

RESOLUTION NO. R 02-2021

**A RESOLUTION OF THE GOVERNING BOARD
OF THE BIG BEAR AREA REGIONAL WASTEWATER AGENCY
ESTABLISHING THE SEWER USER CHARGE AND TAKING CERTAIN
OTHER ACTIONS RELATING THERETO**

WHEREAS, the Big Bear Area Regional Wastewater Agency (“BBARWA”) is a joint powers authority that provides wholesale sewer service to customers within its service area, including the City of Big Bear Lake, the Big Bear City Community Services District (“Big Bear City CSD”), and Zone “B” of County Service Area 53 (“CSA 53 B”) (each a “Collecting Agency” and, collectively, the “Collecting Agencies”); and

WHEREAS, the Governing Board of BBARWA has been empowered to establish sewer rates and charges, including the Sewer User Charge (“User Charge”) to be imposed on the Collecting Agencies during the applicable fiscal year; and

WHEREAS, the costs of providing service have increased; and

WHEREAS, BBARWA previously retained the services of HDR Engineering, Inc. to develop recommendations and a comprehensive sewer rate study (“HDR Report”) regarding the amount for the User Charge in order to address BBARWA's increased costs of providing service, and a copy of the HDR Report is on file at BBARWA's administrative offices and available for public review, and staff has provided financial updates to the HDR Report that reflect higher costs than previously projected (collectively, the “Report”); and

WHEREAS, pursuant to Health and Safety Code Section 5471 and Government Code Section 61115(a), the Governing Board is empowered to prescribe and collect rates and charges for services and facilities furnished by BBARWA in connection with its sewerage system; and

WHEREAS, the Governing Board is required by BBARWA Operating Agreement No. 1 to present to each Collecting Agency a statement showing the amount of the User Charge to be collected for each Equivalent Dwelling Unit (“EDU”) during the ensuing fiscal year, as such term is defined in the Report, and it is therefore necessary that the Governing Board establish the amount of the User Charge to be so collected for the applicable fiscal year; and

WHEREAS, the proposed rates for the User Charge consist of a single charge, per EDU (referred to in this Resolution as the “Base Rate”), as set forth in the Report, to which the Collecting Agencies have agreed to apply adjustments to account for varying levels of demand on the sewer system by each Collecting Agency, as set forth in that certain Payment and Collection Agreement, dated as of August 23, 2011, by and among BBARWA and the Collecting Agencies, as has been amended from time to time (the “Agreement”); and

WHEREAS, as a result, the User Charge for certain Collecting Agencies will be higher than the Base Rate in the applicable fiscal year, and for others the User Charge will be lower than the Base Rate pursuant to the Agreement; and

WHEREAS, the Governing Board previously adopted its User Charge pursuant to Ordinance No. O. 01-2018 on April 25, 2018 (the “Ordinance”), in accordance with the HDR Report and based on the methodology described above, and since the time of adoption of the prior User Charge, certain costs of BBARWA have increased in amounts greater than projected under the HDR Report; and

WHEREAS, the Ordinance authorized BBARWA to make future adjustments to the User Charge by resolution, and pursuant to this Resolution, BBARWA seeks to increase the User Charge to reflect increased costs, as reflected by the Report; and

WHEREAS, pursuant to California Constitution article XIII C, section 1(e)(2), a fee or charge is a tax and subject to voter approval if it is imposed on a fee payer for a service and that service is provided to others who are not charged for the same service, or the fee exceeds the cost of providing the service; and

WHEREAS, wholesale sewer service fees, such as the User Charges, are fees for a service subject to California Constitution article XIII C, section 1(e)(2); and

WHEREAS, pursuant to California Constitution article XIII C, section 1(e), an agency imposing fees for wholesale sewer services has the burden of demonstrating that the amount of the fees imposed are no more than necessary to cover the reasonable costs of providing the wholesale sewer services, and that the manner in which those costs are allocated to a payer bear a fair or reasonable relationship to the payer’s burdens on, or benefits received from, the governmental activities provided; and

WHEREAS, based on the Report, the Governing Board has determined that the amount of the proposed User Charge, is no more than necessary to cover the reasonable costs of providing the wholesale sewer services, that the manner in which those costs are allocated to the Collecting Agencies bears a fair or reasonable relationship to each of the Collecting Agencies burden on, or benefit received from, BBARWA’s wholesale sewer service, and that the User Charge is not a property-related fee or fee imposed as an incident of property ownership; and

WHEREAS, in accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, BBARWA staff has determined that the increases in User Charges are exempt from CEQA pursuant to Section 15378 and Section 15273 of the CEQA Guidelines and Public Resources Code section 21080(b)(8) because: (i) the increased charges are for the purpose of meeting operational and maintenance expenses of the aforementioned services; and (ii) the charges constitute the creation of a funding mechanism/other governmental fiscal activity which does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment; and

WHEREAS, the adoption of this Resolution is exempt from CEQA for the same reason;

NOW, THEREFORE, be it resolved by the Governing Board of the Big Bear Area Regional Wastewater Agency as follows:

1. Recitals. The recitals set forth above are true and correct and by this reference incorporated herein.

2. New User Charge Adopted. The Governing Board hereby adopts the User Charge in the maximum amount set forth below.

Collecting Agency	\$/EDU (effective July 1, 2021)
Base Rate	\$231.77
City of Big Bear Lake	\$240.24
Big Bear City CSD	\$224.88
CSA 53 B	\$220.61

The User Charge imposed on each Collecting Agency is determined in accordance with the provisions of the Agreement in order to fairly allocate the costs of BBARWA based on demand placed on the system by each Collecting Agency.

3. Amendment to Code of Regulations and Ordinances. Chapter 5.16.020 of the Big Bear Area Regional Wastewater Agency Code of Regulations and Ordinances is hereby amended in its entirety to read as follows:

“Chapter 5.16

USER CHARGES

5.16.020 User Charge.

BBARWA is authorized to adopt a User Charge for provision of wholesale sewer service. The rates for the User Charge may be adopted in accordance with applicable law, from time to time, by ordinance or resolution. BBARWA shall maintain a schedule of rates for its User Charge at its offices, and/or post such schedule of rates on the BBARWA website, and such schedule of rates for the User Charge shall be updated upon adoption and implementation of new or increased User Charges.

The User Charge imposed on each Collecting Agency is determined in accordance with the provisions of the Payment and Collection Agreement, dated as of August 23, 2011, by and among BBARWA and the Collecting Agencies, as has been amended from time to time in order to fairly allocate the costs of BBARWA based on demand placed on the system by each Collecting Agency.

The rates will be effective July 1 of each fiscal year with the member agencies receiving notice of the rate change by May 1 of the preceding fiscal year. The rate schedule represents the maximum rates that may be charged by the Agency, and in any given year, may be reduced by Governing Board action.”

4. Amendments to User Charges. On or before adoption of BBARWA's annual budget, or at any other appropriate time, the Governing Board may review the amount of the User Charge that will be effective for the upcoming fiscal year and may exercise its authority to take action in regard to said User Charge. Such action may include, without limitation, establishing a reduced amount for the User Charge than the amount set forth in Section 2 above for the applicable fiscal year. In the event the Governing Board does not take any such action, the amount of the User Charge set forth in Section 2 above shall remain in effect for the applicable fiscal year.

5. Relationship Between Costs and User Charges. By adoption of this Resolution, the Governing Board finds that the amount of the User Charge is no more than necessary to cover the costs of providing wholesale sewer service, and that the manner in which those costs are allocated bears a fair or reasonable relationship to burdens on, or benefits received from, BBARWA's wholesale sewer service activities. This relationship is more fully documented in the Report. The new User Charge shall not be used for any other purpose than that for which the new User Charge is imposed. The new User Charge is not imposed upon real property or upon persons as an incident of property ownership. The User Charge is imposed only as a condition of service upon the request of the Collecting Agency. As documented in the Report, the User Charge is based upon reasonable estimates of the demand placed upon BBARWA in its role as a provider of regional wholesale sewer services.

6. Validity. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, including any portion of the User Charge adopted herein, such invalidity shall not affect other provisions or applications of this Resolution, including any portion of the fee not held invalid, and to this end the provisions of this Resolution are declared to be severable.

7. Prior Rates. All ordinances, resolutions or administrative actions by the Governing Board, or parts thereof that are inconsistent with any provision of this Resolution, are hereby superseded only to the extent of such inconsistency.

8. Effective Date. This Resolution shall be effective immediately. The increased rates for the User Charges set forth herein shall become effective as authorized herein.

ADOPTED, this 24th day of March, 2021.

James Miller, Chair of the Governing Board of the
Big Bear Area Regional Wastewater Agency

ATTEST:

I, Karyn Oxandaboure, Secretary of the Big Bear Area Regional Wastewater Agency, DO HEREBY CERTIFY, that the foregoing Resolution of the Governing Board of the Big Bear Area Regional Wastewater Agency, being Resolution No. R. 02-2021, was duly adopted at a regular meeting of the Governing Board held on the 24th day of March 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Karen Oxandaboure, Secretary of the Governing Board
of the Big Bear Area Regional Wastewater Agency