water. Relinquishment credits are administered by the State Engineer and accrue when more Rio Grande water is delivered to Texas than the Compact requires. Currently the City has a balance of 7,207 AF in relinquishment credits.

Because relinquishment credit water is Santa Fe River water, which is the least expensive to treat and deliver to City water customers, there are advantages for the City in releasing its SJCP water into the Rio Grande in exchange for relinquishment credits.

Generally, the City uses proportionately more SJCP and Santa Fe River water than well-field water in order to "rest" its wells for use in drier years when SJCP and Santa Fe River water are not as readily available. In part this is because surface water is a more renewable resource than groundwater and in part because the City must offset groundwater pumped from many of its wells.

To understand offsets, it is important to recognize that surface water and groundwater are hydrologically connected. Snowmelt and rainfall feed New Mexico's rivers. The rivers in turn slowly replenish groundwater. Thus, pumping groundwater over time depletes surface water.

⁴ The 1938 Rio Grande Compact is an agreement by Colorado, New Mexico and Texas apportioning the waters of the Rio Grande above Fort Quitman, Texas, among the three states. It establishes annual water delivery obligations, depletion entitlements for Colorado and New Mexico, and provides for debits and credits to be carried over from year to year until extinguished. A copy of the Compact is attached as Appendix E.

New Mexico law requires the City to offset the depletion of surface water by “retiring”⁵ an equivalent amount of surface water rights in the stream systems depleted by the pumping. Thus the City must acquire surface water rights from the Rio Grande, La Cienaga, Nambe, Pojoaque and Tesuque stream systems in order to “retire” them when it uses groundwater. When the City requires developers of projects in the City to purchase and transfer water rights to the City for new development, the water rights are intended to offset pumping from the Buckman well-field and Northwest wells that will result from increased demand occasioned by the new development. Offsets are described in more detail in Appendix F, attached.

In 2015 the City’s Water Division produced and delivered a total of 8,167 AF of water, including 8,062 AF to City water customers and 105 AF to the Santa Fe County Water Utility.

The foregoing is addressed in more detail in the 2015 Annual Water Report prepared by the City of Santa Fe Water Division. A copy of that report is attached as Appendix G.

The City also sells reclaimed wastewater from the City’s treatment plant to contractors for uses such as irrigation for golf courses and recreational fields, dust control, and livestock watering. The remainder flows into the lower Santa Fe River to support the riparian ecosystem and local agriculture in the areas of La Cienaga and La Bajada. The City and Santa Fe County, together with BOR, have undertaken a feasibility study to identify the highest value use of reclaimed water from the City’s and County’s wastewater treatment plants. The results of that study will be presented in the coming year.

⁵ “Retiring” surface water rights means that the surface water may no longer be diverted – typically, for irrigation – but must be allowed to flow, augmenting the stream to counterbalance the loss over time occasioned by groundwater pumping.

Legal Parameters – the Regulation of Water in New Mexico

Under the Constitution and by statute...

Under the New Mexico Constitution, "Beneficial use shall be the basis, the measure and the limit of the right to the use of water."⁶

Ultimately, "[a]ll natural waters flowing in streams and watercourses, whether such be perennial, or torrential, within the limits of the state of New Mexico, belong to the public and are subject to appropriation for beneficial use."⁷ A "watercourse" includes any river, creek, arroyo, canyon, draw or wash, or other channel having definite banks and bed with visible evidence of the occasional flow of water.⁸

And "...owners of any works for the storage, diversion or carriage of water who may make application to store or carry water in excess of their needs for irrigation or other beneficial use, shall be required, as trustee of such right, to deliver such surplus at reasonable and uniform rates to parties entitled to use the same under like conditions and circumstances."⁹

Although the term "beneficial use" is not defined in either the Constitution or applicable statutes, New Mexico courts have established certain requirements for a beneficial use. The first of these is "maximum utilization": "Our entire state has only enough water to supply its most urgent needs. Water conservation and preservation is of utmost importance. Its utilization for maximum benefits is second to none, not only for progress, but for survival."¹⁰

The concept of beneficial use of water requires actual use for some purpose that is socially accepted as beneficial.¹¹ Thus "actual use", as opposed to a speculative use¹², is another fundamental principle of beneficial use. An intended future use is not sufficient to establish beneficial use if the water is not put to actual use within a reasonable period of time¹³ as determined by the Office of the State Engineer.

However, a non-consumptive use can be a "beneficial use".¹⁴ For example, the use by the Albuquerque-Bernalillo County Water Utility Authority of Rio Grande water to "carry" SJCP water to its water treatment plant, then return an equal quantity of water to the Rio Grande is a non-consumptive use that

⁶ Const. Art. 16, § 3

⁷ N.M. Stat. Ann. § 72-1-1 (West)

⁸ *Ibid.*

⁹ N.M. Stat. Ann. § 72-1-1 (West)

¹⁰ *Jicarilla Apache Tribe v. U.S.*, 657 F.2d 1126 (1981), citing *Kaiser Steel v. W.S. Ranch Co.*, 81 N.M. 414, 467 P.2d 986 (1970)

¹¹ *Montgomery v. N.M. State Engineer*, 2005, 1137 N.M. 21, 114 P.3d 339, cert. granted 137 N.M. 767, 115 P.3d 230, affirmed in part, reversed in part, 141 N.M. 21, 150 P.3d 971.

¹² *Ibid.*, *Jicarilla Apache Tribe*, 1134. "It is important to observe that no matter how early a person's priority of appropriation may be, he is not entitled to receive more water than is necessary for his actual use. An excessive diversion of water, through waste, cannot be regarded as a diversion to beneficial use within the meaning of the Constitution..."; and, "In sum, it is essential that there shall have been a beneficial use which is more than speculative." In *Jicarilla*, the City of Albuquerque that the storage of "excess" SJCP water, i.e., water to which it was entitled, but which was intended to accommodate future growth, in Elephant Butte Reservoir for recreational purposes was a beneficial use.

¹³ *Ibid.*, *Montgomery*

¹⁴ *Carangelo v. Albuquerque-Bernalillo County Water Utility Authority*, 320 p.3d 492, 2014-NMCA-032 (2013)

is nevertheless beneficial.¹⁵ It is not important that "[m]ost, if not all, appropriations of water in New Mexico are for consumptive use."¹⁶

The court has described a non-consumptive beneficial use as "...no more than a type of water use where either there is no diversion from a source body, or where there is no diminishment of the source."¹⁷

"Artificial surface waters, as distinguished from natural surface waters, are...defined...as waters whose appearance or accumulation is due to escape, seepage, loss, waste, drainage or percolation from constructed works, either directly or indirectly, and which depend for their continuance upon the acts of man. Such artificial waters are primarily private and subject to beneficial use by the owner or developer thereof; provided, that when such waters pass unused beyond the domain of the owner or developer and are deposited in a natural stream or watercourse and have not been applied to beneficial use by said owner or developer for a period of four years from the first appearance thereof, they shall be subject to appropriation and use; provided, that no appropriator can acquire a right, excepting by contract, grant, dedication or condemnation, as against the owner or developer compelling him to continue such water supply."¹⁸

As we will see, "bypass water" is water that passes "unused beyond the [City's] domain" and becomes public water, subject to appropriation.

By contract...

The City's use of its water is also regulated by contracts like the Compact and its contract with BOR for SJCP water and with Santa Fe County for the construction and operation of the BDD facility to treat the SJCP water.

By court order...

And, there are other limitations on the City's use of its water, including the rights of the Acequia Madre Community Ditch Association (Acequia Madre) and the Acequia Cerro Gordo Community Ditch Association (Acequia Cerro Gordo) to take water from the Santa Fe River before the City takes its water. These priority rights are embodied in the 1990 Order of the First Judicial District Court in *Anaya, et al. v. Public Service Company of New Mexico, et al.*, No 43,347¹⁹ which provides that "PNM's releases of water to the acequias shall occur during the months of April through October at such times and at such rates as may be requested by the acequias; provided, however, that PNM shall not be required to release water in quantities greater than would otherwise be available to the acequias from stream flow, assuming no impoundment or diversion by [the City]..." The July 5, 1990 Order was amended by the court on February 10, 2015 on the Acequia Madre's Motion (the Order). The Order establishes the quantities of water to be delivered to the Acequias Madre and Cerro Gordo. The parties have also

¹⁵ *Ibid.*, *Carangelo*, 504

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ NMSA 1978 § 72-5-27; see also *Hagerman Irrigation Co. v. McMurry*, 16 N.M. 172; 1 Wlel, *Water Rights in the Western States* ss 30, 31, 32 (3d Ed. 1911); 1 *Waters and Water Rights*, s 53.2 (Clark, ed. 1967); *Turley v. Furman*, 16 N.M. 253; *State ex rel. Reynolds v. Luna Irr. Co.*, 1969-NMSC-111, 80 N.M. 515, 458 P.2d 590.

¹⁹ The Order applies to the City as the successor to PNM's interest in the water utility.

agreed to a Stipulated Operating Agreement implementing the Order. Copies of the Order and the Stipulated Operating Agreement, as amended are attached as Appendices H and I respectively.

In addition to the Acequias Madre and Cerro Gordo, two other acequias have rights in Santa Fe River water, although their rights have not been established as having priority over the City's rights. These are the Acequia Llano and the Acequia Muralla.

The maximum potential water obligations of the City to all four acequias, including with the farm delivery rate (FDR) and the project delivery rate (PDR), are set out on a table attached as Appendix J. The FDR and the PDR address respectively the additional amounts of water required to deliver the water at the acequia's headgate and at the point of delivery for each of the irrigated properties served by the acequia.

By ordinance and resolution...

Finally, the City itself regulates the use of its water through the adoption of resolutions and ordinances. As examples, Santa Fe City Code (SFCC) Sections 25-11 and 25-12 address respectively water conservation and development water budgets.

And in February 2012, the City adopted SFCC Section 25-13, the "Santa Fe River Target Flow Ordinance," most often referred to as the "Living River Ordinance (the Ordinance), and Resolution No. 2012-28, establishing administrative procedures for the Ordinance (the Administrative Procedures). Copies of the Ordinance and the Administrative Procedures are attached as Appendices K and L respectively.

Some History – the Acequias, the Living River, and the Law

The Ordinance

The purpose of the Ordinance is "...to formalize the city's commitment to provide for a target flow within the Santa Fe River in order to enhance and further the objective of restoring the Santa Fe River as a living river by committing to use up to...1,000...AFY...of the city's water supply, depending upon hydrologic conditions in the Santa Fe River watershed. ..."²⁰

A public process²¹ identified the following four community objectives for the 1,000 AFY "living river" flows, which were incorporated in the Administrative Procedures²²:

1. Create an ecologically healthy vegetative corridor;
2. Benefit the entire community with flows (e.g., equity);
3. Nurture a beautiful, natural urban greenspace with water in an arid environment; and
4. Provide an educational resource for schools and community stewardship.

These concepts have informed a number of developments along the Santa Fe River since they were first articulated, including "...a range of initiatives to make substantial improvements along the Santa Fe River and within the River's broader watershed. These improvements have included forest management practices in the upper watershed; riparian rehabilitation projects along the entire river corridor; a variety of erosion control and storm water management project; construction of significant new reaches of the Santa Fe River Trail; and enhancements within the City's parklands along the river's banks. Consistent with these efforts to protect the City's water supply, improve the drainage and hydrologic functions of the river system, support greenery, shade and wildlife habitat, and to beautify the corridor with aesthetic enhancements, the City also seeks to increase water flows in the River below the City's reservoirs."²³

The City's Santa Fe River projects are shown on a map attached as Appendix M. They extend the length of the River from Canyon Road east of Patrick Smith Park to Siler Road and represent an investment of approximately \$15,000,000 over 16 years, with most having commenced after the adoption of the Ordinance.

"Bypass Water" Means...

As noted above, the City has rights to 5,040 AFY of Santa Fe River water under Permit No. 1677 and Declaration 01278, with 1,540 AFY with a pre-1907 priority date and 3,500 SFY with a 1925 priority date. An associated storage right establishes maximum limits for storage in each of McClure and Nichols Reservoirs, with a combined storage limit of 3,500 AFY.

²⁰ SFCC § 25-13.3

²¹ The process is documented in "Bypass Flows in the Santa Fe River, Public Facilitation & Community Outreach, Reports, Notes and Related Documents, 2.23.11", prepared by Toby Herzlich & Company and Natural Systems International, both of Santa Fe, New Mexico (the Public Process Report). The Public Process Report is attached as Appendix N.

²² Administrative Procedures, Article IV, Section 4.1.1

²³ Administrative Procedures, Article I, par. 2

Only the Acequias Madre and Cerro Gordo have established rights superior to the City's rights. Nevertheless, the City typically delivers water consistent with their existing rights to the Acequias Llano and Muralla, although neither has established that their rights predate the City's.

The Order provides that the City "...shall not be required to release water in quantities greater than would otherwise be available to the acequias from stream flow, assuming no impoundment or diversion by [the City]..."

The Ordinance provides for the City's Water Division to "...operate the city's system of reservoirs to ensure that a bypass target flow of up to one thousand (1,000) AFY of river water flows into the Santa Fe River below Nichols Reservoir..."²⁴

According to the Ordinance, "Bypass flow means, generally, water that flows past a diversion or storage facility. In the administrative procedures, it refers to water that the city chooses not to store in the municipal reservoirs and thus allows to flow to the Santa Fe River below Nichols Reservoir²⁵ provided that the rate at which the bypass flow is passed through the outlet works of Nichols Reservoir dam is always equal or less than the stream inflow at the 'above McClure' gage."²⁶

Thus, deliveries both to the acequias and for the living river are drawn from the amount of water that flows in any given period into McClure. The deliveries do not come from the City's stored water.

The Challenge of Bypass Flows

Because inflow is limited based on snowmelt and rainfall, and declines during the very period when the acequias and the living river need water most, during late spring and early summer, before the monsoon rains come, the acequias and the living river are often competing for the same limited resource. When snowpack is below normal levels or melts early, or the monsoon rains don't come, or come rarely or late, it exacerbates the problem.

In this context, it can be extremely difficult to meet the needs of the City's water customers and its obligations to the Acequias Madre and Cerro Gordo, accommodate the demand of the Acequias Llano and Muralla, and meet living river bypass flow requirements.

In addition, there are two fundamental conflicts embedded in the Ordinance and the Administrative Procedures.

1. *Whether the living river bypass flow is in addition to the City's obligation to the Acequias Madre and Cerro Gordo, and the rights of the Acequias Llano and Muralla, or whether they are inclusive.*

The Ordinance provides that "...the water for the target hydrograph shall not include water released for any other purpose at the time of release, provided that nothing in this section shall require the release of bypass water if the release might jeopardize the city's water right under License 1677 and Declaration 01728."²⁷

²⁴ SFCC § 25-13.5

²⁵ Because living river water passes "unused beyond the [City's] domain," it becomes public water, subject to appropriation -- unlike water delivered to the acequias for irrigation, a consumptive beneficial use.

²⁶ SFCC § 25-13.4

²⁷ SFCC § 25-13.5

As noted above, the License limits the use of the City's 1925 water to "domestic, municipal and related purposes" and the Declaration limits the uses of its 1880 water to "municipal uses".

But since bypass flows are "water the City chooses not to store in the municipal reservoirs and...allows to flow into the Santa Fe River below Nichols...",²⁸ the nature of its use is no longer relevant because once it is released into the River, it is no longer the City's water. As noted above, it is public water and subject to appropriation by others.

As a result, the release of bypass water of itself does not jeopardize the City's water right under the License and Declaration. And since bypass water is, by definition, limited to inflow, it does not raise the question it might raise if it permitted the release of stored water. In the latter case, the release of stored water would be inconsistent with the License and the Declaration.

Clearly, the living river bypass flow is in addition to the City's acequia obligations.

2. Whether there is an obligation to provide living river bypass flows during the irrigation season.

The Administrative Procedures define "upper river" as "the reach in the river for which target flows are maintained year-round to support all aspects of a healthy riverine and riparian ecosystem; at a minimum as far as Two Mile Pond and ideally, as far as the head-gate for the Acequia Madre."²⁹ The upper river includes the Preserve.

This implies that bypass flows should be directed through the Restoration Channel to the Preserve all year.

However, the substantive provisions of the Administrative Procedures addressing the target hydrograph and target bypass flows provide only for "Low Flows for the Upper River" of 0.3 cubic feet per second (cfs) during the colder season from mid-October to mid-March, increasing to 0.6 cfs from mid-March to early May and from mid-September to mid-October.³⁰ Data show that these flow targets were met or exceeded in 2016.³¹

There is no similar provision establishing specific flows to the upper River for the period from early May to mid-September.

The Public Process Report provides additional insight into the intentions behind the first of the four purposes identified in that report and incorporated in the Administrative Procedures, to "create an ecologically healthy vegetative corridor." It expands the concept as follows:

- a. With the limited amount of water available, strive to support the maximum amount of riparian plantings and wildlife habitat along the river.

²⁸ SFCC § 25-13.4

²⁹ Administrative Procedures, Article III, 29.

³⁰ Administrative Procedures, Article IV, Section 4.2.1. Note that these are "aspirational" goals.

³¹ See Appendix O for available data.

- b. Create a constantly-wet section of river in the upper watershed by providing a year-round trickle of flows. This section will serve as a river refuge to seed downstream reaches with river life.³²

At the time, there was substantial seepage flow into the upper river from the Reservoirs upstream. Subsequently, over a period of a few years, the Reservoirs were repaired. During the years when the repairs were underway, significantly more water flowed into the River below Nichols dam. Together, these resulted in a "year-round trickle of flows" that sustained the upper River. It appears that during that time, beaver ponds developed on the Preserve and the riparian habitat expanded. But once the repairs were completed, and the Reservoirs were refilled, those flows declined significantly. In addition, as a result of the repairs, seepage was reduced. The 2016 irrigation season was the first after this unusual "wet period" and with a hydrograph that provided for 740 AFY of bypass flows, created competition for the released bypass flow water.

Managing Bypass Flows

The City's obligation to the Acequias Madre and Cerro Gordo, established under the Order, is the first to be met with bypass flows. Together, they are entitled to take 93.48 AFY (PDR) during the irrigation season. In addition, bypass flows are directed to the Acequias Llano and Muralla³³. Together they have water rights in the River allowing delivery of 63.05 AFY (FDR) during the irrigation season. In fact, because of inefficiencies, it appears that the four acequias take significantly more bypass water than the allotted 156.53 AFY.³⁴

The Administrative Procedures also call for a Spring Pulse timed, and in a magnitude "...to provide necessary flows through the downtown for the Fishing Derby and River Festival and for the blessing of the river in the village of Agua Fria around the day of San Ysidro, patron of the crops. ..."³⁵ The "Summer Flows" and "Summer Pulse" called for in the Administrative Procedures, consumed 484 AF in the period between May 13 and September 3, 2016, including 240 AF to support the Fishing Derby. For this target year (April 15, 2016 through April 14, 2017) living river flows through December 6, 2016 have totaled 558 AF out of the target year's hydrograph.

The Canyon Preserve

On the same day that the Governing Body adopted the Ordinance and the Administrative Procedures, February 29, 2012, the City issued a building permit (TNC BP 2043) to The Nature Conservancy (TNC) for "River restoration, including excavation, fill, rip rap, culvert, control gate, vegetation planting & seeding" (the TNC Project) for continued use as a "private open space preserve" on 525 acres it owns in the foothills adjacent to the Santa Fe National Forest. The TNC Project included opening a channel (the Restoration Channel) between the existing path of the River (the "Bypass Channel") and the "historic River" to direct Bypass Flows via a diversion structure (the Headgate) and culvert into the Santa Fe Canyon Preserve (the Preserve) and the "original route" of the Santa Fe River. Although it is not possible

³² Public Process Report, "Management of 1000 AFY in the Santa Fe River: Report of Recommendations Feb. 2, 2011", p. 3

³³ These acequias have rights in the Santa Fe River, but have not litigated over them and the City's delivery to them of bypass water is not intended as an acknowledgment that those rights have priority over the City's. Only an adjudication of the Santa Fe River Basin rights will establish applicable priorities.

³⁴ See attached Appendix Q for estimated deliveries of water to the acequias. Note that flows are not metered and that all numbers are estimated based on releases from Nichols.

³⁵ Administrative Procedures, Article IV, Section 4.2.1

to know exactly where the "original" River flowed, where it flowed in 1952 is shown on the 1952 USGS map attached as Appendix P as a fine blue line entering Two Mile Reservoir on the northeast end and exiting on the southwest end (the Historic River). The Bypass Channel is shown overlaid on the map in dark blue, exiting Nichols on the northwest corner and roughly paralleling the Historic River to a point of intersection below what is now known as Two Mile Pond.³⁶

Part of the Preserve has been identified as wetlands on the U.S. Fish and Wildlife Service (USF&W) National Wetlands Inventory. A USF&W map showing the area is attached as Appendix R.

The identified wetlands are "artificial surface waters...dependent for their continuance upon the acts of man." As such, the City cannot be compelled to continue to supply to the Preserve with water.

Earlier this year, sandbags placed by the City to direct bypass flows into the Bypass Channel for delivery to the Acequias Madre and Cerro Gordo were moved so as to redirect flow into the Restoration Channel. As noted above, this incident of vandalism led to a search for solutions to the competition for "bypass flows" and precipitated this report.

³⁶ Two Mile Pond was created when Two Mile Dam was breached and Two Mile Reservoir drained after being deemed unsafe due primarily to excessive rodent and tree root holes on the downstream slope. A paper documenting the dam, entitled "Historic American Engineering Record, Two Mile Reservoir, Santa Fe, New Mexico" (HAER No. NM-5) is attached as Appendix S and includes a useful history of the development of the Santa Fe water system.

Conclusion

The City's "bypass flow" is not sufficient now to meet all the needs of the acequias and all the living river goals identified in the Ordinance and the Administrative Procedures, even when the full 1,000 AFY is available. As the City and the region become drier and rain and snow patterns change, we can expect this shortage to become more of a challenge.

Nevertheless, the City can make choices now and in the near future that will help, not just of policy, but by studying conditions as they exist in order to predict how they might change, and by investing in physical improvements to address those projected changes. Some of these efforts are already underway, including studies addressing the capture and use of stormwater and of wastewater.

It is possible – perhaps even likely – that eventually many current uses of the City's water will have to be relinquished in order to meet its first priority: providing clean, reliable and safe drinking water to City customers.