

Bighorn-Desert View Water Agency



Board of Directors

J. Larry Coulombe, President
Michael McBride, Vice President
Judy Cori-Lorono, Secretary
J. Dennis Staley, Director
Terry Burkhart, Director

Marina D West, PG, General Manager

A Public Agency

Agency Office
622 S. Jemez Trail
Yucca Valley, CA 92284-1440

760/364-2315 Phone
760/364-3412 Fax

www.bdvwa.org

Board of Directors Regular Meeting Agenda

Tuesday, February 28, 2017 - 6:00 p.m.
Board Meeting Office
1720 N. Cherokee Trail, Landers, CA 92285

1. Call To Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of Agenda

Discussion and Action Items - The Board of Directors and Staff will discuss the following items, and the Board will consider taking action, if so inclined.

The Public is invited to comment on any item on the agenda during discussion of that item.

When giving your public comment, please have your information prepared. If you wish to be identified for the record then please state your name. Due to time constraints, each member of the public will be allotted three-minutes to provide their public comment.

5. **Resolution No. 17R-XX Expressing Support for the Enactment of Assembly Bill No. 366, An Act to Amend Section 106.4 of the Water Code**
Board considers taking the following action(s):
 1. Adopt Resolution No. 17R-XX Expressing Support for the Enactment of Assembly Bill No. 366, An Act to Amend Section 106.4 of the Water Code.
6. **Discuss General Manager Employment Contract Including Compensation and Other Provisions**
Board considers taking the following action(s):
 1. Amending General Manager Employment Contract provisions including compensation, terms of employment and other benefits provisions.

- 7. Initiating of Procedure for a Cost-Of-Living Adjustment (COLA) to the Board of Directors Compensation Via Future Ordinance**
Board considers taking the following action(s):
 1. Direct staff to initiate the process for increasing the Board of Directors per diem compensation by five percent (5%) for fiscal year 2017/2018.

- 8. Changing the Agency Regular Elections for the Governing Board**
Board considers taking the following action(s):
 1. Adopt Resolution No. 17R-XX Changing the Regular Election for the Governing Board of Directors from November of Odd-Numbered Years to the Statewide General Election in November of Even-Numbered Years.

- 9. Resolution 17R-XX Adopting a Revised Purchasing Authority Policy**
Board considers taking the following action(s):
 2. Adopt Resolution No. 17R-XX Adopting a Revised Purchasing Authority Policy.

- 10. Resolution 17R-XX Authorizing Agency Credit Cards for Staff and Setting Guidelines for the Use of the Same**
Board considers taking the following action(s):
 1. Adopt Resolution No. 17R-XX Authorizing Agency Credit Cards for Staff and Setting Guidelines for the Use of the Same.

- 11. Consent Items** – The following items are expected to be routine and non-controversial and will be acted on by the Board at one time without discussion, unless a member of the Public or member of the Board requests that the item be held for discussion or further action.
 - a. Financial Statements January 2017
 1. Balance Sheet
 2. Budget Status
 - b. Receive and File Bank Reconciliation (AR Disbursements) January 2017
 - c. Unrestricted and Restricted Goat Mtn. Cash Account Summary
 - d. Service Order Report, January 2017
 - e. Production Report, January 2017
 - f. Goat Mtn. Production Report, January 2017
 - g. Regular Board Meeting Minutes, January 24, 2017
 - h. Receive and File Regular FPREP Committee Meeting Report, November 16, 2016
 - i. Resolution 17R-XX – A Resolution Authorizing Agency Director Credit Cards and Setting Guidelines for the Use of the Same.

Recommended Action:

Approve as presented (Items a - i):

12. Matters Removed From Consent Items

13. Public Comment Period

Any person may address the Board on any matter within the Agency's jurisdiction on items not appearing on this agenda.

When giving your public comment, please have your information prepared. If you wish to be identified for the record then please state your name. Due to time constraints, each member of the public will be allotted three-minutes to provide their public comment. State Law prohibits the Board of Directors from discussing or taking action on items not included on the agenda.

14. Verbal Reports - Including Reports on Courses/Conferences/Meetings.

- a. General Manager Report
- b. Director Reports
- c. President Report

15. Adjournment

In accordance with the requirements of California Government Code Section 54954.2, this agenda has been posted in the main lobby of the Bighorn-Desert View Water Agency, 622 S. Jemez Trail, Yucca Valley, CA not less than 72 hours if prior to a Regular meeting, date and time above; or in accordance with California Government Code Section 54956 this agenda has been posted not less than 24 hours if prior to a Special meeting, date and time above.

As a general rule, agenda reports or other written documentation has been prepared or organized with respect to each item of business listed on the agenda.

Copies of these materials and other disclosable public records in connection with an open session agenda item, are also on file with and available for inspection at the Office of the Agency Secretary, 622 S. Jemez Trail, Yucca Valley, California, during regular business hours, 8:00 A.M. to 4:30 P.M., Monday through Friday. If such writings are distributed to members of the Board of Directors on the day of a Board meeting, the writings will be available at the entrance to the Board of Directors meeting room at the Bighorn-Desert View Water Agency.

Internet: Once uploaded, agenda materials can also be viewed at www.bdvwa.org.

Public Comments: You may wish to submit your comments in writing to assure that you are able to express yourself adequately.

Per Government Code Section 54954.2, any person with a disability who requires a modification or accommodation, including auxiliary aids or services, in order to participate in the meeting, should contact the Board's Secretary at 760-364-2315 during Agency business hours.

AGENDA ITEM # 5

**BIGHORN DESERT VIEW WATER AGENCY
AGENDA ITEM SUBMITTAL**

Meeting Date: February 28, 2017

To: Board of Directors

Budgeted: No

Budgeted Amount: \$0

Cost: \$0

From: Marina D. West

Subject: Resolution No. 17R-XX Expressing Support for Assembly Bill 366 (Olbermolte), an Act to Amend Section 106.4 of the Water Code, Regarding Development Utilizing Hauled Water

SUMMARY

Last year, SB 1263 (Wieckowski) was signed into law. The bill contained language which prohibits construction of a home where hauled water is the only economical, potable or available supply.

The Agency is in the water business. At least 1/3 of our service territory does not have a pressurized water supply. To meet the needs of property owners in these areas the Agency developed a water hauling system comprised of 5 stations located throughout the boundaries. At this time, the Agency has approximately 100 individual haulers and several commercial haulers. Therefore, over time the Agency has stayed committed to providing a mechanism for folks to haul water.

As the Agency was just being informed of SB 1263 and its ban on hauled water so was Assy. Olbermolte whose constituents include residents of Johnson Valley, Lucerene Valley and Big Bear where hauled water is common. Assy. Olbermolte took exception to this law and agreed to draft legislation to correct it.

AB 366 is Assy. Olbermolte's bill which simply wants to allow hauled water to development under the conditions that the supply be "legal" and the hauler be licensed.

RECOMMENDATION

Board considers taking the following action(s):

1. Adopt Resolution No. 17R-XX Expressing Support for Assembly Bill SB 366 (Olbermolte), an Act to Amend Section 106.4 of the Water Code, referring to hauled water.

BACKGROUND/ANALYSIS

Last year, SB 1263 (Wieckowski) was signed into law. The bill contained language which prohibits construction of a home where hauled water is the only economical, potable or available supply.

The bill contained the following language:

This bill would prohibit a city, including a charter city, or a county from issuing a building permit for the construction of a new residential development where a source of the water supply is water transported by a water hauler, bottled water, a water-vending machine, or a retail water facility, as specified. By imposing new duties on a city or county in connection with the issuance of a building permit, the bill would impose a state-mandated local program.

The Agency is in the water business. At least 1/3 of our service territory does not have a pressurized water supply. To meet the needs of property owners in these areas the Agency developed a water hauling system comprised of 5 stations located throughout the boundaries. At this time, the Agency has approximately 100 individual haulers and several commercial haulers. Therefore, over time the Agency has stayed committed to providing a mechanism for folks to haul water.

As the Agency was just being informed of SB 1263 and its ban on hauled water so was Assy. Olberholte whose constituents include residents of Johnson Valley, Lucerene Valley and Big Bear where hauled water is common. Assy. Olberholte took exception to this law and agreed to draft legislation to correct it.

AB 366 is Assy. Olberholte's bill which simply wants to allow hauled water to development under the conditions that the supply be "legal" and the hauler be licensed.

The attached resolution would appropriately express the Agency's support for AB 366.

PRIOR RELEVANT BOARD ACTION(S)

None

ASSEMBLY BILL

No. 366

Introduced by Assembly Member Obernolte

February 8, 2017

An act to amend Section 106.4 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 366, as introduced, Obernolte. Water supply: new residential development: building permits.

Existing law prohibits a city, including a charter city, or a county from issuing a building permit for the construction of a new residential development where a source of the water supply is water transported by a water hauler, bottled water, a water-vending machine, or a retail water facility. Under existing law, this prohibition on the issuance of a building permit does not apply to a residence that will be rebuilt because of a natural disaster.

This bill would exempt from the prohibition on the issuance of a building permit a residence that will be rebuilt because of a fire and would provide that this is declaratory of existing law. This bill would exempt from the prohibition on the issuance of a building permit the development of 10 or fewer units on parcels that existed before January 1, 2018, if the water provided to those parcels will be obtained from a legal source and delivered by a licensed water hauler. By imposing new duties on a city or county in connection with the issuance of a building permit, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 106.4 of the Water Code is amended to
2 read:

3 106.4. (a) For the purposes of this section:

4 (1) "Bottled water" has the same meaning as defined in Section
5 111070 of the Health and Safety Code.

6 (2) "Residential development" has the same meaning as defined
7 in Section 65008 of the Government Code.

8 (3) "Retail water facility" has the same meaning as defined in
9 Section 111070 of the Health and Safety Code.

10 (4) "Water-vending machine" has the same meaning as defined
11 in Section 111070 of the Health and Safety Code.

12 (5) "Water hauler" has the same meaning as defined in Section
13 111070 of the Health and Safety Code.

14 (b) A city, including a charter city, or a county shall not issue
15 a building permit for the construction of a new residential
16 development where a source of water supply is water transported
17 by a water hauler, bottled water, a water-vending machine, or a
18 retail water facility.

19 (c) This section does not apply to a residence that will be rebuilt
20 because of a *fire or* natural disaster.

21 (d) *This section does not apply to the development of 10 or fewer*
22 *units on parcels that existed before January 1, 2018, if the water*
23 *provided to those parcels will be obtained from a legal source and*
24 *delivered by a licensed water hauler.*

25 (d)

26 (e) The Legislature finds and declares that this section addresses
27 a matter of statewide concern and not a municipal affair, as that
28 term is used in Section 5 of Article XI of the California
29 Constitution.

30 SEC. 2. The amendment to subdivision (c) of Section 106.4
31 of the Water Code made by this act does not constitute a change
32 in, but is declaratory of, existing law.

1 SEC. 3. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 a local agency or school district has the authority to levy service
4 charges, fees, or assessments sufficient to pay for the program or
5 level of service mandated by this act, within the meaning of Section
6 17556 of the Government Code.

O

RESOLUTION NO. 17R-XX

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BIGHORN-DESERT VIEW WATER AGENCY EXPRESSING ITS SUPPORT FOR ASSEMBLY BILL 366, AN ACT TO AMEND SECTION 106.4 OF THE WATER CODE

WHEREAS, the Bighorn-Desert View Water Agency's ("Agency") Law is set forth in California Water Code-Uncodified Acts; and

WHEREAS, the State Water Resources Control Board Division of Drinking Water has issued Water Supply Permits to supply water for domestic purposes within the Agency boundaries pursuant to the provisions of Division 104, Part 12, Chapter 4, Article 7, of the California Health and Safety Code; and

WHEREAS, the Water Supply Permits are subject to the requirements of Title 22, California Code of Regulations, and to the conditions provided in the water supply permit; and

WHEREAS, approximately one-third of the Agency's service territory does not have a pressurized water system which led to the installation of facilities that could provide a "you haul" water source otherwise known as a "bulk water station"; and

WHEREAS, the water supplied to the five bulk water stations meets all the requirements of Title 22 and the California Code of Regulations; and

WHEREAS, installation of a pressurized water system to these portions of the Agency has been found to be extremely cost prohibitive given the low population and vast amount of public lands managed by the Bureau of Land Management that must be traversed; and

WHEREAS, aside from bulk hauled water the residents in these areas could drill their own water well however water quantity and water quality is not always sufficient to provide for such needs as drinking, cooking and sanitation; and

WHEREAS, bulk hauled water represents one of the most conservative uses of potable water; and

WHEREAS, in 2016 Senate Bill 1263 (Wieckowski) was signed into law and essentially prohibits the use of bulk hauled water for private property development which directly impacts the Agency's ability to provide bulk water service to any new property owners; and

WHEREAS, the Agency finds that this prohibition flies in the face of the “Human Right to Water”; and

WHEREAS, Assemblyman Olberholte (Big Bear) has drafted legislation, AB 366, which would undo some of the prohibitions set forth in SB 1263 (Wieckowski) and essentially allow for the issuance of building permits when “the water provided to those parcels will be obtained from a legal source and delivered by a licensed water hauler”; and

WHEREAS, Bighorn-Desert View Water Agency maintains “legal” bulk hauling water sources and there are known to be “licensed water haulers” doing business within the boundaries of the Agency.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the Bighorn-Desert View Water Agency hereby expresses its unanimous and unqualified approval of, and support for, Assembly Bill 366, introduced by Assembly Member Olberholte on February 8, 2017, and respectfully urges the State Legislature to enact this measure at the earliest opportunity.

PASSED, APPROVED, AND ADOPTED by the Board of Directors to Bighorn-Desert View Water Agency this 28th day of February 2017.

By _____
J. Larry Coulombe, Board President

Attest:

Judy Corl-Lorono, Board Secretary

AGENDA ITEM # 6

**CURRENT
GENERAL MANAGER
EMPLOYMENT CONTRACT
EXPIRES JUNE 1, 2018**



**BIGHORN-DESERT VIEW WATER AGENCY
EMPLOYMENT AGREEMENT
for the Position of
GENERAL MANAGER
AMENDMENT NO. 1**

RECITALS

WHEREAS, an EMPLOYMENT AGREEMENT ("Agreement") was entered into on 31st day of May, 2011, by and between BIGHORN-DESERT VIEW WATER AGENCY ("Agency"), a public agency formed pursuant to the Bighorn-Desert View Water Agency Law, Chapter 112 of the Appendix to the California Water Code, and MARINA D. WEST, P.G. ("Employee" or "General Manager"), an individual.

WHEREAS, on May 28, 2013, the Board of Directors through Motion No. 13-035 and Motion No. 13-036 amended the Agreement.

NOW, THEREFORE, in consideration of mutual covenants contained herein, including the Recitals which are made a part hereof, Agency and Employee hereby agree as follows:

2.0 TERM OF EMPLOYMENT.

Subject to the earlier termination as provided by the (original) Agreement, General Manager shall be employed by Agency for a term of 5 years, beginning the 1st day of May 2013 and ending the 1st day of June 2018.

Provided that, if Agency and General Manager are in negotiation of arrangements to continue employment of General Manager beyond the termination date, this Agreement shall remain in full force and effect until either (i) said negotiations are terminated by either the Agency or General Manager or (ii) the Agreement is replaced by a new agreement, or (iii) the Agency and General Manager agree to continue the terms on this Agreement.

3.0 COMPENSATION.

The Agency shall pay General Manager an annual base salary of One Hundred Thirty-Five Thousand Dollars (\$135,000), payable bi-weekly in accordance with the Agency's standard payroll procedures beginning on July 1, 2013.


In addition to the General Manager's base salary, in any fiscal year, if other Agency employees receive a cost of living ("COLA") increase, then the General Manager shall receive such COLA increase to her base salary.

Additionally, the Board of Directors may give the General Manager compensation increases. Any compensation increase shall be approved by the Board and documented by an addendum or amendment to this agreement signed by both parties.

BIGHORN-DESERT VIEW WATER AGENCY



Michael McBride, Board President

6-6-13
Date

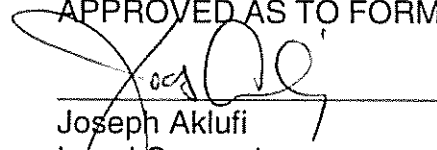

Marina D. West, P.G.

6-6-13
Date

ATTEST:


David Larson
Board Secretary

APPROVED AS TO FORM


Joseph Aklufi
Legal Counsel



**BIGHORN-DESERT VIEW WATER AGENCY
EMPLOYMENT AGREEMENT
For the Position of
GENERAL MANAGER**

This EMPLOYMENT AGREEMENT ("Agreement") is entered into this 31st day of May, 2011, by and between BIGHORN-DESERT VIEW WATER AGENCY ("Agency"), a public agency formed pursuant to the Bighorn-Desert View Water Agency Law, Chapter 112 of the Appendix to the California Water Code, and MARINA D. WEST, P.G. ("Employee" or "General Manager"), an individual.

RECITALS

WHEREAS, is the desire of the Board of Directors of the Bighorn-Desert View Water Agency ("Board of Directors") to employ an individual to serve in the position of General Manager for the Agency, which position is prescribed by state law and the Agency's enabling statute; and

WHEREAS, it is the desire of the Board of Directors to (i) secure and retain the services of Employee, (ii) have Employee perform all of the regular functions of the General Manager pursuant to the statutes and regulations of the Agency, (iii) to provide inducement to Employee to maintain such employment, and (iv) to establish the terms and conditions of Employee's services to the Agency through this Agreement; and

WHEREAS, Employee has been employed in this capacity since April 21, 2008 and has demonstrated the skills and expertise to fulfill such position, and Employee and Agency both desire to continue employment relationship for an additional term of with the Agency.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, including the Recitals which are made a part hereof, Agency and Employee hereby agree as follows:

AGREEMENT

1.0 EMPLOYMENT & DUTIES.

1.1 Duties & Obligations of General Manager. Agency hereby employs Employee as General Manager of the Agency and hereby designates General Manager as the person who shall direct the Agency activities in connection with the development, production, treatment, storage, transmission and distribution of water for potable water uses, bulk water services and fire protection, including operations, maintenance and management in accordance with the directions and policies established by the Board of Directors, as those directions are assigned and as those policies may be amended or otherwise modified from time to time, and shall do and perform all other services, acts, or things necessary or advisable to manage and conduct the business of the Agency consistent with General Manager's best professional judgment and as directed by the Board of Directors, including the approval of all checks but not including the execution of checks, and

engaging in other necessary transactions involving Agency funds. General Manager hereby accepts such employment.

1.2 Obligation of the Board of Directors. The Board of Directors shall direct the Agency only through General Manager. Neither the Board of Directors nor any individual Agency Director shall give orders or instructions to any subordinates of the General Manager except for the purpose of inquiry. General Manager shall take orders and instructions from the Board of Directors only after the Board of Directors have acted in a duly convened meeting of the Agency and General Manager shall take orders from an individual Agency Director only if the Board has lawfully delegated its authority to give orders and instructions on that particular topic to that particular Director, or at the General Manager's discretion where the General Manager believes the direction is consistent with Board policy. Notwithstanding the foregoing, the General Manager remains under the direction of the Board and in the event of any questions concerning the Board's general direction, the matter may be placed on a Board agenda.

1.3 Work Schedule. During employment with the Agency, General Manager shall devote her full productive time and best efforts to performing the General Manager's duties as may be necessary to fulfill the requirements of her position. The Agency expects that the performance of the duties of the General Manager should require at least forty (40) hours per week, of which up to four (4) hours per week may be allocated to educational purposes. This four (4) hour per week allocation for educational purposes will expire upon successful completion of General Manager's pending course work seeking the degree of Master of Arts of Public Administration ("MPA").

General Manager acknowledges that proper performance of the duties of the General Manager will often require the performance of necessary services outside of normal business hours. However, the Agency intends that reasonable time off be permitted to General Manager, such as is customary for exempt employees, so long as the time off does not interfere with normal business. General Manager's compensation (whether salary or benefits or other allowances) is not based on hours worked and General Manager shall not be entitled to any compensation for overtime.

1.4 Agency Documents. All data, studies, reports, and other documents prepared by General Manager while performing her duties during the term of this Agreement shall be furnished to and become the property of the Agency, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to General Manager in connection with the performance of this Agreement shall be held confidential by General Manager to the extent permitted by applicable law. Such materials shall not, without the prior written consent of the Board of Directors, be used by General Manager for any purposes other than the performance of her duties, nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by law.

1.5 FLSA Exempt Status. General Manager agrees that her position is that of an exempt employee for the purposes of the Fair Labor Standards Act.

2.0 TERM OF EMPLOYMENT.

Subject to the earlier termination as provided in this Agreement, General Manager shall be employed by Agency for a term of 5 years, beginning the 31st day of May 2011 and ending the 1st day of June 2016.

Provided that, if the Agency and General Manager are in negotiation of arrangements to continue employment of General Manager beyond the termination date, this Agreement shall remain in full force and effect until either (i) said negotiations are terminated by either the Agency or General Manager or (ii) this Agreement is replaced by a new agreement, or (iii) the Agency and General Manager agree to continue the terms of this Agreement.

3.0 COMPENSATION.

The Agency shall pay General Manager an annual base salary of One Hundred Six Thousand Dollars (\$106,000.00), payable bi-weekly in accordance with the Agency's standard payroll procedures. Upon completion of MPA degree, the \$4,000.00 educational allowance will cease, and the General Manager's base salary shall increase by \$4,000.00; increasing the General Manager's annual base salary to \$110,000.00

In addition to the General Manager's base salary, in any fiscal year, if other Agency employees receive a cost of living ("COLA") increase, then the General Manager shall receive such COLA increase to her base salary.

Additionally, the Board of Directors may give the General Manager compensation increases. Any compensation increase shall be approved by the Board and documented by an addendum or amendment to this agreement signed by both parties.

4.0 BENEFITS.

Except as provided herein, the Agency shall provide for General Manager the same benefits (including, but not limited to, retirement, medical, dental plans and other benefits) which the Agency provides other Agency employees and upon the same terms and conditions as to which apply to other employees or officers of the Agency, which fringe benefits are not included in the base salary. Fringe benefits are implemented immediately and as described in the Employee Handbook.

General Manager shall be entitled to a term life insurance policy (including all of the other amenities associated with the policy) two (2) times her annual salary or the limit imposed by the provider, but not to be lower than \$200,000. The term life insurance policy will be implemented within 3 months of approving this agreement.

In addition to the foregoing fringe benefits, General Manager shall be entitled to a maximum of \$4,000 per year for educational reimbursement, paid in accordance with the terms of the Employee Handbook. This \$4,000 annual educational reimbursement

automatically transfers to the General Manager's base annual salary upon successful completion of General Manager's pending course work seeking the MPA degree as set forth in Section 3.0. General Manager shall be entitled to reimbursement for reasonable or necessary educational or business expenses incurred in furtherance of the Agency's business as set forth in Section 7.0 of this Agreement and the Employee Handbook.

5.0 VACATION, HOLIDAYS, SICK LEAVE AND ADMINISTRATIVE LEAVE.

General Manager shall accrue and take vacation days, holidays and sick leave in accordance with the Employee Handbook, except, General Manager shall be entitled to an additional two (2) weeks vacation time per year and eighty (80) hours of administrative leave per year, with all policies and caps on accruals applying as set forth in the Employee Handbook, except, the "Maximum Allowed Unused Balance" of vacation hours shall be 320 hours.

6.0 AUTOMOBILE.

The Agency shall provide General Manager with an automobile allowance of \$500 per month. On all vehicles owned by General Manager which she intends to use for Agency business, General Manager shall maintain automobile insurance in an amount not less than \$100,000 per person and \$300,000 per incident, which insurance shall name the Agency as an additional insured.

Notwithstanding General Manager's automobile allowance, the Agency and General Manager acknowledge that on a limited basis, it will be necessary for General Manager, from time to time as she deems reasonably appropriate, to utilize a four-wheel drive or other Agency-owned pool vehicle for various purposes including to access areas of the Agency or the surrounding communities in furtherance of Agency business; to transport Agency employees, members of the Board of Directors, consultants, agents, and others; to access areas of the Agency or the surrounding communities and counties; for similar special circumstances, all to conduct Agency business, and use of such vehicle shall not affect General Manager's automobile allowance.

7.0 BUSINESS EXPENSES.

All business expenses reasonably incurred by General Manager in conducting Agency business, including expenditures for entertainment, travel, or otherwise, are to be paid for, insofar as possible, by the use of credit cards which may be furnished to General Manager in the name of the Agency. The Agency shall promptly reimburse General Manager for all other reasonable business expenses incurred by General Manager in conjunction with Agency business. Each such expenditure, however, shall be reimbursable only if General Manager furnishes to the Agency in a timely manner adequate records and other documentary evidence required by federal and state statutes and regulations issued by the appropriate taxing authorities for the substantiation of such expenditures.

8.0 CONDITIONS FOR TERMINATION OF AGREEMENT.

8.1 Death or Incapacity of General Manager. This Agreement shall terminate on the death or disability of General Manager as set forth herein section 9.

8.2 By General Manager. This Agreement may be terminated by General Manager at any time, without cause, upon no less than sixty (60) days prior written notice to Agency. General Manager shall be entitled to compensation and benefits to the effective date of termination, but shall not be entitled to any additional compensation or benefits thereafter.

8.3 By Agency With Cause. The Agency may by majority vote of the membership of the Board of Directors terminate this agreement for cause at any time. For the purposes of this agreement, "cause" for termination shall be defined as: (1) failure to follow the clear direction of the Board of Directors given in a duly noticed meeting and/or flagrant or repeated neglect of duties, after General Manager has been notified in writing of such failure to follow and/or neglect and provided thirty (30) days to correct the deficiencies; (2) willful misappropriation of public property; (3) willful and substantial violation of law related to the performance of the General Manager's duties; or (4) willful falsification of a relevant official statement or document.

8.4 Notice of such proposed discharge by the Agency for cause shall be given in writing to General Manager along with a detailed statement of charges and copies of the materials upon which the proposed action is based. General Manager shall be entitled to a hearing before the Board of Director's at least two (2) weeks from the date of receipt of written notice of the proposed discharge, however, such a hearing shall not be held on weekends or federal or state holidays. Reasonable time shall be permitted for General Manager to prepare for the hearing. General Manager hereby elects for such hearing, should a hearing become necessary under this provision, to be conducted in closed session, unless specifically prohibited by state law or a public hearing is requested by General Manager. Any decision by the Agency shall be in writing and shall be served upon General Manager.

If the Agency terminates General Manager with cause as set forth in this provision, the Agency shall not be required to make the severance payment provided for in this Agreement, but must provide termination benefits as set forth in the Employee Handbook.

8.5 By Agency Not For Cause. The Agency may by majority vote of the membership of the Board of Directors terminate General Manager's employment at any time without cause immediately upon written notice to General Manager and payment to General Manager, in addition to any other amounts that may therein be due pursuant to this Agreement and Agency policies including those set forth in the Employee Handbook, the following amount: (i) if the remaining term of employment of General Manager under this Agreement is six months or less, a lump sum payment in an amount equal to one twelfth of her then-current annual base salary times the number of months in the remaining term of this Agreement; or (ii) if the remaining term of employment of General Manager under this Agreement is more than six months, a monthly payment of one-

twelfth of her then-current annual base salary, paid until General Manager secures and commences other full-time employment or the expiration of her term of employment, whichever occurs first, but in no case more than the remaining term of the Agreement or eighteen (18) months, whichever is less.

8.6 Termination Without Cause in the 180 Days Following an Election. Following an election of the Board of Directors regardless of whether new Directors are elected to represent the Agency, or when a new Board member is appointed, the Board may not terminate this Agreement except for cause for the 180 days following such election.

9.0 DISABILITY.

In the event General Manager becomes unable to perform her duties by reason of physical or mental illness or disability, General Manager shall be entitled to her full compensation for the period of four (4) months from and after the beginning of such disability and if, at the end of the four (4) months she is unable to resume and effectively discharge her duties hereunder, then and in such event, the Agency may terminate this Agreement, subject to applicable law and in accordance with the terms of the Employee Handbook.

10.0 AGENCY'S DUTY TO DEFEND, INDEMNIFY AND HOLD HARMLESS.

Recognizing that General Manager is entitled to perform her duties without fear of suit, and as a public employee is entitled to indemnification rights in accordance with Government Code Section 825. The Agency agrees to defend, indemnify and hold General Manager harmless against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the course and scope of General Manager's employment or resulting from the exercise of judgment or discretion in connection with the course and scope of said duties or responsibilities, except as otherwise set forth herein. The Agency agrees to pay all reasonable litigation expenses of General Manager throughout the pendency of any litigation resulting from any such claim, action, suit or proceeding, actual or threatened, arising out of or continuing beyond General Manager's service to the Agency and shall extend until final determination of the legal action, including appeals. As a condition of the defense, General Manager shall reasonably cooperate in good faith in defense of the claim or action.

In this regard, the Agency shall indemnify General Manager against any and all losses, damages, judgments, interest, settlements, fines, court costs, and other reasonable costs and expenses of legal proceedings, including attorneys' fees and any other liabilities incurred by, imposed upon, or suffered by General Manager in connection with the performance of her duties. Any settlement of any claim must be made with the prior approval of the Agency in order for indemnification, as provided in this Section to be available. Notwithstanding the above, the Agency shall only indemnify General Manager for punitive or exemplary damages as authorized in Government Code Section 825, or its successor.

This section shall not apply to any intentional tort or crime committed by General Manager, to any action resulting from fraud, corruption or malice of General Manager, to

any action outside the course and scope of the services provided by General Manager under this Agreement, or any other intentional or malicious conduct or gross negligence of General Manager, and Agency hereby reserves its right to invoke this provision to terminate its duty to defend and indemnify General Manager if in the course of defending General Manager the Agency learns that General Manager acted with corruption, fraud or malice. The Agency may make this indemnity obligation conditional upon General Manager entering into a reservation of rights agreement. Further, this provision shall not apply to defense of criminal actions or proceedings unless the Agency finds: (i) the criminal action(s) or proceeding(s) brought on account of an act or omission in the scope of General Manager's employment as an employee of the Agency; and (ii) the Board of Directors determines that such defense would be in the best interests of the Agency and that General Manager acted, or failed to act, in good faith, without actual malice and in the apparent interests of the Agency as required by Government Code Section 995.8, or its successor.

11.0 ANNUAL REVIEW.

The Board of Directors shall conduct an annual evaluation of General Manager's performance, either by the full Board of Directors or by a committee thereof, at the first regularly scheduled meeting of the Board of Directors in April of each year that this Agreement is in effect. At a minimum, said evaluation shall consist of an oral conference with General Manager to review her performance in accordance with applicable law and requirements. Every year the Board of Directors and General Manager will, as part of the annual review process, set goals and objectives for the ensuing year.

12.0 GENERAL PROVISIONS.

12.1 Entire Agreement. This Agreement constitutes the entire agreement between the Agency and General Manager and supersedes all prior oral or written agreements of any kind. No amendments to this Agreement may be made except by a writing signed by both the Agency and General Manager.

12.2 Governing Law. The validity and interpretation, performance and effect of this Agreement shall be construed in accordance with the laws of the State of California.

12.3 Notice. Any notice or communication required or permitted to be given under this Agreement shall be effective when deposited, postage prepaid, with the United States Mail. Any notice to the Agency shall be addressed as follows:

Bighorn-Desert View Water Agency
622 South Jemez Trail
Yucca Valley, CA 92284-1440

Notice to General Manager shall be addressed to General Manager at her last known address as reflected in the Agency's records.

12.4 Severability. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect.

12.5 Effect of Waiver. The failure of either the Agency or General Manager to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or time be deemed a waiver or relinquishment of that right or power for all or any other times.

12.6 Enforceability. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees, cost, and necessary disbursement in addition to any other relief to which that party may be entitled. This provision shall be construed as applicable to the entire Agreement.

12.7 Conflicts Prohibited. During the term of this Agreement, General Manager shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict in any manner, with the proper discharge of General Manager's duties under this Agreement. General Manager shall comply with all requirements of law, including but not limited to, Sections 87100 *et seq.*, Section 1090 and Section 1125 of the Government Code, and all other similar statutory and administrative rules. Whenever any potential conflict arises or may appear to arise, the obligation shall be on General Manager to seek legal advice concerning whether such conflict exists and General Manager's obligations arising therefrom. General Counsel of the Agency shall be available to consult with General Manager concerning the foregoing.

12.8 Affirmation and Ratification of Agreement. The Agency and General Manager each ratify and reaffirm each and every one of the respective rights and obligations arising under this Agreement, and both the Agency and General Manager represents and warrants to the other that the Agreement is currently an effective, valid and binding obligation. The Agency and General Manager further ratify and reaffirm all prior actions of the Board of Directors' approving an increase in General Manager's base salary by 6% bringing her base salary up to \$106,000.00, increase administrative leave by 40 hours, increase vacation time by one (1) additional week, and increase educational reimbursement by an additional \$1,000.00, all of which are incorporated herein.

12.9 Independent Review. The Agency and General Manager further represent and warrant that each has carefully reviewed this entire Agreement, and that each and every term thereof is understood, and that the terms of this Agreement are contractual and not a mere recital. This Agreement shall not be construed against the party or its representatives who drafted it or who drafted any portion thereof.


12.10 Assignment. Neither this Agreement, nor any right, privilege, nor obligation of General Manager hereunder, shall be assigned or transferred by General Manager without the prior written consent of the Agency. Any attempt at assignment or transfer in violation of this provision shall, at the option of the Agency, be null and void.

This Agreement is executed by the Agency pursuant to an action of its governing body in open session of a duly organized meeting of the Agency's Board of Directors on **May 31, 2011**, authorizing the same.

BIGHORN-DESERT VIEW WATER AGENCY



Terry Burkhart, Board President

5-31-11
Date

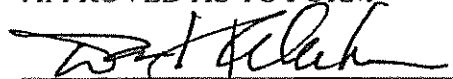

Marina D. West, P.G.

5-31-11
Date

ATTEST:


Judy Corl-Lorono
Board Secretary

APPROVED AS TO FORM


David J. Aleshire, Interim Legal Counsel

AGENDA ITEM # 7

**BIGHORN DESERT VIEW WATER AGENCY
AGENDA ITEM SUBMITTAL**

Meeting Date: February 28, 2017

To: Board of Directors

Budgeted: TBD

Budgeted Amount: N/A

From: Marina D. West

General Counsel Approval: N/A

CEQA Compliance: N/A

Subject: Consider Initiating Procedure Allowing for a Cost-of-Living Adjustment (COLA) to the Board of Directors Per Diem Compensation

SUMMARY

Should the Board of Directors wish to pursue the allowable five percent (5%) Cost-of-Living Adjustment (COLA) to their per diem then the procedure for such should be initiated so that the increase can coincide with the new fiscal year beginning July 1, 2017.

RECOMMENDATION

The Board considers taking the following action(s):

1. Direct staff to initiate the process for increasing the Board of Directors per diem compensation by five percent (5%) for fiscal year 2017/18.

BACKGROUND/ANALYSIS

By law, the Board can authorize an increase in their per diem one time per year. The maximum allowable annual increase is five percent (5 %).

The process of increasing the Board of Directors per diem is done by Ordinance in accordance with Section 20200 - 20207 of the California Water Code and Section 6066 of the California Government Code.

In summary, the Board of Directors can increase their per diem only by Ordinance and the increase may not exceed an amount equal to 5 percent (5%) per year. If the Board requests the full 5% adjustment then per diems would effectively increase to one hundred and twenty-one dollars and fifty-five cents (\$127.62) per day of authorized service.

Staff recommends that if the Board desires to increase their per diem then the process should be initiated now so that the effective date would coincide with the adoption of the fiscal year 2017/18 budget.

PRIOR RELEVANT BOARD ACTION(S)

05/24/2016 Ordinance No. 16O-01 Providing for Compensation of the Board of Directors and Establishing Procedures Related Thereto.

04/28/2015 Ordinance No. 15O-01 Providing for Compensation of the Board of Directors and Establishing Procedures Related Thereto.

4/22/2014 Ordinance No. 14O-01 Providing for Compensation of the Board of Directors and Establishing Procedures Related Thereto.

3/25/2014 Motion No. 14-018 Direct staff to initiate the process for increasing the Board of Directors per diem compensation by five percent (5%) for fiscal year 2014/15.