

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

**August 14, 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 Chair Rob Guzzetta 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:** Committee Chair Guzzetta thanked Committee Vice-Chair Mendall for running the August BPC meeting in his absence. Chair Guzzetta attended the AWWA Annual Conference and Expo.

The agenda includes two important action items for the Committee relating to BAWSCA's Other Post-Employment Benefits (OPEB) Costs, and the temporary appointment of Arthur Jensen as Special Counsel to the CEO/General Manager.

- 3. Consent Calendar:** Approval of Minutes from the June 12, 2013 meeting.

Director Breault made a motion, seconded by Director O'Connell, to approve the Minutes of the Board Policy Committee meeting held on June 12, 2013. Director Bronitsky abstained. The motion carried.

- 4. Public Comment:** There were none.

5. Action Items:

A. Establishment of the Recommended California Employers' Retiree Benefit Trust (CERBT) through CalPERS to fund Other Post-Employment Benefit (OPEB)

Costs: Sr. Administrative Analyst, Christina Tang, reported that at the May Board meeting, the Board approved to fully fund the Annual Required Contribution (ARC) for the OPEB obligations into an irrevocable trust at an investment yield rate assumption of 7% starting FY 2013-14, and that the trust alternatives are to be fully evaluated before funds are deposited, no later than November 2013. The approved budget for FY 2013-14 already includes the total obligation cost of \$142,912 for FY 2013-14.

Following staff analysis of the trust alternatives, the recommendation is to:

- Establish an irrevocable IRC section 115 trust through the CERBT administered by the CalPERS to accommodate the Agency's OPEB funding;

- Authorize the CEO/General Manager to execute an agreement with the CalPERS CERBT to establish and administer the agency's OPEB Trust Fund;
- Delegate authority to the CEO/General Manager to request disbursements from the Agency's OPEB Trust Fund and take other actions needed to implement the trust.

Ms. Tang noted that the use of an irrevocable trust reduces the Unfunded Actuarial Accrued Liability (UAAL), and takes advantage of potentially higher long-term investment yields.

Director Weed commented that irrevocable trusts also provide flexibility on investments and a larger investment portfolio. BAWSCA can choose to have additional restrictions on investments if it chooses to.

Ms. Tang reported that alternative irrevocable IRC trusts were reviewed and presented a side by side comparison between Section 115 Trust, Voluntary Employee Benefit Association (VEBA) Trust, and Section 401(h) Trust on the key elements important to BAWSCA. For flexibility and minimal administrative burden, the key elements in the establishment and administration of the Trust include 1) Tax exemption without an IRS letter of determination approval, 2) no requirement for an annual tax return, and 3) no limit to the amount of funds that can be contributed to the trust. The comparison demonstrated that the Section 115 Trust is the best option for BAWSCA.

Alternative providers of Section 115 Trusts were evaluated. The list of providers reviewed were CalPERS CERBT, Public Agency Retirement Services (PARS) and US Bank in partnership, and Public Financial Management (PFM) and US Bank in partnership.

Ms. Tang explained that the "partnership" with US Bank for PARS and PRM means that US Bank acts as the Trustee, while PARS and PRM manage the investments. Ms. Tang reported that CalPERS CERBT would take on both the Trust and Investment management roles.

The comparison factors included expenses as a % of plan assets, GASB 43 financial reporting responsibility, and investment rate of return.

CERBT Trust was determined as the most appropriate Trust provider for BAWSCA's OPEB costs. It has a long history of administering employer-sponsored plans, it's a non-profit organization and is a leading OPEB service provider managing OPEB trusts for approximately 372 public agencies with a \$2.6 billion in total assets. It has the lowest estimated total cost of 0.15% for FY 2013-14, it provides minimal administrative burden to BAWSCA, and has an actuarial assumed rate of return between 6.39% and 7.61%.

The primary objective of BAWSCA's investment policy is safety, liquidity, and investment return. Ms. Tang stated that similar to PARS and PFM, CERBT's actual rate of return will be different from their estimate and will vary from period to period. But

the existence of uncertainty of future rate of return for all Trust providers would not affect BAWSCA's recommendation for the establishment of CERBT.

Director Weed commented that the CERBT has several different programs of investments, and each has an assumed rate of return based on their risk. The rate of return ranges from 6.39% (least risk) to 7.61% (highest risk). BAWSCA would want to ask CERBT to select one as close to 7% as possible.

Ms. Sandkulla explained that the proposed Board action includes delegating administration of the trust to the CEO/General Manager, which include selection of the asset allocation strategy.

Director Weed noted that a 7% rate of return means that the fund is going to double every 10-years in assets. In 30 years it will have multiplied by 6 fold. The Dow Jones industrial average is currently at about 15K, and under this scenario, it would have to grow to 120,000 at the end of this period. This is the assumption of how BAWSCA's investments under this program will develop. He noted that since it's a fixed end date, as our requirements increase, it becomes more of a challenge toward the end. The end date is not a rolling 30 years, it's now fixed at 30 years from now.

Ms. Sandkulla stated that the Board's direction to have a yearly review of how the plan is performing is an important part of managing the funding for the OPEB. As directed by the Board, staff will report the progress at mid-year and at the end of each year.

Ms. Tang reported that the options of CERBT's asset allocations strategies vary in degree of investment risk and assumed rate of return. The proposed recommendation authorizes the CEO/General Manager to implement the CERBT trust which includes the task of selecting an asset allocation strategy in accordance with BAWSCA's investment policy. The Board will receive reports on the actual portfolio performance, and the actual rate of return will be considered at the next annual OPEB actuary evaluation.

Ms. Tang further reported that 10 BAWSCA member agencies utilize irrevocable trusts to deposit their OPEB funds. Of the 10, eight agencies participate in CalPERS CERBT, and none of the 8 agencies expressed concern on the use of the CERBT.

Director Weed stated the ACWD uses the recommended process, and offered a few comments. He suggests that the contribution amount be adjusted periodically, and that as an organization, BAWSCA can add more funding, if that's a better alternative. BAWSCA should have the ability to modify retirement benefits particularly for new employees. He noted that the majority of the members for the JPIA for ACWA do not have medical retirement benefits for retirees. ACWA has almost 300 members. Director Weed stated that BAWSCA inherited the older ACWD criteria, which ironically was changed at the same month that BAWSCA was formed. There is a range of things that the BAWSCA Board can do if it were to step it back for new employees. BAWSCA's unfunded OPEB liability, since it is relatively short term and relatively manageable, will see a quantum leap in the next actuarial report because it will have more people. Lastly, the biggest concern for BAWCA is SFPUC's OPEB liability. Wholesale

Customers are responsible for a portion of that amount, which the SFPUC is not fully funding.

Director Pierce stated that she is pleased that the CEO/General Manager will be determining the asset allocation. She advised caution and suggested that the return level is not overly optimistic, so that BAWSCA won't have to make up a loss.

Chair Guzzetta stated that BAWSCA's current unfunded liability is not huge but it will become larger as time goes by. And while having a higher target rate is good, it is a more volatile fund. He noted that in the past two years, it earned almost nothing. As the actuaries look at BAWSCA's needs, BAWSCA's contribution would have to increase if the fund does not yield what we expect it to. That makes the budget more volatile, which the Board needs to be aware of. The Board should be careful with its investments because the investments it chooses will affect the budget moving forward.

Director O'Connell made a motion, seconded by Director Bronitsky, 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/General Manager to execute an agreement with the CalPERS CERBT to establish and administer the Agency's OPEB Trust Fund; and,**
- 3. Delegating authority to the CEO/General Manager to request disbursements from the Agency's OPEB Trust Fund, and take other actions needed to implement the trust.**

The motion carried unanimously.

- B. Resolution approving Temporary Appointment of Arthur Jensen as Special Counsel to the CEO/General Manager, with Compensation Consistent with the Salary Schedule for the CEO/General Manager Position:** Ms. Sandkulla reported that at her request as the incoming CEO/General Manager for BAWSCA following Mr. Jensen's retirement, it is being recommended that the Board appoint Art Jensen as Special Counsel to the BAWSCA CEO/General Manager. The transition to the CEO/General Manager has begun, and having access to Mr. Jensen following his retirement will enable a smooth transition, as well as provide essential assistance on two critical tasks included in the FY 2013-14 Work Plan. The critical activities include the negotiations with San Francisco related to classification of assets under the Water Supply Agreement, and legislative action to extend the sunset date of AB 1823.

Ms. Sandkulla stated that she will work with both Bud Wendell and Art Jensen, using their individual expertise in carrying out the objectives of the two efforts, with the intention of being the lead in the meetings with San Francisco and legislative officials and staff.

While the FY 2013-14 budget did not include the costs associated with the appointment of Mr. Jensen, Ms. Sandkulla stated that the adopted budget for FY 2013-14 includes sufficient funding based on estimates of salary savings and costs of new employees. Actual costs will be evaluated at the mid-year work plan and budget review, and the Board will be presented with recommended budget adjustments, if necessary.

Because of Mr. Jensen's status as a retiree, there are special requirements to comply with the California law and Public Employees Retirement System (PERS). BAWSCA contracts with PERS to provide retirement benefits to eligible employees. When Mr. Jensen retires, he will be a retired annuitant entitled to receive retirement benefit payments under PERS. California Law requires a retired PERS annuitant to be reinstated to active PERS membership upon employment by a PERS-covered agency, unless the employee is temporarily appointed under specified conditions. The specified conditions for PERS compliance include temporary appointment and a limit of 960 hours per fiscal year.

Ms. Sandkulla estimates that for her purposes as incoming CEO/General Manager and for anticipating budget impacts, Mr. Jensen's required time will be half time. Legal Counsel, Allison Schutte, also clarified that the limitation is for each fiscal year, and noted that the first year will be from October through June 30th 2014.

PERS also requires that the appointee has specialized skills needed in performing the necessary work of limited duration, their rate of pay is neither less than nor more than that paid to other employees who perform comparable duties, and that the appointee has not received unemployment compensation arising out of any prior employment with the same employer during the 12-months prior to the appointment.

A resolution adopted by the BAWSCA Board is required for this appointment. The resolution states BAWSCA's compliance to the requirements, and authorizes the incoming CEO/General Manager to appoint Mr. Jensen in full accordance with the stated requirements. The resolution includes a salary schedule for the CEO/General Manager position to demonstrate compliance with California law and PERS regulations. The State requires that the retired annuitant's compensation be consistent with the salary range for the position that is most closely related to the duties he will be performing, and PERS requires that the salary schedule be duly adopted by the Board and publicly available.

Director Weed asked if there will be reimbursements such as car allowance and travel expenses in addition to the salary. Ms. Sandkulla stated that there will be no allowances, but incurred expenses related to the normal course of business, just as it is for BAWSCA employees, would be submitted in an expense report subject to the CEO/General Manager's review. Expense reports from the CEO/General Manager are submitted and reviewed by the Chair of the Board for authorization.

Director Bronitsky commented that while he supports the appointment, the salary schedule is vague and offers too much discretion. While he is confident with the agency's responsible actions, he would like to exercise what is required of the Board. He would like to see an actual number for the salary, a clear determination of the appoint-

tee's time in an agreement, and an estimated end date for the services, whether it's a date or a completion of the tasks subject to the Board's re-consideration. Subject to these additions, he supports the recommendation.

Ms. Sandkulla agrees and explained that BAWSCA typically includes a scope of work with its contracts. The Scope of Work will specifically define the boundaries, expected hourly rate, and details of the agreement. With the Committee's direction, a draft scope will be included in the staff report to the Board for its September Board meeting to satisfy Director Bronitsky's request. The Committee was comfortable with that direction for Ms. Sandkulla.

Director Pierce asked if Ms. Sandkulla anticipates the need for Mr. Jensen's support in the next fiscal year. Ms. Sandkulla stated that Mr. Jensen's support is specifically related to the two efforts in the FY 13-14 work plan. Further need for his support can be evaluated during the mid-year review.

Director Guzzetta asked Legal Counsel about the State and PERS requirements after one year of service. Ms. Schutte explained that the resolution authorizes Mr. Jensen's temporary appointment for one year. The CEO/General Manager will have to go back to the Board for approval of another appointment. The annual limit of 960 hours will still apply, provided PERS does not change that requirement.

Director O'Connell made a motion, seconded by Director Bronitsky, that the Committee recommends Board adoption of the attached resolution approving the temporary appointment of Arthur Jensen to the position of Special Counsel to the CEO/General Manager, and making associated findings in support of such an appointment. The motion carried unanimously.

6. Brief Reports:

- A. Bond Surcharge Collection – Update: Ms. Tang reported that BAWSCA's first monthly surcharge was included in the SFPUC's July water bills distributed to wholesale customers. The SFPUC sent BAWSCA the first monthly surcharge collection report for July 2013 on August 8th. Most of the wholesale customers' bills were not due by the time the July report was generated because of the varying billing cycles of the agencies. The status of the collection will be reported to the Board upon receipt of the information.

In response to Director Pierce's question, Ms. Sandkulla explained that BAWSCA has a stabilization fund available to use, if needed, for bond payments.

Ms. Tang added that BAWSCA will continue to closely monitor the payment status to determine if there is ever a need to administer a 30-day penalty charge.

- B. Economic Impact of Drought Analysis – Update: Ms. Sandkulla reported that the SFPUC initiated an economic impact analysis of water shortage to support its

FERC proceedings. The purpose of the study is to identify the economic impacts that result from water shortages in the service area, and use the information as part of the impact analysis in the Environmental Impact Statement (EIS) needed for these FERC proceedings. BAWSCA supported the SFPUC with similar studies in the past. They have been very effective in better understanding the impacts to water users when there are changes to the flows. BAWSCA has supported the SFPUC in a limited fashion by reviewing and commenting on scopes of work, tasks, and deliverables. BAWSCA has been a source of readily available data, and an assessor of data input. Ms. Sandkulla reported that BAWSCA will be analyzing the initial results, not from an economic standpoint, but from a water supply perspective, on behalf of the 26 member agencies, to identify possible errors and inconsistencies.

The draft report is anticipated to be available in September. BAWSCA will work closely with member agencies to review the results and provide the SFPUC with comments as appropriate. Assuming that the study results will be available before the September Board meeting, the Board will be briefed on the information.

Director Pierce asked if this is the same analysis that was done previously and cited by BAWSCA. Ms. Sandkulla explained that this is the same group and similar analysis. The numbers have since been updated when the SFPUC went through the Administrative Law Judge proceeding. The analysis is being done by the same consultants who have updated the economic tool and have a more sophisticated process of looking at water demands that are impacted by factors such as weather and economy. Ms. Sandkulla reported that the consultants do coordinate with the Bay Area Economic Forum (BAEF), and stated that past efforts have been done in conjunction with BAEF.

- C. BAWSCA Pilot Water Transfer Plan – Update: Ms. Sandkulla reported that the BAWSCA/EBMUD Pilot Water Transfer Plan will be completed in September. It is currently being reviewed by the SFPUC and Hayward. The final documents will be distributed to the Board and member agencies, and Ms. Sandkulla intends to provide a full presentation to the Board in September with the results and recommended actions.

Ms. Sandkulla reported that the process has been very effective in going through the technical and feasibility issues of moving water through the EBMUD system. The study has concrete recommended actions related to the documents and agreements that need to be completed to move forward. EBMUD is very interested in initiating the plan if next year is dry, and BAWSCA is excited about the partnership.

Director Guzzetta asked if the agreement would require action by the 26 member agencies or by the Board. Ms. Sandkulla stated that it is expected to be a Board action.

In response to Director Weed's question, Ms. Sandkulla explained that Hayward will be an essential partner to this agreement. Hayward is the linchpin of making this plan work as the water will move through their city. Hayward has been involved in the work to date, and knows that the system works. The question is what happens when the plan is used, and what concerns does Hayward have, including the difference between a planned use of alternative supply as opposed to emergency use of supply. They do want to look at more water quality monitoring for when they use the intertie and receive EBMUD water on a regular basis. Hayward has been cooperative and they are addressing the critical things they would want to evaluate for their community.

Ms. Sandkulla stated that while Hayward is critical to the plan, it is important to BAWSCA that Hayward is satisfied with the Pilot plan so that critical issues are identified for future developments.

Director Breault asked if it is during the pilot or in the further development of an agreement that Hayward will be looking at what the operational cost of their system would be when the intertie is being used. Ms. Sandkulla stated that there will be an agreement as part of the Pilot. She confirmed that there will be costs associated with running that facility. While Hayward already has a plan with the SFPUC and EBMUD to fully recover the costs to operate that facility as an emergency facility, that plan would have to be amended to consider a fourth party.

Director Weed stated that the existence of the Dumbarton Quarry as a potential reservoir is an idea that he will continue to introduce to the process for consideration by the Board. It has a potential storage capacity for 4,000 acre feet of water, and it is in close proximity to the junction of Hayward and, what would be the extension of, the EBMUD facilities. It could tie into the idea of having a transfer agreement through EBMUD.

7. **Comments by Committee Members:** For BAWSCA and the member agencies' awareness, Director Weed reported that ACWD had its first report of a radium-226 detection in their source water. He provided the Committee copies of the report presented to the ACWD Board which shows detection level, known causes, impacts, and costs of treatments. Ms. Sandkulla reported that the SFPUC is aware of this issue, and that she has spoken with the Chair of the BAWSCA and SFPUC Joint Water Quality Committee (WQC). The SFPUC is looking at alternative responses, which will likely include more testing to determine if this is a one-time occurrence or if there's a pattern. Ms. Sandkulla has asked the Chair of the Joint WQC and the SFPUC to provide BAWSCA with their findings and their approach to addressing this issue. Ms. Sandkulla stated that this element has not been previously detected, and that in the past, the SFPUC has had other constituents show up for only one instance. There's a potential that this incident falls into that category, or that it falls into a systemic issue. Ms. Sandkulla will provide the information she receives from the SFPUC to the Board and member agencies.

Director Piccolotti asked how many samples were taken and how many other agencies had similar results. Ms. Sandkulla stated that it appears that there's only been one positive sample and that a few other agencies might have noticed it. Ms. Sandkulla noted that many of the sole source agencies rely upon the SFPUC for their water quality monitoring, and this came up as part of the SFPUC's water quality report to the wholesale customers for the prior calendar year. ACWD's report stems from the SFPUC's supply. Ms. Sandkulla noted that this testing happens once a year, or twice a year for some systems.

Director Weed encouraged the Board to keep a close eye on the Calaveras Dam Project. He also suggested that the Board ask the SFPUC to include the BAWSCA story as part of the interpretive center that the SFPUC is building at the Sunol Temple.

Director Pierce suggested the consideration of future opportunities to influence the SFPUC on how finances are spent on behalf of the wholesale customers. Ms. Sandkulla agreed and reported that she will be meeting with David Briggs and Steve Ritchie about its 10 year CIP. Ms. Sandkulla will address the scope, objective and benefits of projects, and how they serve the wholesale customers.

Ms. Schutte announced that there will be a conference room at the League of Cities Conference in Sacramento where Board members can conference call into the September Board meeting. The Board will be provided with further information. A Hanson Bridgett staff will be at the conference to assist in the coordination of the teleconference.

8. **Adjournment:** The meeting was adjourned at 2:30pm. The next meeting is October 9, 2013.

Respectfully submitted,



Nicole Sandkulla, Chief Executive Officer

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Attachments: 1) Attendance Roster

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

BOARD POLICY COMMITTEE – August 14, 2013

Roster of Attendees:

Committee Members Present

Rob Guzzetta, California Water Service Company (Chair)
Randy Breault, City of Brisbane/GVMID (BAWSCA Vice Chair)
Charlie Bronitsky, City of Foster City
Irene O’Connell, City of San Bruno (BAWSCA Chair)
Tom Piccolotti, North Coast County Water District
Barbara Pierce, City of Redwood City
John Weed, Alameda County Water District

Committee Members Absent

Al Mendall, City of Hayward (Vice Chair)
Louis Vella, Mid-Peninsula Water District

BAWSCA Staff:

Nicole Sandkulla	Acting CEO/General Manager
Christina Tang	Sr. Administrative Analyst
Lourdes Enriquez	Assistant to the Chief Executive Officer
Allison Schutte	Legal Counsel, Hanson Bridgett, LLP

Public Attendees:

Peter Drekmeier	Tuolumne River Trust
Michelle Novotny	San Francisco Public Utilities Commission
Nico Procos	City of Palo Alto