

# SYSTEM DEVELOPMENT CHARGES



## System Development Charges: Understanding the Legal & Technical Requirements

John Ghilarducci



# Key Characteristics of SDCs

- SDCs are one-time charges, not ongoing rates. Paid at the time of development.
- SDCs are available for water, wastewater, stormwater, transportation, and parks.
- SDCs are for capital only, in both their calculation and in their use.
- SDCs include both existing and future (planned) infrastructure cost components.
- SDCs are for “system” facilities, not “local” facilities.



# Comparative Legal Authority

	Oregon	Washington	Idaho	California	Colorado
Water	ORS 223.297	RCW 35.92.025 RCW 57.08.005	IC §§ 50-10 IC §§ 67-82	CGC 66000	CRS §29-20-104, 104.5
Wastewater	ORS 223.297	RCW 35.92.025 RCW 57.08.005	IC §§ 50-10 IC §§ 67-82	CGC 66000	CRS §29-20-104, 104.5
Stormwater	ORS 223.297	RCW 35.92.025 RCW 57.08.005	IC §§ 50-10 IC §§ 67-82	CGC 66000	CRS §29-20-104, 104.5
Transportation	ORS 223.297	RCW 82.02	IC §§ 67-82	CGC 66000	CRS §29-20-104, 104.5
Parks	ORS 223.297	RCW 82.02	IC §§ 50-10 IC §§ 67-82	CGC 66000	CRS §29-20-104, 104.5
Other	Schools (CET) ORS 320.170	Schools, Fire RCW 82.02	Public Safety IC §§ 67-82	Public Facilities CGC 66000	Capital Facilities CRS §29-20-104, 104.5



# Legal Framework for SDCs

**ORS 223.297 - 314, known as *the SDC Act*, provides “a uniform framework for the imposition of system development charges by governmental units” and establishes “that the charges may be used only for capital improvements.”**





# Definitions

## 223.299 Definitions for

in ORS 223.297 to 223.31

(1)(a) “Capital improv

for the following:

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(B) Waste water col

disposal;

(C) Drainage and flo

(D) Transportation;

(E) Parks and recrea

(b) “Capital improv

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use decision. [1989 c.449 §

1995 c.595 §28; 2003 c.765 §

(2) “**Improvement fee**” means a fee for costs associated with capital improvements **to be constructed**.

(3) “**Reimbursement fee**” means a fee for costs associated with capital improvements **already constructed, or under construction** when the fee is established, for which the local government determines that **capacity exists**.

(4)(a) “**System development charge**” means a reimbursement fee, an improvement fee or a combination thereof **assessed or collected at the time of increased usage of a capital improvement or issuance of a development permit, building permit or connection to the capital improvement**. “System development charge” includes that portion of a sewer or water system connection charge that is **greater than the amount necessary to reimburse the local government for its average cost of inspecting and installing connections** with water and sewer facilities.

✓ *Not a hook-up fee*



# Prohibited Methodologies

223.301 Certain system development charges and methodologies prohibited. (1) As used in this section, “employer” means any person who contracts to pay remuneration for, and secures the right to direct and control the services of, any person.

(2) A local government may not establish or impose a system development charge that requires an employer to pay a reimbursement fee or an improvement fee based on:

(a) The number of individuals hired by the employer after a specified date; or

(b) A methodology that establishes an amount of the fee that is determined by the number of employees of an employer without regard to new construction, new development or new use of an existing structure by the employer. [1999 c.1098 §2; 2003 c.802 §19]

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(2) A local government may not establish or impose a system development charge that requires an employer to pay a reimbursement fee or an improvement fee based on:

(a) **The number of individuals hired by the employer after a specified date;** or

✓ *Can't be based on added employees*



# Use of Revenues

**223.302 System development charges; use of revenues; review procedures.** (1) Local governments are authorized to establish system development charges and to use the moneys produced therefrom for the purposes specified in ORS 223.297 to 223.314.

revenues from system development charges in violation of the limitations described in ORS 223.307, the local government shall replace the misspent amount with moneys derived from sources other than system development charges. Replacement moneys must be deposited in a fund designated for the system development charge revenues not later than one year following a determination that the funds were misspent.

(2) Local governments shall adopt administrative review procedures by which any citizen or other interested person may challenge an expenditure of system development charge revenues. Such procedures shall provide that such a challenge must be filed within two years of the expenditure of the system development charge revenues. The decision of the

local government shall be final unless the citizen or other interested person in ORS 34.010 to 34.100.

(3)(a) A local government may challenge an expenditure of system development charge revenues. Such procedures shall provide that such a challenge must be filed within two years of the expenditure of the system development charge revenues. The decision of the

(b) If a local government has adopted an administrative review procedure for system development charges, the local government shall give adequate notice regarding the procedure for review to a person who makes a written objection to the calculation of a system development charge. [1989 c.449 §3; 1991 c.902 §27; 2001 c.662 §2; 2003 c.765 §3; 2003 c.802 §20]

ORS 223.297 to 223.314. If a local government expends revenues from system development charges in violation of the limitations described in ORS 223.307, the local government shall replace the misspent amount with moneys derived from sources other than system development charges. Replacement moneys must be deposited in a fund designated for the system development charge revenues not later than one year following a determination that the funds were misspent.

(2) Local governments shall adopt administrative review procedures by which any citizen or other interested person may challenge an expenditure of system development charge revenues. Such procedures shall provide that such a challenge must be filed within two years of the expenditure of the system development charge revenues. The decision of the

# Methodology

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(A) Promote

contributing no more than an equitable share to the cost of existing facilities.

(B) Be available for public inspection.

(1)(a) **Reimbursement fees** must be established or modified by ordinance or resolution setting forth a **methodology that is, when applicable, based on:**

(A) **Ratemaking principles** employed to finance publicly owned capital improvements;

(B)

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(A) **Promote the objective of future system users contributing no more than an equitable share to the cost of existing facilities.**

(B) **Be available for public inspection.**

✓ *Reimbursement fee methodology*

✓ *Cost to serve*





# Methodology cont'd

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- (2) **Improvement fees must:**
- (a) Be established or modified by ordinance or resolution setting forth a **methodology that is available for public inspection and demonstrates consideration of:**
    - (A) The projected cost of the capital improvements identified in the plan and list adopted pursuant to ORS 223.309 that are needed to increase the capacity of the systems to which the fee is related; and
    - (B) The need for increased capacity in the system to which the fee is related that will **be required to serve the demands placed on the system by future users.**
  - (b) Be calculated to **obtain the cost of capital improvements for the projected need for available system capacity for future users.**

✓ *Improvement fee methodology*  
✓ *“Demonstrates” is new language*

✓ *Growth-related capacity only*

## Key Legal Cases:

- ◆ **City of Bend**
- ◆ **City of West Linn**



# Methodology Cont'd

(4) The ordinance or resolution that establishes or modifies an improvement fee shall also provide for a credit against such fee for the construction of a qualified public improvement” means a capital improvement that is required as a condition of development approval and is identified in the plan and list adopted pursuant to ORS 223.309.

(a) Not located on the subject of development approval.

(b) Located in whole or in part on the subject of development approval with greater capacity than the project to which the credit is applied.

(5)(a) The credit amount shall be the amount of the improvement fee only for the improvement being constructed, and shall not exceed the portion of such improvement fee that exceeds the minimum standard fee for that particular development project, less any credit under subsection (4)(b) of this section.

(b) A local government may provide a credit under subsection (4) of this section.

(A) That the applicable ordinance or resolution under subsection (4) of this section.

(B) By reference to the improvement fee schedule and list adopted pursuant to ORS 223.309.

(c) When the construction of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project. **This subsection does not prohibit a local government from providing a greater credit, or from establishing a system providing for the transferability of credits, or from providing a credit for a capital improvement not identified in the plan and list adopted pursuant to ORS 223.309, or from providing a share of the cost of such improvement by other means, if a local government so chooses.**

(d) Credits must be used in the time specified in the ordinance but not later than 10 years from the date the credit is given.

(4) The ordinance or resolution that establishes or modifies an improvement fee shall also provide for a **credit** against such fee for the construction of a qualified public improvement. A “qualified public improvement” means a capital improvement that is required as a

✓ Credits

(c) When the construction of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project. **This subsection does not prohibit a local government from providing a greater credit, or from establishing a system providing for the transferability of credits, or from providing a credit for a capital improvement not identified in the plan and list adopted pursuant to ORS 223.309, or from providing a share of the cost of such improvement by other means, if a local government so chooses.**

✓ Many local governments far exceed minimum requirements

(d) Credits must be used in the time specified in the ordinance but not later than **10 years** from the date the credit is given.



# Methodology Cont'd

(8) A change in the amount of a reimbursement fee or an improvement fee is **not a modification of the system development charge**

✓ *Indexed  
inflationary*

(b) **Legal action intended to contest the methodology used for calculating a system development charge may not be filed after 60 days following adoption** or modification of the system development charge ordinance or resolution by the local government. A person shall request judicial review of the methodology used for calculating a system development charge only as provided in ORS 34.010 to 34.100.

(B) Published by a **recognized organization** or agency that produces the index or data source for reasons that are independent of the system development charge methodology; and

(C) **Incorporated as part of the established methodology or identified and adopted in a separate ordinance, resolution or order.**  
[1989 c.449 §4; 1991 c.902 §28; 1993 c.804 §20; 2001 c.662 §3; 2003 c.765 §§4a,5a; 2003 c.802 §21]

## Key Legal Cases:

- ◆ **City of Eugene**
- ◆ **City of Redmond**



# Authorized Expenditure

## 223.307 Authorized expenditure of system

development charges. (1) **Reimbursement fees** may be

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**development charges. (1) Reimbursement fees** may be

spent only on **capital improvements associated with the**

(3) System development charges may **not be expended** for costs associated with the construction of **administrative office facilities** that are more than an incidental part of other

(4) **Any capital improvement being funded wholly or in**

(5) Notwithstanding subsections (1) and (2) of this section, system development charge revenues may be expended on the costs of complying with the provisions of ORS 223.297 to 223.314, including **the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures.** [1989 c.449 §5; 1991 c.902 §29; 2003 c.765 §6; 2003 c.802 §22]



# Preparation of CIP

223.309 Preparation of capital improvement plan for systems financed by system development charges

(1) Prior to the imposition of a system development charge by a local government, the local government shall prepare a capital improvement plan and list of projects to be financed by the fund, in order to improve the system to a percentage of the improved capacity.

(2) A local government that has prepared a plan and the list described in subsection (1) of this section **may modify the plan and list at any time**. If a system development charge will be increased by a proposed modification of the list to include a capacity increasing capital improvement, as described in ORS 223.307 (2):

✓ *Reduced notice for additions to the project*

(2) A local government that has prepared a plan and the list described in subsection (1) of this section may modify the plan and list at any time. If a system development charge will be increased by a proposed modification of the list to include a capacity increasing capital improvement, as described in ORS 223.307 (2):

(a) The local government shall hold a public hearing if the local government receives a written request for a hearing on the proposed modification within seven days of the date the proposed modification is scheduled for implementation.

(b) The local government shall **hold a public hearing if the local government receives a written request** for a hearing on the proposed modification within seven days of the date the proposed modification is scheduled for implementation.

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(c) Notwithstanding ORS 294.100, a public hearing is **required** if the local government does not receive a written request for a hearing.

(c) Notwithstanding ORS 294.100, a public hearing is **required** if the local government does not receive a written request for a hearing.

(d) The decision to implement the proposed modification shall be judicially reviewed under ORS 34.100. [1989 c.449 §6; 2003 c.765 §7a; 2003 c.802 §23]

## Key Legal Cases:

- ◆ City of Bend
- ◆ City of West Linn
- ◆ City of Portland



# Annual Accounting

## 223.311 Deposit of system development charge

revenues; annual accounting. (1) System development charge revenues must be deposited in accounts designated for such moneys. The local government shall provide an annual accounting

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**revenues; annual accounting.** (1) System development charge revenues must be deposited in accounts designated for such moneys. The local government shall **provide an annual accounting, to be completed by January 1 of each year, for system development charges showing the total amount of system development charge revenues collected for each system and the projects that were funded in the previous fiscal year.**

✓ *Reporting requirements*

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223.297 to 223.311, as described in ORS 223.507. [1989  
c.449 §7; 1991 c.902 §31; 2001 c.662 §5; 2003 c.765 §8a;  
2003 c.802 §24]



# Application

**223.313 Application of ORS 223.297 to 223.314.** (1) ORS 223.297 to 223.314 shall apply only to system development charges in effect on or after July 1, 1991.

(2) The provisions of ORS 223.297 to 223.314 shall not be applicable if they are construed to impair bond obligations for which system development charges have been pledged or to impair the ability of local governments to issue new bonds or other financing as provided by law for improvements allowed under ORS 223.297 to 223.314. [1989 c.449 §8; 1991 c.902 §32; 2003 c.802 §25]

**223.314 Establishment or modification of system development charge not a land use decision.** The establishment, modification or implementation of a system development charge, or a plan or list adopted pursuant to ORS 223.309, or any modification of a plan or list, is **not a land use decision** pursuant to ORS chapters 195 and 197. [1989 c.449 §9; 2001 c.662 §6; 2003 c.765 §9]

# 2001 Legislation

- ◆ **Allows indexing of the charges without notification (predictability)**
- ◆ **Limits includable costs to those projects providing capacity “available” or “needed” for future users only (no correcting existing deficiencies)**
- ◆ **Methodology must consider “gifts or grants” by others, including federal and state governments (tough on transportation reimbursement fees)**
- ◆ **Notification and process changes**



# 2003 Legislation

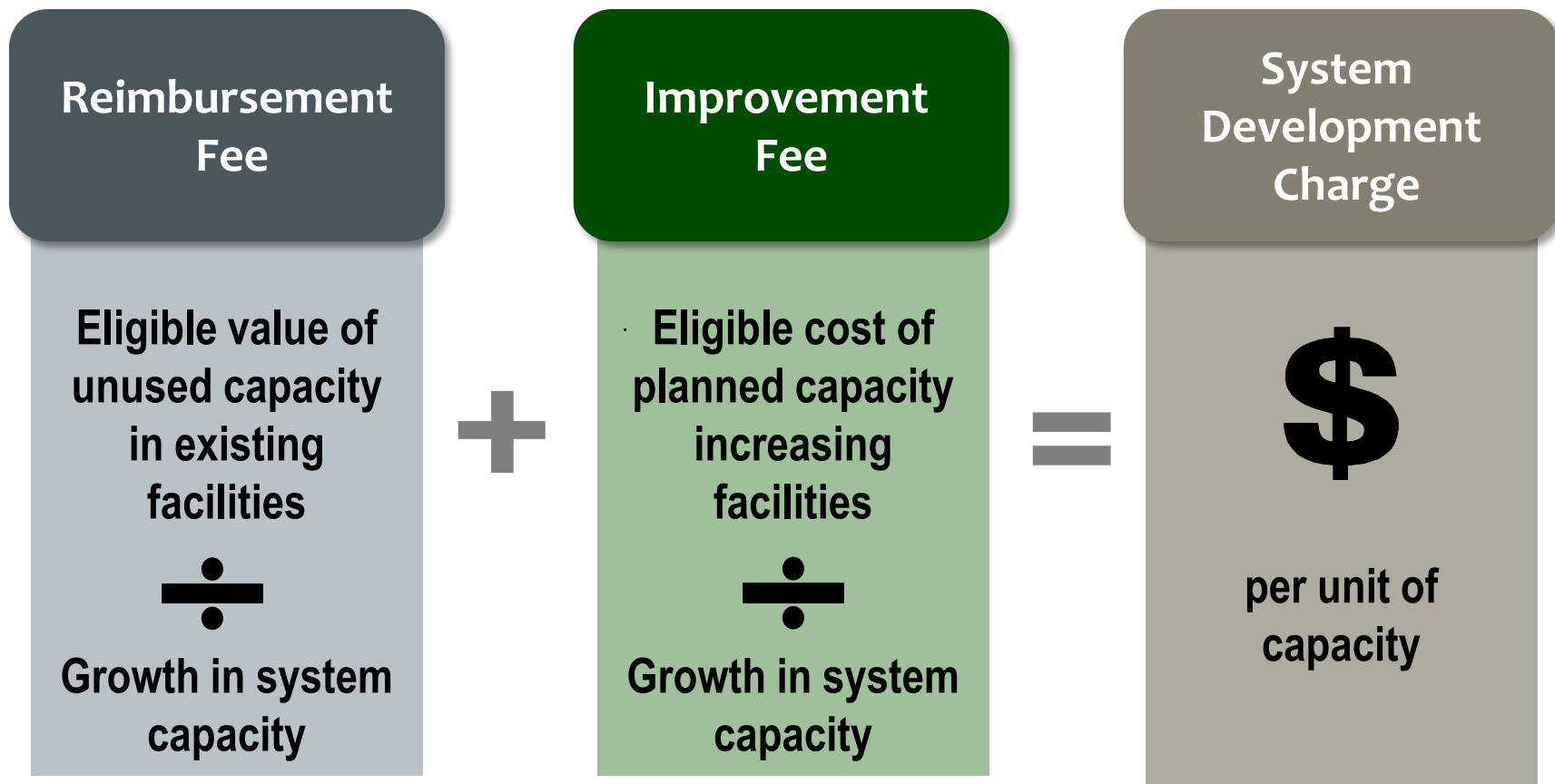
- ◆ **Clarification of legislative intent and housekeeping throughout**
- ◆ **Must demonstrate consideration of key factors (e.g., growth capacity needs)**
- ◆ **May charge both fees only if not for the same capacity**
- ◆ **Changes in project costs / capacities not methodology changes**
- ◆ **30-day notice required for changes to project lists that result in higher fees**



# 2016 Legislation

- ◆ **Senate Bill 1533 (SB 1533)**
  - Provides the option to implement construction excise taxes (CETs) to help pay for affordable housing programs
    - Whole or partial fee waivers or reductions.
    - **Whole or partial waivers of system development charges or impact fees set by the city or county.**
    - Finance-based incentives.
    - Full or partial exemption from ad valorem property taxes on the terms...

# The SDC Calculation

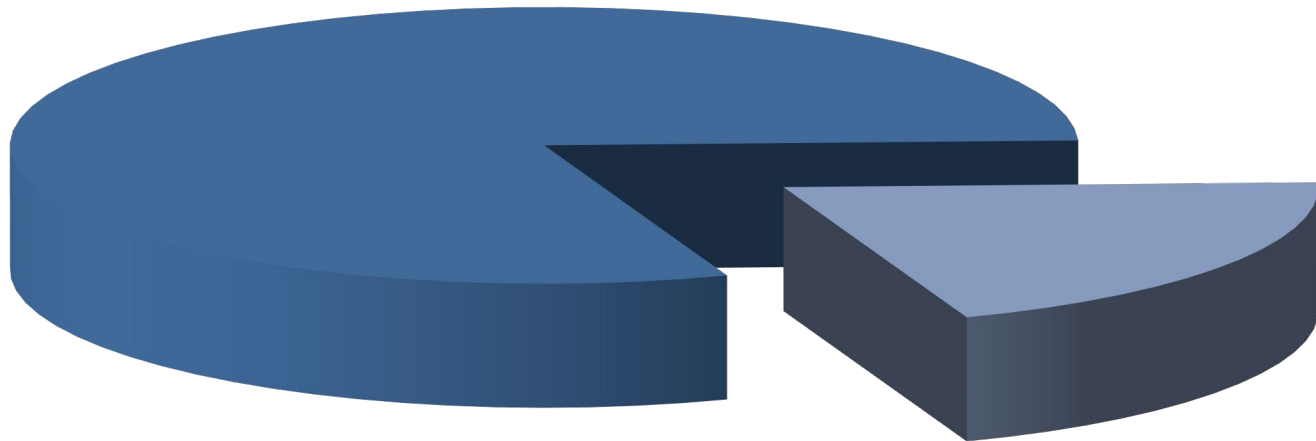




# Reimbursement Fee Cost Basis

## Sample Existing Facilities Cost

*reimbursement fee eligible*



*Unused Capacity*

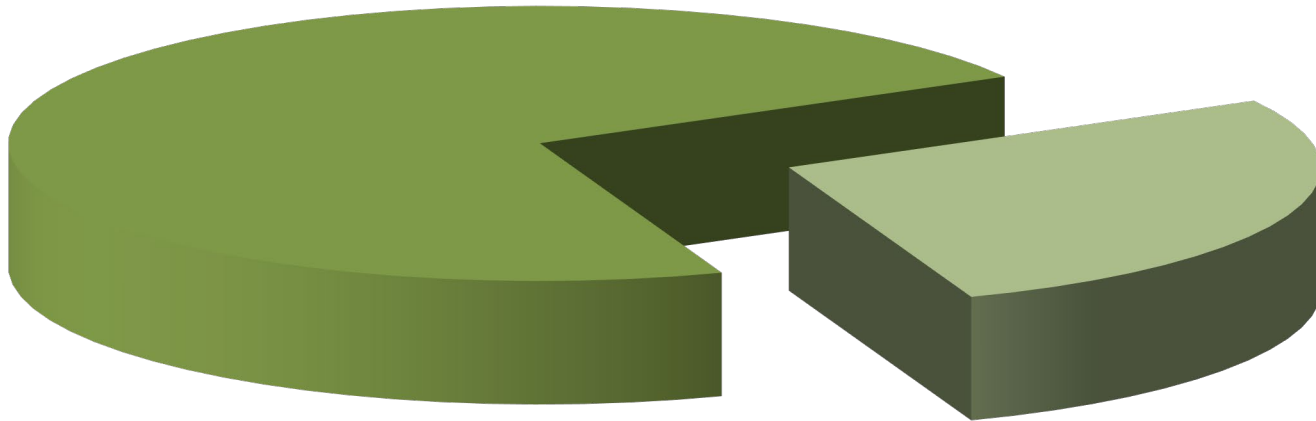


# Improvement Fee Cost Basis

## Sample Planned Capital Costs

*improvement fee eligible*

*To Serve Existing Customers*



*Capacity Increasing*



# Key Assumptions

- ◆ **Planned capital projects will provide system-wide capacity of 30 million gallons per day maximum day demand (MDD)**
- ◆ **All project costs are in current dollars**
- ◆ **Charge basis: meter equivalents, based on 5/8" x 3/4" meter size**
- ◆ **Customer base (in MEs) will grow proportionately from current MDD of 13 MGD to 30 MGD**
- ◆ **Two charge options/scenarios:**
  - Uniform charge: single SDC (per ME) systemwide
  - Area-specific charge: single base SDC (per ME) systemwide with a SDC surcharge assessed to developments in Zone 2
- ◆ **Calculated charges represent maximum allowable – reduced amounts may be implemented**



# SDC Calculation Summary

## Capacity Analysis

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Projected Growth	25,371	Meter Equivalents
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## Reimbursement Fee Calculation

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Allocable Unused Capacity Cost	\$ 50,457,148	
Reimbursement Fee	\$ 1,989	per Meter Equivalent

## Improvement Fee Calculation

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Capacity Increasing Project Costs	\$ 23,377,655	
Improvement Fee	\$ 921	per Meter Equivalent



# SDC Calculation Summary

## System Development Charge

Reimbursement Fee		\$ 1,989	per ME
Improvement Fee		921	per ME
Subtotal		\$ 2,910	per ME
plus: Administrative Cost Recovery	0.6828%	\$ 19.87	per ME
Total Water SDC		\$ 2,930	per ME

*The average single-family residence has a 5/8" x 3/4" meter, or 1.0 ME.*





# SDC Schedule

Meter Size	Flow Factor	SDC
5/8" x 3/4"	1.0	\$ 2,930
3/4"	1.5	4,395
1"	2.5	7,325
1 1/2"	5.0	14,650
2"	8.0	23,440
3"	16.0	46,880
4"	25.0	73,250
6"	50.0	146,500
8"	80.0	234,400
10"	115.0	336,950





# Customer Base / Growth

FY 2010 Customers by Meter Size				FY 2011	FY 2011
<u>Meter Size</u>	<u>Connections</u>	<u>Flow Factor</u>	<u>Total MEs</u>	<u>Growth</u>	<u>Total MEs</u>
5/8 x 3/4"	6,818	1.00	6,818.00	0.5%	6,852.09
3/4"	2,315	1.50	3,472.50	0.5%	3,489.86
1"	1,175	2.50	2,937.50	0.5%	2,952.19
1.5"	194	5.00	970.00	0.5%	974.85
2"	269	8.00	2,152.00	0.5%	2,162.76
3"	55	16.00	880.00	0.5%	884.40
4"	45	25.00	1,125.00	0.5%	1,130.63
6"	19	50.00	950.00	0.5%	954.75
<b>Totals</b>	<b>10,890</b>		<b>19,305</b>		<b>19,402</b>

Current: FY 2011 (1)	End of Period: 30 MGD (2)	Net Growth
# of Meter Equivalents	# of Meter Equivalents	# of Meter Equivalents
19,402	44,773	25,371
<b>19,402</b>	<b>44,773</b>	<b>25,371</b>



# Reimbursement Fee Cost Basis

	<b>Original Cost [1]</b>	<b>Unused Capacity [2]</b>	<b>Allocable Cost</b>
Source / Supply	\$ 21,328,951	57%	\$ 12,086,405
Diversion	1,036,763	57%	587,499
Treatment	4,686,673	0%	-
Transmission - Non-Tunnel	11,299,683	28%	3,138,801
Transmission - Tunnel	1,110,385	10%	114,867
Distribution	19,796,333	57%	11,217,922
Meters & Services	3,774,846	0%	-
Hydrants	2,238,196	57%	1,268,311
Water Rights	14,436	57%	8,180
General Plant	1,556,514	44%	677,619
plus: Recently Completed Treatment Projects	30,000,000	100%	30,000,000
<b>Subtotal</b>	<b>\$ 96,842,780</b>	<b>61%</b>	<b>\$ 59,099,605</b>
<b>less: Contributions In Aid of Construction</b>	<b>14,161,848</b>	<b>61%</b>	<b>8,642,458</b>
<b>Allocable Unused Capacity</b>	<b>\$ 82,680,932</b>		<b>\$ 50,457,148</b>

**NOTES:**

[1] Source: Fixed Asset Summary. Water Division. February 28, 2011.

[2] Unused capacity percentage determined by current max day demand (13 MGD), total asset capacity, and future max day demand (30 MGD).



# Improvement Fee Cost Basis

	<b>Project Cost [1]</b>	<b>% Capacity Increasing [2]</b>	<b>Allocable Cost</b>
Replacement Pipe - Diversion Line	\$ 460,062	56.7%	\$ 260,702
Treatment Improvements	7,173,019	86.1%	6,173,019
Transmission Improvements	22,506,500	63.0%	14,178,350
Distribution Mains	8,875,072	9.7%	858,830
Transportation (Vehicle) Costs	2,803,780	55.1%	1,544,609
Buildings & Grounds Improvements	2,000,000	18.1%	362,146
<b>Subtotal</b>	<b>\$ 43,818,433</b>		<b>\$ 23,377,655</b>
<b>Allocable Capacity Increasing Cost</b>			<b>\$ 23,377,655</b>

**NOTES:**

[1] Source: FY 2011 Final Water Capital Budget. Inflation removed from finalized project costs. Provides capacity for 2030 maximum day demand: 30 MGD.

[2] Projects that replace system assets that provide capacity to build-out are assigned a growth allocation proportionate to its share of the future population base: 56.7%.

Treatment - Current capacity: 22 MGD. Current max day demand: 13 MGD. Post-project capacity: 30 MGD. 100% growth allocation (excluding Filter 1-4 Replacement).

Transmission - Zone 2 projects. 100% capacity provided for growth.

Transmission - 16" Transmission Main Replacement. Current capacity: 18 MGD. Post-project capacity: 30 MGD. Growth =  $1 - 18/30 = 40\%$

Distribution Mains - Various Main Replacements. Partial increase in capacity for growth to 30 MGD max day demand, based on improved pipe sizes and 8" existing need.

Distribution - All Other. Provide no additional capacity for growth as capacity for build-out development will be provided by Various Water Main Replacements project.



# Project List Detail

Project Title	Project Cost	% Capacity Increasing	SDC Eligible Cost
<b>Diversion/Outlet</b>			
Replacement Pipe - Diversion Line	\$ 460,062	56.7%	\$ 260,702
<b>Treatment</b>			
WTP Expansion Construction	\$ 1,000,000	100.0%	\$ 1,000,000
WTP Engineering Svcs During Construction	\$ 400,000	100.0%	\$ 400,000
WTP Filters 1-4 Filter Media Replacement	\$ 1,000,000	0.0%	
WTP Cl2 Generator Unit #2			
WTP Filter 7 & 8, GT2 Pre-Design Study	\$ 25,000	100.0%	\$ 25,000
WTP Filter 7 & 8, GT2 Permitting	\$ 25,000	100.0%	\$ 25,000
WTP Filter 7 & 8, GT2 Construction	\$ 2,700,000	100.0%	\$ 2,700,000
WTP Filter 7 & 8, GT2 Eng. Svcs Construction	\$ 300,000	100.0%	\$ 300,000
WTP - Equipment	\$ 1,723,019	100.0%	\$ 1,723,019
<b>Transmission</b>			
Pressure Zone 2 Land Acquisition			
Pressure Zone 2 Pump Station Design	\$ 160,500	100.0%	\$ 160,500
Pressure Zone 2 Pump Station Construction	\$ 575,000	100.0%	\$ 575,000
Pressure Zone 2 16" Pipe	\$ 1,080,000	100.0%	\$ 1,080,000
Pressure Zone 2 Svc. Reservoir #1 (1.65 MG)	\$ 2,250,000	100.0%	\$ 2,250,000
Pressure Zone 2 Svc. Reservoir #2 (1.65 MG)			
Pressure Zone 2 Additional Pump			
Trans. Main Tunnel Design/Permit	\$ 150,000	100.0%	\$ 150,000
Trans. Main Tunnel Construction	\$ 1,500,000	100.0%	\$ 1,500,000
16" Trans. Main Replacement Design/Permit: 14.5 mgd current, 30 future	\$ 560,000	51.7%	\$ 289,333



# Key Policy Issues

1. Reimbursement fee cost basis
2. Improvement fee cost basis
3. Unit bases for the charges
4. Credit approaches
5. Multi-modal transportation SDCs
6. Level of service issues (parks)
7. Nonresidential park SDCs
8. Area-specific charges
9. Affordability



# John Ghilarducci

Principal

[johng@fcsgroup.com](mailto:johng@fcsgroup.com)

(425) 336-1865

Contact FCS GROUP:

**(425) 867-1802**

**[www.fcsgroup.com](http://www.fcsgroup.com)**