

BAWSCA

Bay Area Water Supply & Conservation Agency

BOARD POLICY COMMITTEE

August 14, 2013

1:30 p.m.

BAWSCA Offices, 155 Bovet Road, San Mateo, 1st Floor Conference Room
(Directions on page 2)

AGENDA

<u>Agenda Item</u>	<u>Presenter</u>	<u>Page#</u>
1. <u>Call To Order, and Roll Call</u> Roster of Committee Members (<i>Attachment</i>)	(Guzzetta)	Pg 3
2. <u>Comments by Chair</u>	(Guzzetta)	
3. <u>Consent Calendar</u> A. Approval of Minutes from the June 12, 2013 meeting (<i>Attachment</i>)	(Guzzetta)	Pg 5
4. <u>Public Comment</u> <i>Members of the public may address the committee on any issues not listed on the agenda that are within the purview of the committee. Comments on matters that are listed on the agenda may be made at the time the committee is considering each item. Each speaker is allowed a maximum of three (3) minutes.</i>	(Guzzetta)	
5. <u>Action Items</u> A. Establishment of the Recommended California Employers' Retiree Benefit Trust (CERBT) through CalPERS to fund Other Post-Employment Benefits Costs (<i>Attachment</i>) <u>Issue:</u> What irrevocable trust is most appropriate for BAWSCA to prefund OPEB costs starting FY 2013-14? <u>Information to Committee:</u> Written and Oral Report <u>Committee Action Requested:</u> Comments and questions B. Resolution Approving Temporary Appointment of Arthur Jensen as Special Counsel to the CEO/GM, with Compensation Consistent with the Salary Schedule for the CEO/GM Position (<i>Attachment</i>) <u>Issue:</u> What outside expertise and resources are needed to achieve critical results during FY 2013-14? <u>Information to Committee:</u> Written and oral reports <u>Committee Action Requested:</u> Comments and questions.	(Tang) (Sandkulla)	Pg 13 Pg 31
6. <u>Reports</u> A. Bond Surcharge Collection - Update B. Economic Impact of Drought Analysis - Update C. BAWSCA Pilot Water Transfer Plan - Update	(Tang) (Sandkulla) (Sandkulla)	
7. <u>Comments by Committee Members</u>	(Guzzetta)	

8. **Adjournment to the next meeting on October 9, 2013 at 1:30pm in the 1st floor conference room of the BAWSCA office building, at 155 Bovet Road, San Mateo. (Guzzetta)**

*Upon request, the Board Policy Committee of the Bay Area Water Supply and Conservation Agency (BAWSCA) will provide for written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, including auxiliary aids or services, to enable individuals with disabilities to participate in public meetings. Please send a written request, including your name, mailing address, phone number and brief description of the requested materials and the preferred alternative format or auxiliary aid or service at least two (2) days before the meeting. Requests should be sent to: **Bay Area Water Supply & Conservation Agency, 155 Bovet Road, Suite 650, San Mateo, CA 94402** or by e-mail at bawasca@bawasca.org*

*All public records that relate to an open session item of a meeting of the Board Policy Committee that are distributed to a majority of the Committee less than 72 hours before the meeting, excluding records that are exempt from disclosure pursuant to the California Public Records Act, will be available for inspection at **BAWSCA, 155 Bovet Road, Suite 650, San Mateo, CA 94402** at the same time that those records are distributed or made available to a majority of the Committee.*

Directions to BAWSCA

From 101: Take Hwy.92 Westbound towards Half Moon Bay. Exit at El Camino Northbound (move into the far left Lane) Left at the 1st stop light which is Bovet Road (Washington Mutual Building will be at the corner of Bovet and El Camino). Proceed West on Bovet Road past Albertson's to two tall buildings to your left. Turn left into the driveway between the two buildings and left again at the end of the driveway to the "Visitor" parking spaces in front of the parking structure.

From 92: Exit at El Camino Northbound and follow the same directions shown above



BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

BOARD POLICY COMMITTEE

Committee Roster:

Rob Guzzetta, California Water Service Company (Chair)

Al Mendall, City of Hayward (Vice-Chair)

Randy Breault, City of Brisbane/GVMID (BAWSCA Vice-Chair)

Charlie Bronitsky, Estero MID

Irene O'Connell, City of San Bruno (BAWSCA Chair)

Tom Piccolotti, North Coast County Water District

Barbara Pierce, Redwood City

Louis Vella, Mid-Peninsula Water District

John Weed, Alameda County Water District

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**BAY AREA WATER SUPPLY AND CONSERVATION AGENCY
BOARD POLICY COMMITTEE**

**June 12, 2013 – 1:30 p.m.
BAWSCA Offices, 155 Bovet Road, San Mateo, 1st Floor Conference Room**

MINUTES

1. Call to Order: 1:30 p.m.

Committee Vice Chair Al Mendall called the meeting to order at 1:30 pm. A list of Committee members present (7) and absent (2), and other attendees is attached.

The Committee took the following actions and discussed the following topics:

- 2. Comments by Chair:** Vice Chair Mendall commented that he was very pleased with the 10-year anniversary reception held on May 16th prior to the Board meeting. He learned a lot from the attendees and the speakers, and commented that the event was both functional and enjoyable.

Director Vella added that he was amazed at what everyone had to say. The speakers shared interesting perspectives on the goals and achievements of the agency. As a Board member since 2003, Director Vella stated that he is impressed with the agency's accomplishments in the period of 10 years.

Mr. Jensen confirmed that there were photos taken which will be shared with the Board.

- 3. Public Comments:** There were none.

- 4. Consent Calendar:** Approval of Minutes from the April 10, 2013 meeting.

Director O'Connell made a motion, seconded by Director Vella, to approve the Minutes of the Board Policy Committee meeting held on April 10, 2013. The motion carried unanimously.

5. Action Items:

- A. Approval of Professional Services Contract with EKI:** Mr. Jensen reported that EKI is the firm at which Anona Dutton accepted her new position. The purpose of the agreement with EKI is to obtain temporary resources needed while filling the vacancy created by Ms. Dutton's departure from BAWSCA.

The specialized water resources services provided by Anona Dutton will complete the work in progress in the current fiscal year, maintain the momentum of critical activities associated with the adopted FY 2013-14 work plan, and support the transition of the incoming staff following the completion of the hiring process.

Mr. Jensen reported that he has already entered into an initial agreement with EKI for a not-to-exceed \$25,000 under his discretionary authority to get through the work in progress in the current fiscal year, and up to the July 18th Board meeting. He noted that Ms. Dutton is not working full time under the contract. He emphasized that should the current contract fall short of what the agency needs through July 18th, he may need to reschedule some work or authorize work beyond his authority. In either case he would inform the chair of the Board. Mr. Jensen does not anticipate having to take such measures, but said the Committee should be aware that it is a possibility.

The action before the Committee is to recommend that the Board increase the contract by an additional \$120,000, for a total of \$145,000, for a scope of activities anticipated through October 31, 2013, and extend the contract term to the end of the calendar year.

The initial contract was funded using available unspent funds in the FY 2012-13 budget, and the additional \$120,000 for FY 2013-14 can be funded through the General Reserve. Mr. Jensen reported that the action would not change the projected balance of the General Reserve dramatically, nor would it affect the timing of the decisions the Board might make regarding how to manage the General Reserve balance. The timing for the Board's consideration of a 4% increase in assessments would also not be affected.

The not-to-exceed cost of \$145,000 is for Ms. Dutton's services on a part time basis. Mr. Jensen noted that the hourly rate was negotiated by Ms. Sandkulla so that BAWSCA is not billed for Ms. Dutton's services as an officer of the firm, but as a high-level engineer instead.

In response to a question from Director Breault, Mr. Jensen reported that he will review how the \$145,000 equates to a percentage of time before the July Board meeting.

Director Piccolotti commented that it appears that Ms. Dutton was taken off of BAWSCA's payroll, and put on EKI's payroll but at BAWSCA's expense.

Mr. Jensen explained that Ms. Dutton was hired away from BAWSCA by EKI, and that BAWSCA is hiring Ms. Dutton as a consultant of EKI to maintain progress of ongoing work. She will be paid at the rate of a high-level engineer, instead of at a rate for the firm's VP of Water Resources, the position into which she was hired.

In response to Director Vella's question, Mr. Jensen anticipates having the replacement for Ms. Dutton's position in August or September.

Director Pierce made a motion, seconded by Director O'Connell, that the Committee recommend the Board to authorize the CEO/General Manager to negotiate and execute a contract amendment with EKI that would increase the total not-to exceed amount to \$145,000 for as-needed specialized water resources services for FY 2013-14, and authorize the transfer of \$120,000 from the General Reserve. The motion passed unanimously.

6. Brief Reports:

- A. Investment Advisor Appointment: Mr. Jensen reported that the appointment of an investment advisor was done under his discretionary spending authority and requires no action from the Committee or Board. He reported three companies were solicited, and BLX was selected for a not-to-exceed contract amount of \$6,000.

Mr. Jensen explained BLX will provide expert advise on how to invest bond proceeds used to establish a stabilization fund, and bond surcharges that will be received from agency payments. Funds are automatically deposited into money markets with the Bank of New York in a manner consistent with the Board's investment policy. The Board's investment policy has certain parameters and criteria including Security, Liquidity, and Interest Earnings. BAWSCA does not have in-house expertise on how to distribute the money to safely maximize the investment return.

BLX will also perform the arbitrage rebate calculations which are necessary toward the end of the year. Mr. Jensen reported that BLX is familiar with San Francisco and BAWSCA's bond issuance, and was the best fit for BAWSCA's needs.

As required by Board policy, uses of the CEO's discretionary spending authority are reported in budget reports submitted with each Board packet. Because of the sums of money on deposit, this contract engagement was worthy of mention to the Committee in addition to the written budget report to the Board.

Director Weed asked about an additional report that he thought BAWSCA, as a public agency, might have to submit regarding its reserves because it has certain investments and returns limitations. He recommends that BLX be given responsibility for preparing such a report in addition to the arbitrage rebate calculation.

To address Director Weed's comment, Mr. Jensen will provide a list of all the documents BAWSCA is required to file with respect to the bond issuance.

In response to Director Mendall's question, Christina Tang, BAWSCA's Senior Administrative Analyst, clarified that the \$6,000 contract with BLX is for the investment advisory services, and that the arbitrage calculation services is an additional \$2,000.

- B. July Board meeting scheduled with RFA Meeting – Mr. Jensen reported that the July Board meeting will coincide with the bi-annual meeting of the RFA Board. The agenda will include the approval of the minutes from the January 17th Board meeting, and approval of a budget of \$1,400 for FY 2013-14.

7. Special Reports:

- A. Long-term Agency Planning – A Necessary Perspective: Mr. Jensen reported that the SFPUC Commissioner Anson Moran asked him and Steve Ritchie to provide a joint presentation on what each agency is doing with respect to long-term water supply

planning, and how the two agencies are working together. At the present time the stated objective for the presentation to the Commission is to identify what each agency is doing and whether there are issues neither agency is addressing. The presentations will be made on June 25th.

The presentation to the Board Policy Committee serves three purposes. It is a preview of what will be presented to the Commission, but more importantly it reviews material presented to the Board on May 16 and connects important concepts that the Board will be addressing in critical policy decisions over the next several years.

Mr. Jensen stated that his presentation to the Commission will emphasize BAWSCA's goal to provide a reliable supply of high quality water at a fair price, augmented by the words "with certainty".

Mr. Jensen explained that "with certainty" is used to capture the essence of sound business and policy decisions. The words "with certainty" are not meant to suggest predictability in weather, hydrology or climate change. Instead, the words mean that the BAWSCA Board intends to have sufficient information with which to make confident decisions.

Mr. Jensen presented two quotes from Lincoln, which he believed demonstrate what BAWSCA is doing for its member agencies: "*The best way to predict your future is to create it,*" and "*Things may come to those who wait, but only the things left behind by those who hustle.*"

In a series of bullet points, Mr. Jensen reported that action or inaction by the City and County of San Francisco has created uncertainty for BAWSCA member agencies. Mr. Jensen explained that the SFPUC has made no commitment to meet the member agencies' future water needs and has reserved the claim that it has no obligation to do so. The SFPUC unilaterally limited water deliveries to the wholesale customers, including San José and Santa Clara, to 184 MGD through at least 2018.

Mr. Jensen noted that the Level of Service (LOS) goal the SFPUC adopted in 2008 includes rationing of up to 20% system-wide during droughts. For the wholesale customers, shortages would exceed 20% and economic losses are estimated to be billions of dollars for a single year of drought. The SFPUC is not yet able to meet its adopted LOS goal. Beyond 2018, San Francisco may or may not continue serving the cities of San José and Santa Clara.

Mr. Jensen emphasized that the above bullet points are facts, and are not disputed by San Francisco.

Mr. Jensen said the BAWSCA communities cannot flourish in the face of such large uncertainties in their water supplies, and BAWSCA's Long-Term Reliable Water Supply Strategy is designed to address and resolve these uncertainties.

Mr. Jensen then presented a series of reasonable assumptions that form the foundation of BAWSCA's planning and analyses. These assumptions include: The SFPUC will meet its LOS goal for drought reliability; the SFPUC will not provide greater drought reliability than its LOS goal; the SFPUC will provide 184 mgd to Wholesale Customers after 2018 (the contractual and perpetual supply guarantee for BAWSCA agencies other than San José and Santa Clara); the SFPUC will not provide more than 184 mgd; San Francisco will defend all of its water rights; and lastly, San Francisco will never deliver more than an average of 265 mgd to the Bay Area.

Mr. Jensen emphasized that these assumptions are fact-based, conservative, but reasonable for making business and policy decisions.

As presented by Ms. Dutton at the May 16th Board meeting, the BAWSCA Board will be asked to consider whether to adopt a regional level of service goal for drought reliability. A question the Board can think about relative to the upcoming action is how much does it make sense to invest in increased drought reliability? Alternatively, does it make sense to not invest in more reliability?

The Board will be presented with information on the economic impacts at various levels of water shortage. The costs of potential means to enhance reliability will be presented in November. The information will lead to further discussions such as beneficiaries and cost allocations.

Mr. Jensen presented BAWSCA's future challenges in the next 10 years as listed in BAWSCA's 10-year Brochure. They include San Francisco's completion of the Water System Improvement Program, threats to supply reliability as a result of FERC proceedings and issues with the Delta, completing and implementing BAWSCA's Long-Term Reliable Water Supply Strategy, water supplies for San José and Santa Clara, whether San Francisco decides to provide additional water, and preparation of a new drought allocation plan among BAWSCA members. It is critical that BAWSCA addresses these challenges and remains engaged in discussions with San Francisco.

Director Pierce asked how the information will be presented to the Commission and how it will be framed so that there is clarity with the value of working together despite the differences in goals.

Mr. Jensen stated that he plans to have a copy of the memo to the BPC included in the Commission packet along with a revised version of his presentation.

He explained that the SFPUC staff and Commissioners recognize that BAWSCA's goals are different from theirs, and stated that this recognition is key to the success of the two agencies working together.

Director Weed brought up contingency water supply and encouraged BAWSCA to look at its alternatives in a worse-case scenario should the San Francisco Regional Wa-

ter System be unable to provide water supply to its wholesale customers for more than 24 hours. Secondly, he stated that the SFPUC has 60 mgd for which they don't have customers. He noted that there is a risk of losing water rights to supply if it is not used. He said it would be to the member agencies' mutual advantage to maximize consumption of that water, and to the SFPUC's advantage to maximize sales of the supply, but added that this might not be the time nor the place to discuss his idea.

In response to Director Mendall's questions, Mr. Jensen reported the water consumption is down for San Francisco and the BAWSCA service area on both overall and per capita basis.

Director O'Connell commented that the presentation, when presented in July, should clarify the purpose for the Board.

Mr. Jensen explained that the information is relevant to critical decisions the Board will face beginning this Fall. Considering the available facts and reasonable assumptions, ignoring the issues is not an option. Mr. Jensen stated that *what* the Board chooses to do is another matter, but ignoring the issues should not be a choice.

Mr. Jensen stated the economic impacts are estimated to be in the billions of dollars per year of drought. Some dispute the estimates or the basis of the economic analyses. He added that even if the results are off by a factor of 100, the impacts would be tens of millions of dollars per year.

He said that if a drought occurs and the regional economy suffers such impacts, the public, businesses, communities and media will be asking why, when we knew the impacts could occur, this agency did nothing to prevent them. BAWSCA is the agency that has the authority to address these anticipated challenges.

The Committee suggested that the presentation should provide the board with that explanation. The Committee also suggested that Mr. Jensen's presentation to the SFPUC Commissioners on June 25th should include the fact that many San Francisco residents work in the areas that are affected by the economic impacts of water supply shortages.

Peter Drekmeier of Tuolumne River Trust provided public comments in support of the reasonable assumptions presented in Mr. Jensen's presentation. Where he disagrees with addressing additional water supply needs is in the billions of dollars in costs. He reported that Estero Municipal Improvement District was able to reduce their water use by 33% through a budget based water rates approach. He stated that if current consumption remains the same, it is almost at 20% below "BAWSCA's cap." He encourages BAWSCA to focus on water-efficient landscape irrigation and stated that TRT looks forward to working with BAWSCA on a forum in the Spring of 2014.

8. **Closed Session:** The Committee adjourned to Closed Session at 2:28.

9. **Re-convene to Open Session:** No actions were taken during closed session
10. **Recruitment of a New CEO and General Manager – Status Report:** Chair O’Connell reported that the Ad Hoc Committee for the CEO Recruitment has met seven times. Robert Burg of Ralph Anderson and Associates is leading the recruitment. Recruitment closed on June 7th with 27 applications received. The process is confidential to protect the candidates.
- Mr. Burg found seven candidates he believes the Committee should consider interviewing. The Committee’s job is to recommend the best qualified candidate to the Board by July 18th. The Committee is meeting on June 13th to determine the short list of candidates to be interviewed.
11. **Comments by Committee Members:** There were no comments.
12. **Adjournment:** The meeting was adjourned at 3:45pm. The next meeting is August 14, 2013.

Respectfully submitted,

Arthur R. Jensen, Chief Executive Officer and Secretary

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Attachments: 1) Attendance Roster

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

BOARD POLICY COMMITTEE – JUNE 12, 2013

Roster of Attendees:

Committee Members Present

Al Mendall, City of Hayward (Vice Chair)
Randy Breault, City of Brisbane/GVMID (BAWSCA Vice Chair)
Irene O’Connell, City of San Bruno (BAWSCA Chair)
Tom Piccolotti, North Coast County Water District
Barbara Pierce, City of Redwood City
Louis Vella, Mid-Peninsula Water District
John Weed, Alameda County Water District

Committee Members Absent

Rob Guzzetta, California Water Service Company (Chair)
Charlie Bronitsky, City of Foster City

BAWSCA Staff:

Art Jensen	CEO/General Manager
Christina Tang	Sr. Administrative Analyst
Lourdes Enriquez	Assistant to the Chief Executive Officer
Allison Schutte	Legal Counsel, Hanson Bridgett, LLP
Bud Wendell	Strategic Counsel, Management Communications

Public Attendees:

Peter Drekmeier	Tuolumne River Trust
Marilyn Mosher	City of Hayward
Michelle Novotny	San Francisco Public Utilities Commission

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

BOARD POLICY COMMITTEE MEETING

Agenda Title: Establishment of the Recommended California Employers' Retiree Benefit Trust (CERBT) through CalPERS to fund Other Post-Employment Benefits Costs

Summary:

This report presents several irrevocable trust options and alternative trust providers to fund the agency's Other Post-Employment Benefits (OPEB) costs.

On May 16, the Board approved funding the Annual Required Contribution (ARC) for the OPEB obligations into an irrevocable trust every year starting FY 2013-14, at an investment yield rate assumption of 7%. The next step was to evaluate trust alternatives before funds are deposited, and no later than November 2013.

The evaluation presented in this report includes several irrevocable Internal Revenue Code (IRC) tax-qualified trust options. Based on the evaluation results, an IRC Section 115 Trust appears to be the best option for the agency's OPEB trust, due to its flexibility, low cost, and minimal administrative burden. BAWSCA's Financial Advisor, KNN, was consulted during the evaluation.

This report also presents a side-by-side evaluation of various providers of Section 115 Trusts. Based on this evaluation, the California Employers' Retiree Benefit Trust (CERBT) through CalPERS, which has a long history of experience in administering employer-sponsored plans, was determined to be the most appropriate trust provider for the agency's OPEB funds.

Fiscal Impact:

The establishment of a Section 115 trust through CalPERS CERBT will have no impact on the current year's operating budget. The previously approved budget for OPEB funding of the ARC is \$142,912 for FY 2013-14. The CERBT administrative costs will be deducted from the asset balance of the trust, which includes the investment earnings, with no net additional cost to the agency.

Recommendation:

That the Committee recommends Board approval of:

- 1. establishing an irrevocable IRC Section 115 trust through CERBT trust administered by the CalPERS to accommodate the agency's OPEB funding; and**
- 2. authorizing the CEO/GM to execute an agreement with the CalPERS CERBT to establish and administer the agency's OPEB Trust Fund (A copy of the agreement is attached to this report as Attachment A); and**
- 3. delegating authority to the CEO/GM to request disbursements from the agency's OPEB Trust Fund (A copy of the delegation of authority is attached to this memo as Attachment B), and take other actions needed to implement the trust.**

Discussion:

Several irrevocable IRC tax-qualified trust options are available for funding OPEB costs. The options include:

- Section 115 Trust
- Voluntary Employee Benefit Association (VEBA) Trust
- Section 401(h) Trust

A side-by-side comparison of the key elements in establishing and administering an OPEB trust was performed (Attachment C). Based on the evaluation results, a Section 115 Trust appears to be the best option for the agency's OPEB trust, due to its flexibility and minimal administrative burden.

A side-by-side comparison of various providers of available Section 115 Trusts was also performed (Attachment D). The various providers included:

- CalPERS CERBT
- Public Agency Retirement Services (PARS) and U.S. Bank in partnership
- Public Financial Management (PFM) and U.S. Bank in partnership

Based on the evaluation results, the CERBT trust through CalPERS, which has a long history of experience in administering employer-sponsored plans, is determined to be the most appropriate trust provider for the agency's OPEB funds.

The CERBT is a public sector, not-for-profit OPEB service provider. Due to the long term nature of the portfolio, the CERBT's expected long term rate of return, net of expenses, is between 6.39% and 7.61%, depending on the asset allocation strategy selected by the employer. CERBT is the leading provider of OPEB trusts, currently managing trusts for approximately 372 public agencies with \$2.6 billion in total assets.

The CERBT will provide trust administration and investment management at a total cost estimated to be 0.15% for FY2013-14. Trust administration includes performing tasks necessary to comply with GASB 43 reporting requirements including financial statements, footnote disclosure, and supplemental information.

CERBT offers three asset allocation strategies, which vary in degree of investment risk, as well as assumed rate of return. If the Board authorizes the CEO/GM to implement the CERBT trust, the CEO/GM will select the most appropriate strategy in accordance to BAWSCA's investment policy approved by the Board. Like the other two providers, the actual rate of return will vary from period to period, and the investments include a risk that employers will earn negative rather than positive returns during a given investment period.

Approximately ten of BAWSCA's member agencies utilize irrevocable trusts to deposit their OPEB funds. Among them, eight agencies joined the CalPERS CERBT. BAWSCA surveyed the eight agencies that fund their OPEB costs through the CERBT and none expressed concerns over the use of the CERBT trust.

The Inherent Uncertainty in Rates of Return Does Not Affect the Recommendation:

As discussed above, the actual rate of return of all three trust providers considered in the evaluation will vary from period to period and will differ from their estimates of return. However, the existence of uncertainty in the future investment return of all trust providers does not affect the recommendation to use the CalPERS CERBT.

The selected trust provider's actual investment performance will be documented and reported to the Board each year. The actual investment performance will be considered during the actuarial valuation in determining the OPEB costs and during the annual budget process in determining how much to place in the trust each year.

Attachment A: CERBT Prefund Agreement

Attachment B: CERBT Delegation of Authority to Request Disbursements

Attachment C: Irrevocable IRC Trusts Comparison

Attachment D: Section 115 Trust Providers Comparison

CALIFORNIA EMPLOYERS' RETIREE BENEFIT TRUST PROGRAM ("CERBT")

**AGREEMENT AND ELECTION
OF**

(NAME OF EMPLOYER)

**TO PREFUND OTHER POST EMPLOYMENT
BENEFITS THROUGH CalPERS**

WHEREAS (1) Government Code Section 22940 establishes in the State Treasury the Annuitants' Health Care Coverage Fund for the prefunding of health care coverage for annuitants (Prefunding Plan); and

WHEREAS (2) The California Public Employees' Retirement System (CalPERS) Board of Administration (Board) has sole and exclusive control and power over the administration and investment of the Prefunding Plan (sometimes also referred to as CERBT), the purposes of which include, but are not limited to (i) receiving contributions from participating employers and establishing separate Employer Prefunding Accounts in the Prefunding Plan for the performance of an essential governmental function (ii) investing contributed amounts and income thereon, if any, in order to receive yield on the funds and (iii) disbursing contributed amounts and income thereon, if any, to pay for costs of administration of the Prefunding Plan and to pay for health care costs or other post employment benefits in accordance with the terms of participating employers' plans; and

WHEREAS (3) _____
(NAME OF EMPLOYER)

(Employer) desires to participate in the Prefunding Plan upon the terms and conditions set by the Board and as set forth herein; and

WHEREAS (4) Employer may participate in the Prefunding Plan upon (i) approval by the Board and (ii) filing a duly adopted and executed Agreement and Election to Prefund Other Post Employment Benefits (Agreement) as provided in the terms and conditions of the Agreement; and

WHEREAS (5) The Prefunding Plan is a trust fund that is intended to perform an essential governmental function within the meaning of Section 115 of the Internal Revenue Code as an agent multiple-employer plan as defined in Governmental Accounting Standards Board (GASB) Statement No. 43 consisting of an aggregation of single-employer plans, with pooled administrative and investment functions;

NOW, THEREFORE, BE IT RESOLVED THAT EMPLOYER HEREBY MAKES THE FOLLOWING REPRESENTATION AND WARRANTY AND THAT THE BOARD AND EMPLOYER AGREE TO THE FOLLOWING TERMS AND CONDITIONS:

A. Representation and Warranty

Employer represents and warrants that it is a political subdivision of the State of California or an entity whose income is excluded from gross income under Section 115 (1) of the Internal Revenue Code.

B. Adoption and Approval of the Agreement; Effective Date; Amendment

(1) Employer's governing body shall elect to participate in the Prefunding Plan by adopting this Agreement and filing with the CalPERS Board a true and correct original or certified copy of this Agreement as follows:

Filing by mail, send to: CalPERS
 Affiliate Program Services Division
 CERBT (OPEB)
 P.O. Box 1494
 Sacramento, CA 95812-1494

Filing in person, deliver to: CalPERS Mailroom
 Affiliate Program Services Division
 CERBT (OPEB)
 400 Q Street
 Sacramento, CA 95811

(2) Upon receipt of the executed Agreement, and after approval by the Board, the Board shall fix an effective date and shall promptly notify Employer of the effective date of the Agreement.

(3) The terms of this Agreement may be amended only in writing upon the agreement of both CalPERS and Employer, except as otherwise provided herein. Any such amendment or modification to this Agreement shall be adopted and executed in the same manner as required for the Agreement. Upon receipt of the executed amendment or modification, the Board shall fix the effective date of the amendment or modification.

(4) The Board shall institute such procedures and processes as it deems necessary to administer the Prefunding Plan, to carry out the purposes of this Agreement, and to maintain the tax exempt status of the Prefunding Plan. Employer agrees to follow such procedures and processes.

C. Other Post Employment Benefits (OPEB) Cost Reports and Employer Contributions

(1) Employer shall provide to the Board an OPEB cost report on the basis of the actuarial assumptions and methods prescribed by the Board. Such report shall be for the Board's use in financial reporting, and shall be prepared at least as often as the minimum frequency required by GASB 43. This OPEB cost report may be prepared as an actuarial valuation report or, if the employer is qualified under GASB 45 and 57, may be prepared as an Alternative Measurement Method (AMM) report.

- (a) Unless qualified under GASB 45 and 57 to provide an AMM report, Employer shall provide to the Board an actuarial valuation report. Such report shall be for the Board's use in financial reporting, and shall be prepared at least as often as the minimum frequency required by GASB 43 and 57, and shall be:
 - 1) prepared and signed by a Fellow or Associate of the Society of Actuaries who is also a Member of the American Academy of Actuaries or a person with equivalent qualifications acceptable to the Board;
 - 2) prepared in accordance with generally accepted actuarial practice and GASB 43, 45 and 57; and,
 - 3) provided to the Board prior to the Board's acceptance of contributions for the valuation period or as otherwise required by the Board.
- (b) If qualified under GASB 45 and 57, Employer may provide to the Board an AMM report. Such report shall be for the Board's use in financial reporting, shall be prepared at least as often as the minimum frequency required by GASB 43 and 57, and shall be:
 - 1) affirmed by Employer's external auditor, or by a Fellow or Associate of the Society of Actuaries who is also a Member of the American Academy of Actuaries or a person with equivalent qualifications acceptable to the Board, to be consistent with the AMM process described in GASB 45;
 - 2) prepared in accordance with GASB 43, 45, and 57; and,
 - 3) provided to the Board prior to the Board's acceptance of contributions for the valuation period or as otherwise required by the Board.

(2) The Board may reject any OPEB cost report submitted to it, but shall not unreasonably do so. In the event that the Board determines, in its sole discretion, that the OPEB cost report is not suitable for use in the Board's financial statements or if Employer fails to provide a required OPEB cost report, the Board may obtain, at

Employer's expense, an OPEB cost report that meets the Board's financial reporting needs. The Board may recover from Employer the cost of obtaining such OPEB cost report by billing and collecting from Employer or by deducting the amount from Employer's account in the Prefunding Plan.

(3) Employer shall notify the Board of the amount and time of contributions which contributions shall be made in the manner established by the Board.

(4) Employer contributions to the Prefunding Plan may be limited to the amount necessary to fully fund Employer's actuarial present value of total projected benefits, as supported by the OPEB cost report acceptable to the Board. As used throughout this document, the meaning of the term "actuarial present value of total projected benefits" is as defined in GASB Statement No. 45. If Employer's contribution causes its assets in the Prefunding Plan to exceed the amount required to fully fund the actuarial present value of total projected benefits, the Board may refuse to accept the contribution.

(5) No contributions are required. If an employer elects to contribute then the contribution amount should not be less than \$5000 or the employer's annual required contribution (ARC), whichever amount is lower. Contributions can be made at any time following the seventh day after the effective date of the Agreement provided that Employer has first complied with the requirements of Paragraph C.

D. Administration of Accounts, Investments, Allocation of Income

(1) The Board has established the Prefunding Plan as an agent plan consisting of an aggregation of single-employer plans, with pooled administrative and investment functions, under the terms of which separate accounts will be maintained for each employer so that Employer's assets will provide benefits only under employer's plan.

(2) All Employer contributions and assets attributable to Employer contributions shall be separately accounted for in the Prefunding Plan (Employer's Prefunding Account).

(3) Employer's Prefunding Account assets may be aggregated with prefunding account assets of other employers and may be co-invested by the Board in any asset classes appropriate for a Section 115 Trust.

(4) The Board may deduct the costs of administration of the Prefunding Plan from the investment income or Employer's Prefunding Account in a manner determined by the Board.

(5) Investment income shall be allocated among employers and posted to Employer's Prefunding Account as determined by the Board but no less frequently than annually.

(6) If Employer's assets in the Prefunding Plan exceed the amount required to fully fund the actuarial present value of total projected benefits, the Board, in compliance with applicable accounting and legal requirements, may return such excess to Employer.

E. Reports and Statements

- (1) Employer shall submit with each contribution a contribution report in the form and containing the information prescribed by the Board.
- (2) The Board shall prepare and provide a statement of Employer's Prefunding Account at least annually reflecting the balance in Employer's Prefunding Account, contributions made during the period and income allocated during the period, and such other information as the Board determines.

F. Disbursements

- (1) Employer may receive disbursements not to exceed the annual premium and other costs of post employment healthcare benefits and other post employment benefits as defined in GASB 43.
- (2) Employer shall notify CalPERS in writing in the manner specified by CalPERS of the persons authorized to request disbursements from the Prefunding Plan on behalf of Employer.
- (3) Employer's request for disbursement shall be in writing signed by Employer's authorized representative, in accordance with procedures established by the Board. The Board may require that Employer certify or otherwise establish that the monies will be used for the purposes of the Prefunding Plan.
- (4) Requests for disbursements that satisfy the requirements of paragraphs (2) and (3) will be processed monthly.
- (5) CalPERS shall not be liable for amounts disbursed in error if it has acted upon the written instruction of an individual authorized by Employer to request disbursements. In the event of any other erroneous disbursement, the extent of CalPERS' liability shall be the actual dollar amount of the disbursement, plus interest at the actual earnings rate but not less than zero.
- (6) No disbursement shall be made from the Prefunding Plan which exceeds the balance in Employer's Prefunding Account.

G. Costs of Administration

Employer shall pay its share of the costs of administration of the Prefunding Plan, as determined by the Board.

H. Termination of Employer Participation in Prefunding Plan

- (1) The Board may terminate Employer's participation in the Prefunding Plan if:

- (a) Employer gives written notice to the Board of its election to terminate;
- (b) The Board finds that Employer fails to satisfy the terms and conditions of this Agreement or of the Board's rules or regulations.

(2) If Employer's participation in the Prefunding Plan terminates for any of the foregoing reasons, all assets in Employer's Prefunding Account shall remain in the Prefunding Plan, except as otherwise provided below, and shall continue to be invested and accrue income as provided in Paragraph D.

(3) After Employer's participation in the Prefunding Plan terminates, Employer may not make contributions to the Prefunding Plan.

(4) After Employer's participation in the Prefunding Plan terminates, disbursements from Employer's Prefunding Account may continue upon Employer's instruction or otherwise in accordance with the terms of this Agreement.

(5) After thirty-six (36) months have elapsed from the effective date of this Agreement or at such earlier date as may be approved by the Board in its sole discretion:

- (a) Employer may request a trustee to trustee transfer of the assets in Employer's Prefunding Account. Upon satisfactory showing to the Board that the transfer will satisfy applicable requirements of the Internal Revenue Code and the Board's fiduciary duties, then the Board shall effect the transfer within one hundred twenty (120) days. The amount to be transferred shall be the amount in the Employer's Prefunding Account as of the disbursement date and shall include investment earnings up to the investment earnings allocation date immediately preceding the disbursement date. In no event shall the investment earnings allocation date precede the transfer by more than 120 days.
- (b) Employer may request a disbursement of the assets in Employer's Prefunding Account. Upon satisfactory showing to the Board that all of Employer's obligations for payment of post employment health care benefits and other post employment benefits and reasonable administrative costs of the Board have been satisfied, then the Board shall effect the disbursement within one hundred twenty (120) days. The amount to be disbursed shall be the amount in the Employer's Prefunding Account as of the disbursement date and shall include investment earnings up to the investment earnings allocation date immediately preceding the disbursement date. In no event shall the investment earnings allocation date precede the disbursement by more than 120 days.

(6) After Employer's participation in the Prefunding Plan terminates and at such time that no assets remain in Employer's Prefunding Account, this Agreement shall terminate.

(7) If, for any reason, the Board terminates the Prefunding Plan, the assets in Employer's Prefunding Account shall be paid to Employer after retention of (i) amounts sufficient to pay post employment health care benefits and other post employment benefits to annuitants for current and future annuitants described by the employer's current substantive plan (as defined in GASB 43), and (ii) amounts sufficient to pay reasonable administrative costs of the Board.

(8) If Employer ceases to exist but Employer's Prefunding Plan continues to exist and if no provision has been made by Employer for ongoing payments to pay post employment health care benefits and other post employment benefits to annuitants for current and future annuitants, the Board is authorized to and shall appoint a third party administrator to carry out Employer's Prefunding Plan. Any and all costs associated with such appointment shall be paid from the assets attributable to contributions by Employer.

(9) If Employer should breach the representation and warranty set forth in Paragraph A., the Board shall take whatever action it deems necessary to preserve the tax-exempt status of the Prefunding Plan.

I. General Provisions

(1) Books and Records.

Employer shall keep accurate books and records connected with the performance of this Agreement. Employer shall ensure that books and records of subcontractors, suppliers, and other providers shall also be accurately maintained. Such books and records shall be kept in a secure location at the Employer's office(s) and shall be available for inspection and copying by CalPERS and its representatives.

(2) Audit.

- (a) During and for three years after the term of this Agreement, Employer shall permit the Bureau of State Audits, CalPERS, and its authorized representatives, and such consultants and specialists as needed, at all reasonable times during normal business hours to inspect and copy, at the expense of CalPERS, books and records of Employer relating to its performance of this Agreement.
- (b) Employer shall be subject to examination and audit by the Bureau of State Audits, CalPERS, and its authorized representatives, and such consultants and specialists as needed, during the term of this Agreement and for three years after final payment under this Agreement. Any examination or audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering this Agreement. Employer shall cooperate fully with the Bureau of State Audits, CalPERS, and its authorized representatives, and such consultants and specialists as needed, in connection with any

examination or audit. All adjustments, payments, and/or reimbursements determined to be necessary by any examination or audit shall be made promptly by the appropriate party.

(3) Notice.

(a) Any notice, approval, or other communication required or permitted under this Agreement will be given in the English language and will be deemed received as follows:

1. Personal delivery. When personally delivered to the recipient. Notice is effective on delivery.
2. First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice. Notice is effective three delivery days after deposit in a United States Postal Service office or mailbox.
3. Certified mail. When mailed certified mail, return receipt requested. Notice is effective on receipt, if delivery is confirmed by a return receipt.
4. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, Notice is effective on delivery, if delivery is confirmed by the delivery service.
5. Telex or Facsimile Transmission. When sent by telex or fax to the last telex or fax number of the recipient known to the party giving notice. Notice is effective on receipt, provided that (i) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (ii) the receiving party delivers a written confirmation of receipt. Any notice given by telex or fax shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a nonbusiness day.
6. E-mail transmission. When sent by e-mail using software that provides unmodifiable proof (i) that the message was sent, (ii) that the message was delivered to the recipient's information processing system, and (iii) of the time and date the message was delivered to the recipient along with a verifiable electronic record of the exact content of the message sent.

Addresses for the purpose of giving notice are as shown in Paragraph B.(1) of this Agreement.

- (b) Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger or overnight delivery service.
- (c) Any party may change its address, telex, fax number, or e-mail address by giving the other party notice of the change in any manner permitted by this Agreement.
- (d) All notices, requests, demands, amendments, modifications or other communications under this Agreement shall be in writing. Notice shall be sufficient for all such purposes if personally delivered, sent by first class, registered or certified mail, return receipt requested, delivery by courier with receipt of delivery, facsimile transmission with written confirmation of receipt by recipient, or e-mail delivery with verifiable and unmodifiable proof of content and time and date of sending by sender and delivery to recipient. Notice is effective on confirmed receipt by recipient or 3 business days after sending, whichever is sooner.

(4) Modification

This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by the party to be charged.

(5) Survival

All representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the parties to be a part of their Agreement shall survive the termination of this Agreement until such time as all amounts in Employer's Prefunding Account have been disbursed.

(6) Waiver

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

(7) Necessary Acts, Further Assurances

The parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

A majority vote of Employer's Governing Body at a public meeting held on the _____ day of the month of _____ in the year _____, authorized entering into this Agreement.

Signature of the Presiding Officer: _____

Printed Name of the Presiding Officer: _____

Name of Governing Body: _____

Name of Employer: _____

Date: _____

BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
RAND ANDERSON
AFFILIATE PROGRAM SERVICES DIVISION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

To be completed by CalPERS

The effective date of this Agreement is: _____



DELEGATION OF AUTHORITY TO REQUEST DISBURSEMENTS

RESOLUTION OF THE

(GOVERNING BODY)

OF THE

(NAME OF EMPLOYER)

The _____ delegates to the incumbents
(GOVERNING BODY)

in the positions of _____ and
(TITLE)

_____ and/or
(TITLE)

_____ authority to request on
(TITLE)

behalf of the Employer disbursements from the Other Post Employment Prefunding
Plan and to certify as to the purpose for which the disbursed funds will be used.

By _____

Title _____

Witness _____

Date _____

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**Side-by-Side Comparison of
OPEB Eligible Tax Qualified Irrevocable Trusts**

Issues of Importance to BAWSCA. Note: Affirmative responses are desired, for ease of administration and benefits to participants	Section 115 Trust	VEBA Trust	Section 401(h) Trust
Is trust tax exempt without an IRS letter of determination approval?	Y ⁽¹⁾	N ⁽²⁾	Y
No requirement for an annual tax return?	Y	N	Y
Are assets held by Trustee solely for the benefit of participants?	Y	Y	Y
No limit to the amount of funds that can be contributed to the trust?	Y	Y	N ⁽³⁾
Can excess assets revert to employer upon trust termination?	Y	N ⁽⁴⁾	Y
Non-discrimination rules do not apply?	Y ⁽⁵⁾	N ⁽⁶⁾	Y ⁽⁵⁾
Are employee pre-tax voluntary contributions disallowed?	Y	Y	N ⁽⁷⁾

Notes:

(1) IRS approval is not required. However, an IRS private letter ruling is recommended.

(2) The plan sponsor must prepare and submit IRS Form 1024 along with a pro forma budget and trust documents to the IRS. With the IRS letter of determination approval, the plan qualifies as a VEBA.

(3) Annual contributions to the Section 401(h) trust are limited to 1/3 of pension contributions. A Section 401(h) trust is established within an existing qualified pension fund.

(4) After employers terminate the VEBA trust, the employers are permitted solely to use Fund Balance to continue to provide their employees with the benefits until the Fund Balance is exhausted. The employers have no legal right to a reversion of assets.

(5) Violation of the non-discrimination rules by any participating employer has no effect on the tax exemption of the trust.

(6) Violation of the non-discrimination rules by any participating employer in a multiple-employer trust will disqualify the tax exemption for all participating employers.

(7) Contributions are made pre-tax if the employee irrevocably elects to participate.

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Side-by-Side Comparison of Various Providers of Internal Revenue Code Section 115 Trusts

	CalPERS CERBT	PARS & U.S. Bank in Partnership⁽¹⁾	PFM & U.S. Bank in Partnership⁽¹⁾
Expenses⁽¹⁾ as % of plan assets	FY2011-12: 12 bps - actual FY2012-13: 15 bps - actual FY2013-14: 15 bps - estimate ⁽¹⁾ Minimum fees: None	25 bps administration fees + 35 bps investment fees - Minimum fees: \$3,600/yr	45 bps management fees + \$1,000 annual trustee fees + 2.5 bps trustee fees + \$7.50 transaction cost per trade Minimum fees: \$6,000/yr
Portfolio/Investment management responsibility	CalPERS ⁽²⁾	U.S. Bank's Investment Subadvisor ⁽²⁾	PFM ⁽²⁾
Investment fiduciary responsibility	CalPERS	U.S. Bank	PFM & U.S. Bank
Indemnification from liability for Trustee's errors	Yes ⁽³⁾	Yes ⁽³⁾	Yes ⁽³⁾
GASB 43 financial reporting⁽²⁾- Trust financial statements Footnote disclosure Supplemental Information	CalPERS	BAWSCA	BAWSCA
Requirement of agency - Investment policy Treasury function Oversight board	No	No	No
Anticipated long-term investment rate of return⁽³⁾	Strategy 1: 7.61% Strategy 2: 7.06% Strategy 3: 6.39%	Strategy 1: 7.19%, Strategy 2: 6.41% Strategy 3: 5.91%, Strategy 4: 4.89% Strategy 5: 4.04%	6% to 8%, depending on the selected investment options
Actual investment rate of return in FY2012-13⁽³⁾	Strategy 1: 11.63% Strategy 2: 8.72% Strategy 3: 5.06%	Strategy 1: 13.61%, Strategy 2: 12.72% Strategy 3: 10.62%, Strategy 4: 7.87%	3.31% to 13.35%, prior to \$1,000 annual trustee fees & \$7.50 transaction cost per trade
Actual investment rate of return in FY2011-12⁽³⁾	Strategy 1: 0.03% Strategy 2: 5.51% Strategy 3: 4.84%	Strategy 1: 0.08%, Strategy 2: 1.19% Strategy 3: 2.38%, Strategy 4: 2.85% Strategy 5: 3.13%	-0.21% to 4.17%, prior to \$1,000 annual trustee fees & \$7.50 transaction cost per trade
Minimum deposit	No minimum	No minimum	No minimum
Maximum deposit	Actuarial present value of BAWSCA's OPEB plan benefits	No restriction	No restriction
Obstacles of participation termination	No time restriction on trustee-to-trustee transfer ⁽⁴⁾	90 days notice is required on trustee-to-trustee transfer	30 days notice is required on trustee-to-trustee transfer

Currently managing how many agencies' OPEB Trust plans⁽⁴⁾
Total assets in OPEB Trust discretionary plans⁽⁴⁾

Attachment D		
372	112	40
\$2.6 billion	\$590 million	\$1.3 billion

(1) The total costs include administration, trust management, investment management, legal, and accounting costs.

(2) Responsibility for financial statement reporting of OPEB plan and trust in compliance with GASB 43.

(3) Net of all costs.

(4) Data as of June 30, 2013.

(1) A single cost rate to all participants. It varies from year to year and is determined based on the average daily balance of assets at the end of the operating year.

(2) CalPERS provides three asset allocation strategies (BAWSCA selects one) and investment management.

(3) CalPERS has established a custodial agreement with the CERBT Custodian, which includes a process to cover employer loss of interest, dividend, or principle in the event of an error or omission by the CERBT.

(4) Within the first 3 years, the CalPERS Board approval is required for a trustee-to-trustee transfer.

(1) Both PARS (Public Agency Retirement Services) and PFM (Public Financial Management) select U.S. Bank as the trustee. The Bank is responsible for investing the fund and recordkeeping on the trust level. PARS/PFM is responsible for breaking down the pool and recordkeeping on the agency level and coordinating the disbursements of the reimbursement.

(2) Under the discretionary investment pool approach, U.S. Bank delegates investment authority to its investment subadvisor, HighMark, who will make investment decisions in accordance with BAWSCA's funding strategy.

(3) Per the Trust Agreement, the employer shall not be liable for, and Trustee shall indemnify, defend, and hold the employer and other employers harmless from and against any liability as a result of Trustee's errors.

(2) PFM will be responsible for the portfolio/investment management, and will take full discretion when making decisions for BAWSCA's portfolio.

(3) An agreement by the Trustee will indemnify BAWSCA for the Trustee's willful misconduct or willful breach of its standard of conduct under the Trust Agreement.

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

BOARD POLICY COMMITTEE MEETING

Agenda Title: **Resolution Approving Temporary Appointment of Arthur Jensen as Special Counsel to the CEO/GM, with Compensation Consistent with the Salary Schedule for the CEO/GM Position**

Summary:

As required by PERS, Board findings are required before Arthur Jensen, soon to retire from BAWSCA, can be appointed to the position of Special Counsel to the Chief Executive Officer and General Manager (CEO/GM) in order to provide BAWSCA with essential services.

Fiscal Impact:

Sufficient funds to appoint Arthur Jensen as Special Counsel to the CEO/GM are estimated to be available in the adopted budget for salaries and benefits for FY 2013-14. No budget adjustment is needed at this time due to the following factors:

1. Salary and benefit savings will accrue while three positions are vacant. These positions are (a) the new water resources position, (b) the position vacated by Anona Dutton, and (c) Nicole Sandkulla's position that will be vacant beginning September 30. Active recruitment for all three positions is currently underway.
2. Additional salary savings will accrue throughout the year due to the difference between the salaries of the retiring and newly appointed CEO/GM.

Estimates made at this time, which include assumptions for the cost of salaries and benefits for the three new employees, indicate that the existing salary and benefit budget may be sufficient to cover the compensation related to Arthur Jensen's temporary appointment as well as the salaries and benefits for all regular employees.

These estimates should be updated and reviewed during the mid-year work plan and budget review. At that time, all three new employees will have been hired and the costs of their salaries and benefits will be known with certainty.

If the estimate at mid-year indicates that the budget for salaries and savings will be insufficient through the end of the year, the additional increment of funding will be relatively small and may be available from savings in other areas of the budget or, if necessary, from the General Reserve.

Recommendation:

That the Board Policy Committee recommend Board adoption of the attached resolution approving the temporary appointment of Arthur Jensen to the position of Special Counsel to the CEO/GM, and making associated findings in support of such an appointment.

Discussion:

Although Arthur Jensen will soon retire from BAWSCA, his services will continue to be essential in order to (1) effect a smooth transition to his successor, Nicole Sandkulla; (2) ensure BAWSCA can complete critical negotiations with the City and County of San Francisco pertaining to the classification of assets under the Water Supply Agreement between San Francisco and its wholesale water customers; and (3) ensure successful legislative action in the next legislative

session to extend the sunset date of AB 1823, the Wholesale Regional Water System Security and Reliability Act, among other matters.

The California Government Code allows the temporary employment of a PERS-covered retiree only under specified conditions, and only if the person works no more than 960 hours per fiscal year. The attached resolution includes findings that the Board must adopt in order for the incoming CEO/GM to retain Arthur Jensen in this position for no longer than one year in compliance with all legal requirements. The resolution also includes an attachment setting forth the salary schedule of the CEO/GM position, which demonstrates that Arthur Jensen's compensation will be consistent with the salary range for the position that is most closely related to the duties that Arthur Jensen will be performing.

Attachments:

1. Resolution for the temporary appointment of Arthur Jensen as Special Counsel to the CEO/GM, which includes an attachment describing the salary schedule for the CEO/GM position.

**RESOLUTION NO. 2013-03
BY THE BOARD OF DIRECTORS OF THE
BAY AREA WATER SUPPLY AND CONSERVATION AGENCY**

**APPROVING TEMPORARY APPOINTMENT OF ARTHUR JENSEN
AS SPECIAL COUNSEL TO THE CEO/GM**

WHEREAS, the Bay Area Water Supply and Conservation Agency ("BAWSCA") is organized and established pursuant to the Bay Area Water Supply and Conservation Agency Act, Water Code section 81300, et seq. (the "Act"); and

WHEREAS, section 81408 of the Act authorizes the Board of Directors of BAWSCA (the "Board") to (i) employ employees that it determines are necessary or convenient to operate BAWSCA, and (ii) delegate that authority to the Chief Executive Officer and General Manager of BAWSCA (the "CEO/GM") with respect to the employment of additional employees; and

WHEREAS, the incoming CEO/GM, Nicole Sandkulla, recommends the temporary appointment of Arthur Jensen (the "Appointee") to the position of Special Counsel to the CEO/GM; and

WHEREAS, the Appointee will be a retired annuitant entitled to receive retirement benefit payments under the California Public Employees' Retirement System ("PERS"), which benefits he accrued based on service with multiple PERS-covered agencies; and

WHEREAS, BAWSCA contracts with PERS to provide retirement benefits to its eligible employees; and

WHEREAS, the California Government Code ("Code") generally requires that a retired PERS annuitant be reinstated to active PERS membership upon employment by a PERS-covered agency, unless he is temporarily appointed by the agency's appointing authority under section 21224 of the Code, which exempts a retired PERS annuitant from the reinstatement requirement if (i) he is temporarily appointed because he "... has specialized skills needed in performing work of limited duration," (ii) he works no more than 960 hours per fiscal year for all PERS-covered employers, (iii) his rate of pay is neither less than nor more than that paid by the agency to any of its other employees who perform comparable duties, as reflected in the attached salary schedule for the CEO/GM position, and (iv) he has not received unemployment compensation arising out of any prior employment subject to these requirements with the same employer during the 12-month period preceding his appointment; and

WHEREAS, the Board has determined that the Appointee has the skills needed in performing work as Special Counsel to the CEO/GM for a limited term of no more than one year and intends that his appointment to that position for such term meet this and all other applicable requirements of section 21224 of the Code.

NOW THEREFORE BE IT RESOLVED, that subject to BAWSCA's customary employment practices and the specific terms and conditions of any offer of employment by BAWSCA to the Appointee in connection therewith, the Board hereby approves the appointment of the Appointee to the position of Special Counsel to the CEO/GM for up to a one-year term, effective upon appropriate action by the incoming CEO/GM; and

RESOLVED FURTHER, that in accordance with section 21224 of the Code:

1. the Board finds and declares that the Appointee possesses extensive, highly specialized skills and experience needed to (1) effect a smooth transition to his successor, (2) complete critical negotiations with the City and County of San Francisco pertaining to the classification of assets under the Water Supply Agreement between San Francisco and its wholesale water customers, and (3) ensure successful legislative action in the next legislative session to extend the sunset date of AB 1823, the Wholesale Regional Water System Security and Reliability Act, among other matters;
2. the Appointee's appointment to the position of Special Counsel to the CEO/GM will not exceed 960 hours in any fiscal year for all PERS-covered agencies;
3. the Appointee's rate of pay as Special Counsel to the CEO/GM will be neither less than nor more than that of any of BAWSCA's other employees who perform comparable duties, as reflected in the attached salary schedule for the CEO/GM position, which is hereby adopted by the Board;
4. the Appointee has not received any unemployment compensation arising out of his prior employment with BAWSCA during the 12-month period preceding his appointment; and
5. subject to BAWSCA's customary employment practices, including "at-will" employment, the appointment of Appointee as Special Counsel to the CEO/GM will continue only until the earlier of: (i) the end of the appointment's one-year term, or (ii) termination of the Appointee's employment by either BAWSCA or the Appointee for any other reason; and

FURTHER RESOLVED, that the incoming CEO/GM is hereby authorized and directed to execute all documents and take all other actions necessary or advisable to effect the purposes of this resolution.

PASSED AND ADOPTED this 19th day of September, 2013, by the following vote:

AYES:

NOES:

ABSENT:

Chair, Board of Directors
Bay Area Water Supply and
Conservation Agency

ATTEST:

Assistant to the CEO

Attachment A

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

Salary Schedule for the Chief Executive Officer and General Manager Position

Position	Salary Range
Chief Executive Office and General Manager	\$154,415 per year - \$211,000 per year

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