

NOTE: If you wish to address the MWD Board of Directors during discussion of an agenda item, or during the PUBLIC FORUM, please complete a Speaker Request card (blue in color) and give it to the Board Secretary. Unless a detailed presentation of an agenda item is required by the Board of Directors, it is requested that each speaker limit comments to FIVE MINUTES. All testimony given before the Board of Directors is tape recorded.

A G E N D A
BIG BEAR MUNICIPAL WATER DISTRICT

BOARD OF DIRECTORS
Regular Meeting
June 17, 2010

PLACE: Big Bear Municipal Water District
40524 Lakeview Drive, Big Bear Lake, CA 92315

Next Resolution Number: 2010- 04

OPEN SESSION: 1:00 P.M.

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. DISCUSSION AND ACTION ON CLOSED SESSION ITEMS**
- 4. REPORTS**
 - A. General Manager
 - B. Lake Manager
 - C. Legal
 - D. Committee
 - E. Other
- 5. CONSENT CALENDAR**
 - A. Minutes of a Regular Meeting of June 4, 2010
 - B. Minutes of a Special Meeting of June 10, 2010
 - C. Consider approval of a Resolution of the Board of Directors of Big Bear Municipal Water District establishing employee compensation and repealing Resolution No. 2009-09
 - D. Consider approval of General Manager's contract
 - E. Consider approval of Ratification of the Amended and Restated ACWA Health Benefits Authority Joint Powers Agreement and Bylaws
- 6. PUBLIC HEARING**

Consider Budget for Fiscal Year 2010-2011

7. **BUSINESS**
 - A. Consider approval of a Resolution of the Board of Directors of Big Bear Municipal Water District transferring funds unappropriated as of June 30, 2010 to the District's Contingency Reserve Account, affirming Investment Policy, approving the District's Budget and establishing the Appropriations Limit for the Fiscal Year commencing July 1, 2010
 - B. Consider approval of second reading by title only of an Ordinance of the Board of Directors of Big Bear Municipal Water District relating to Directors' Compensation
 - C. Consider approval of request to assist in funding the Santa Ana River Sucker Fish Task Force

8. **PUBLIC FORUM**

(The Board will receive comments from the public on items not on the agenda; no action is permitted on these items. Time set aside not to exceed 30 minutes total by all participants)

9. **ANNOUNCEMENTS**

10. **DIRECTOR COMMENTS**

11. **CLOSED SESSION**

Conference with Legal Counsel under:
Government Code Section 54956.9 (b) - Potential Litigation

 - A. Two Cases

12. **ADJOURNMENT**

NEXT MEETING: Open Session at 1:00 P.M.
Thursday, July 1, 2010
Big Bear Municipal Water District
40524 Lakeview Drive, Big Bear Lake, CA

***MINUTES OF A REGULAR MEETING OF
BIG BEAR MUNICIPAL WATER DISTRICT
HELD ON THURSDAY, JUNE 3, 2010***

CALL TO ORDER

President Fashempour called the Open Session to order at 1:00 PM. Those in attendance included Director Eminger, Director Suhay, Director Murphy, District Counsel Wayne Lemieux (via Skype), General Manager Scott Heule, Lake Manager Mike Stephenson, and Board Secretary Vicki Sheppard.

REPORTS

Mr. Heule thanked the Board for approving his vacation time last week commenting that he and his family had a wonderful time in Alaska. He reported that staff was concerned about impacts on launch ramp operations during road closures for the Amgen event on May 21st explaining that, as it turned out, we essentially had no impacts on our operations. He added that several people used the east ramp parking lot but it pretty much looked like a typical Friday afternoon crowd with nothing out of the ordinary. Mr. Heule reported that our staff has received written commendations from people we serve, and the District was thanked for opening up the Big Bear Marina launch ramp for public use while the east ramp is under construction adding that a phone call was received yesterday from a woman who specifically wanted to thank us for making those plans. He also read two letters that the District received. One was from Sol Polen praising the outstanding service and professionalism of Eric Gonzales and another was from Wally Weber thanking Travis Carroll and Adam Williams for assistance in handling a problem over the Memorial Day weekend. Mr. Heule reported that he met with Don Evenson (MWH) and Doug Headrick (GM of San Bernardino Valley Municipal Water District) to discuss a proposed change to our in-lieu agreement. He stated that Mr. Headrick was generally agreeable to the proposal but wants to see some modeling of the proposals before discussing it in detail with his Board. He explained that the plan would essentially create a storage account for Muni (San Bernardino Valley Municipal Water Dist.) and the District could recreate on the stored water in the mean time. He explained that Mr. Evenson will be making another presentation to the Watermaster Committee on this topic at the next meeting on June 22nd. He reported that he spoke with Bryce Johnston yesterday who explained that Caltrans is satisfied with the latest design from Simon Wong and the Federal Highway Administration (which provided funding for the new highway bridge) has said the bridge on the dam must be replaced before the new highway bridge project is considered complete. He reported that he sent a copy of the dam bridge design to Gloria Meade at the historical society so she is kept informed on the progress. He added that we will probably be considering approval of the final design plans and specifications contract with Simon Wong during the Board meeting on June 17. Mr. Heule reported that the new District web site can now be viewed at www.bbmwd.com and once some registration issues are resolved a full launch to the new web site at our regular web address will occur within the next 5 to 10 days. He explained that at that time we will also send out a post card mailer announcement in-lieu of our regular *Lakeviews* newsletter.

Lake Manager Mike Stephenson reported that the lake temperature is at 53 degrees explaining the unusual limnological report. He stated that there has been a lot of interest in the Carp Roundup adding that because of the unusual weather recently, it is a good thing that the tournament was rescheduled for later in June. He reported that staff will start weed treating next week describing the new hardware purchased for mapping. Mr. Stephenson reported that he

observed 3 different nests of small mouth bass. President Fashempour asked what bass nests were. Mr. Stephenson explained bass spawning nests. He reported on the progress of the East Ramp Repave and Decon Station project. He stated that it should be completed by next Thursday, June 10th, explaining that there is a penalty clause in the contract that the District can choose to exercise if the project is not completed by that date. Mr. Stephenson reported that trout fishing is incredible at this time adding that as the water temperature goes up it will change explaining that trout don't like the higher water temperatures.

District Counsel Wayne Lemieux reported that the Board met in closed session on May 20th regarding Conroy with no action to report.

APPROVAL OF CONSENT CALENDAR

Upon a motion by Director Suhay, seconded by Director Murphy, the following consent items were unanimously approved:

- Minutes of a Regular Meeting of May 20, 2010
- Warrant List Dated May 28, 2010 for \$67,808.71
- Approval of a dock design variance for Lakeside Village Park

PUBLIC FORUM

Mr. Rusty Barnes of Big Bear Lake inquired about the closure of the East Ramp. He asked about dock rights for the residential property just east of the Edgewater Inn stating that he represents the property buyer. Mr. Heule stated that he will consult with District Counsel and then the Operations Committee will meet regarding the Edgewater.

DISCUSSION AND PUBLIC COMMENT ON PROPOSED FISCAL YEAR 2010-2011 BUDGET – NO ACTION

Mr. Heule reported on the proposed budget stating that the Budget & Finance committee, along with Carrie Shirreffs, has been working very hard on the new budget. He summarized the budget going over it page by page. Mr. Heule discussed page 3 explaining Professional Services would most likely be less due to the reduction in payments to Walter Yep & Associates. Director Suhay stated that he feels we should keep Walter Yep as a consultant and perhaps lobby for direct funding for District projects rather than for ACOE projects. Mr. Heule stated that if that was the consensus they would make that adjustment. Mr. Heule continued explaining pages 4 through 15. No other comments were made. Mr. Heule stated that the next meeting, June 17th, would be for the budget adoption.

CONSIDER APPROVAL OF FIRST READING BY TITLE ONLY OF AN ORDINANCE OF THE BOARD OF DIRECTORS OF BIG BEAR MUNICIPAL WATER DISTRICT RELATING TO DIRECTORS' COMPENSATION

Mr. Heule reported that the Administrative Committee is recommending that each Director be paid not more than \$148.00 for each day's attendance at meetings of the Board and Committees thereof, and for each day's service rendered as Director by request of the Board, not exceeding a total of six days in any calendar month. He explained that each calendar year, the compensation shall be increased annually in January, but not decreased, in the amount of the change in the Consumer Price Index Urban Wage Earners of Los Angeles, Riverside, and Orange County, California. He added that in no event shall the increase exceed five percent. He reported that the Committee is recommending that the Ordinance first reading be made at this meeting and finally adopted at the June 17, 2010 Board meeting.

CONSIDER APPROVAL OF MWH TASK ORDER NO. 6 FOR TMDL WORKSHOP MEETINGS AND ON-CALL CONSULTING SERVICES

Mr. Heule reported that the Lake Improvement Committee did not have an opportunity to review the proposal prior to Agenda preparation but is now recommending approval. He stated that MWH's Arcadia office recently provided the District consulting and facilitation services associated with the conceptual master plan workshop. He explained that this work was requested by the Board partly in anticipation of the need to critically review and respond to proposals from the Nutrient TMDL Task Force to conduct studies and complete projects in the Lake. He added that in order to prepare the Board for this work MWH was asked for a scope of work and cost estimate to meet with key TMDL Task Force consultants in preparation for and facilitation of a Board workshop on June 24, 2010. He explained that during the workshop the Board will: 1. Review with the consultants the background and current standing of the Nutrient TMDL and Task Force status; 2. Learn about the draft Plans currently being proposed by the Task Force and; 3. Have an opportunity to develop guidelines from which the District can formally adopt support of the draft Plans (qualified where necessary) during the regular Board meeting on July 15, 2010. Mr. Heule reported that two of the draft plans include the Aquatic Plant Management Plan and the Lake Sediment Nutrient Reduction Plan adding that both of these plans will result in some minor or major obligations for the District or possibly impact the objectives identified by the District at the recent conceptual master plan workshop. He added that MWH was asked to include a task for on-call consulting services relating to TMDL issues so a piece meal approach to consultant management could be avoided in the future. Mr. Heule explained that the proposed cost for the MWH work is \$6,984 for Task 1 - TMDL Task Force meeting preparation and participation; \$12,953 for Task 2 - District TMDL workshop; and \$25,945 for Task 3 - Supplemental On-call services adding that besides the project management services associated with delivery of Tasks 1 and 2, the supplemental on-call services will only be commenced upon written direction from the District. He reported that funding for this work was not budgeted however there is sufficient money that has not already been designated in the Lake Improvement fund to pay for this effort.

Director Murphy moved approval of MWH Task Order No. 6 for TMDL Workshop Meetings and On-call Consulting Services. Director Eminger seconded the motion and it was unanimously approved.

ANNOUNCEMENTS

Mr. Heule announced that the ACOE Change of Command Ceremony is scheduled for July 1st at 10:00am, Fort Mac Arthur, San Pedro with dinner the night before. He asked if the Directors wanted to attend and if so the July 1st Board meeting would have to be adjourned. Director Suhay, Director Eminger, Director Murphy, and President Fashempour stated they would like to attend. President Fashempour proposed adjournment of the meeting but not deciding on another time and place of adjournment at this time.

Director Eminger moved to adjourn the meeting of July 1, 2010. Director Suhay seconded the motion and it was unanimously approved.

Mr. Heule reminded the Board that a closed session meeting was scheduled for June 10th to conduct the General Manager's performance evaluation. He also stated that the Board Workshop meeting on TMDL was scheduled for June 24th. Mr. Heule announced that the jet boat test tour with Wally Weber could be scheduled for after the Board meeting on June 17th. It was the consensus of the Board that Mr. Stephenson should try and schedule it with Wally Weber for 12:00 noon on that date.

DIRECTOR COMMENTS

Director Murphy announced that he would have to attend the closed session meeting on June 10th via conference call.

ADJOURNMENT

There being no further business, the meeting was adjourned at 2:12 P.M.

NEXT MEETING

Open Session at 1:00 P.M.
Thursday, June 17, 2010
Big Bear Municipal Water District
40524 Lakeview Drive, Big Bear Lake, CA

Vicki Sheppard
Secretary to the Board
Big Bear Municipal Water District

(SEAL)

***MINUTES OF A SPECIAL MEETING OF
BIG BEAR MUNICIPAL WATER DISTRICT
HELD ON THURSDAY, JUNE 10, 2010***

CALL TO ORDER

President Fashempour called the Open Session to order at 9:30 AM. Those in attendance included Director Eminger, Director Suhay, Director Smith, Director Murphy, General Manager Scott Heule, and Board Secretary Vicki Sheppard.

PUBLIC FORUM

No comments were made

ANNOUNCEMENTS

No announcements were made

DIRECTOR COMMENTS

No comments were made

ADJOURNMENT TO CLOSED SESSION

The meeting was adjourned to Closed Session at 9:34 AM to:
Conduct a General Manager Performance Evaluation

RECONVENE TO OPEN SESSION

The meeting was reconvened to Open Session at 11:29 AM
No reportable action.

ADJOURNMENT

There being no further business, the meeting was adjourned at 11:30 AM

NEXT MEETING

Open Session at 1:00 P.M.
Thursday, June 17, 2010
Big Bear Municipal Water District
40524 Lakeview Drive, Big Bear Lake, CA

Vicki Sheppard
Secretary to the Board
Big Bear Municipal Water District

(SEAL)

**BIG BEAR MUNICIPAL WATER DISTRICT
REPORT TO BOARD OF DIRECTORS**

MEETING DATE: *June 17, 2010*

AGENDA ITEM: *5C*

SUBJECT:

CONSIDER APPROVAL OF A RESOLUTION OF THE BOARD OF DIRECTORS OF BIG BEAR MUNICIPAL WATER DISTRICT ESTABLISHING EMPLOYEE COMPENSATION AND REPEALING RESOLUTION NO. 2009-09

RECOMMENDATION:

The General Manager and the Budget & Finance Committee (Directors Fashempour and Murphy) recommend approval of this action.

DISCUSSION/FINDINGS:

The District's Administrative Code states: "Subject to the following provisions, all employees of the agency shall receive a COLA effective the second payday in July of each year. In previous years, this adjustment has been based on the average of the previous six months (December – May) of the Consumer Price Index Urban Wage Earner of Los Angeles, Riverside and Orange County, CA areas. The data is available for the period ending April 2010 and based on the 12 month period May 2009 through April 2010 the CPI is 2.4%. It is recommended the Board approve the new compensation scale for 2010/2011 fiscal year based on the data from the period ending April 2010 which incorporates a 2.4% CPI.

OTHER AGENCY INVOLVEMENT: None

FINANCING: The increases will be charged against Salaries & Benefits.

Submitted by: Scott Heule, General Manager

RESOLUTION NO. 2010-04

**A RESOLUTION OF THE BOARD OF DIRECTORS OF BIG BEAR
MUNICIPAL WATER DISTRICT ESTABLISHING EMPLOYEE
COMPENSATION AND REPEALING RESOLUTION NO. 2009-09**

**BE IT RESOLVED BY THE BOARD OF DIRECTORS OF BIG BEAR
MUNICIPAL WATER DISTRICT** as follows:

Section 1. Purpose

The purpose of this resolution is to establish positions of employment and employment compensation as stated in Exhibits "A" and "B" attached hereto.

Section 2. Repeals

Resolution No. 2009-09 is hereby repealed.

PASSED, APPROVED AND ADOPTED this 17th day of June, 2010

Paula Fashempour, President

ATTEST:

Vicki Sheppard, Secretary to the Board

(SEAL)

**RESOLUTION NO. 2010-04
EXHIBIT "A"
2010 COMPENSATION PLAN**

FULL-TIME EMPLOYEES

POSITION	MINIMUM (Monthly)	MAXIMUM (Monthly)
GENERAL MANAGER	\$8,387	\$11,238
8,387 - 8,806 - 9,246 - 9,708 - 10,193 - 10,703 - 11,238		
LAKE MANAGER	\$5,724	\$7,867
5,724 - 6,010 - 6,471 - 6,795 - 7,135 - 7,492 - 7,867		
SR. ACCOUNTANT/HUMAN RESOURCES	\$4,481	\$6,004
4,481 - 4,705 - 4,940 - 5,187 - 5,446 - 5,718 - 6,004		
LAKE OPERATIONS SUPERVISOR	\$4,481	\$6,004
4,481 - 4,705 - 4,940 - 5,187 - 5,446 - 5,718 - 6,004		
MECHANICAL AND FACILITY TECHNICIAN	\$3,512	\$4,706
3,512 - 3,688 - 3,872 - 4,066 - 4,269 - 4,482 - 4,706		
MAINTENANCE COORDINATOR	\$3,334	\$4,469
3,334 - 3,501 - 3,676 - 3,860 - 4,053 - 4,256 - 4,469		
ADMINISTRATIVE ASSISTANT	\$3,124	\$4,186
3,124 - 3,280 - 3,444 - 3,616 - 3,797 - 3,987 - 4,186		
ACCOUNTANT I/PUBLIC INFORMATION COORDINATOR	\$3,124	\$4,186
3,124 - 3,280 - 3,444 - 3,616 - 3,797 - 3,987 - 4,186		
CUSTOMER SERVICE CLERK	\$2,468	\$3,308
2,468 - 2,591 - 2,721 - 2,857 - 3,000 - 3,150 - 3,308		
LAUNCH RAMP SUPERVISOR	\$2,468	\$3,308
2,468 - 2,591 - 2,721 - 2,857 - 3,000 - 3,150 - 3,308		

* RESOLUTION NO. 2004-08 Section 4.104 Step Raises

(b) Employees who are at the top or above the approved pay scale and who have not received a step (merit) increase in three (3) years, shall be eligible for a five percent (5%) merit raise after performing three years of satisfactory service. Performance evaluation(s) with a satisfactory or higher rating shall be required for this merit increase. Employees at the top of the pay scale shall only be eligible for this merit increase once in any three (3) year period.

RESOLUTION NO. 2010-04

**EXHIBIT "B"
2010
COMPENSATION PLAN**

SEASONAL EMPLOYEES

POSITION	MINIMUM (Hourly)	MAXIMUM (Hourly)
LAKE RANGER AIDE	legal minimum wage	legal minimum wage
LAKE RANGER I 11.16 - 11.72 - 12.31 - 12.93 - 13.58 - 14.26 - 14.97	\$11.16	\$14.97
LAKE RANGER II 13.57 - 14.25 - 14.96 - 15.71 - 16.50 - 17.33 - 18.20	\$13.57	\$18.20

TEMPORARY EMPLOYEES

POSITION	(Hourly)	(Hourly)
GRANT COORDINATOR	\$45.00	\$45.00

***BIG BEAR MUNICIPAL WATER DISTRICT
REPORT TO BOARD OF DIRECTORS***

MEETING DATE: June 17, 2010

AGENDA ITEM: 5D

SUBJECT:

CONSIDER APPROVAL OF GENERAL MANAGER'S CONTRACT

RECOMMENDATION:

The Administration Committee recommends approval of the Amended General Managers three year contract

DISCUSSION/FINDINGS:

The two year contract for General Manager, Scott Heule, expired on May 31, 2010. The Board of Directors performed an evaluation of Scott and proposed a renewal of his contract for three years pending further negotiation with the Administration Committee. After that discussion District Counsel prepared the attached addendum that extends the contract for three more years.

OTHER AGENCY INVOLVEMENT: None

FINANCING: 2010-11 FY Budget

Submitted by: Scott Heule, General Manager

**BIG BEAR MUNICIPAL WATER DISTRICT
EMPLOYMENT AGREEMENT
SECOND AMENDMENT**

As of June 1, 2010, **BIG BEAR MUNICIPAL WATER DISTRICT**, hereinafter "Employer," and **SCOTT HEULE**, hereinafter "Employee," agree as follows:

1. Purpose.

The parties entered into an employment agreement on May 3, 2007 (herein "original agreement"), which they desire to amend as set forth herein.

2. Amendment: Term.

Section 2 of the original agreement is amended to read as follows:

"The term of this agreement commenced June 1, 2007, and will end on May 31, 2013."

3. Amendment: Compensation.

Section 3 of the original agreement is amended to read as follows:

"(a) Employer shall pay Employee an annual base salary of One Hundred Thirty One Thousand Seven Hundred Twelve Dollars (\$131,712.00 Salary Step 7), payable in installments at the same time as other employees of Employer are paid.

(b) Based upon a satisfactory performance evaluations, Employee shall receive a Salary COLA Adjustment on July 1, 2010, July 1 2011, and July 1, 2012.

(c) Employer shall not reduce the salary, compensation, or any other financial benefit of Employee, unless it is applied in no greater percentage than the average reduction of department heads of the District."

4. Amendment: Benefits.

Section 4 of the original agreement is amended to read as follows:

"(g) Employer shall provide Employee with a District vehicle for emergency response, travel to and from work, travel to meetings, and travel to any other activities of the District. The Employee may also use the vehicle at any time for personal errands within the Big Bear Valley. Employer shall be solely responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for expenses attendant to the vehicle's purchase, operation, maintenance, and repair."

5. Amendment: Termination.

Section 6 of the original agreement is amended to read as follows:

(b) Employer shall provide a severance payment equal to six (6) months' salary at the current rate of pay if Employee is terminated by Employer without cause between June 1, 2010, and May 31, 2011, and seven (7) months' salary at the current rate of pay if the Employee is terminated by Employer without cause between June 1, 2011, and May 31, 2012, and eight months' salary at the current rate of pay if the Employee is terminated by Employer without cause between June 1, 2012, and May 31, 2013. This severance shall be paid in a lump sum unless otherwise agreed to by Employer and Employee."

6. Other.

Except as provided herein, the original agreement is reaffirmed.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**Employer:
Big Bear Municipal Water District**

**Employee:
Scott Heule**

By: _____
Paula Fashempour, President
Board of Directors

By: _____
Scott Heule

Attest:

By: _____
Vicki Sheppard, Secretary

[Seal]

**BIG BEAR MUNICIPAL WATER DISTRICT
REPORT TO BOARD OF DIRECTORS**

MEETING DATE: *June 17, 2010*

AGENDA ITEM: *5E*

SUBJECT:

CONSIDER APPROVAL OF RATIFICATION OF THE AMENDED AND RESTATED ACWA HEALTH BENEFITS AUTHORITY JOINT POWERS AGREEMENT AND BYLAWS

RECOMMENDATION:

The Administration Committee recommends approval of the changes as stated below.

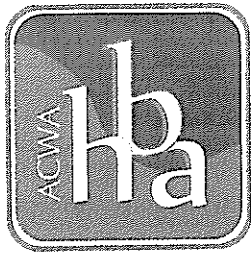
DISCUSSION/FINDINGS:

Over the years ACWA Health Benefits Authority (ACWA HBA) has sponsored and provided administrative services for employee benefit coverage with insurance carriers for medical, dental, vision, disability, life and employee assistance programs. These programs were all fully insured until 2009. In 2009, after having established sufficient reserves in the medical PPO program and maintaining large group enrollment numbers in the medical and dental PPO programs, these programs were converted to a self-funded platform. The self funded platform has increased the fiduciary responsibilities of the Trustees and the advisory bodies to the Trustees. As directed by the Trustees at their meeting on December 17, 2009, the HBA Bylaws and Joint Powers Agreement were redrawn to reflect proposed changes for strengthening the HBA structure in fulfilling its fiduciary responsibility to the participating membership. Because the changes in the new structure are fairly significant it was felt that the documents needed to be amended and restated in-lieu of solely amending them. The changes now need to be presented to the ACWA HBA, which the District is a member of, for ratification. The changes adopt three new advisory committees; Health Benefits Program Committee, Ancillary Benefits Program Committee, and Finance and Audit Committee. The Board of Directors will be expanded to include 11 persons and each new advisory Committee will consist of seven representatives from member agencies as described in the attached paperwork. The Administrative Committee recommends approval of these changes but is not making any recommendation to nominate anyone to the Board of Directors or Advisory Committees at this time.

OTHER AGENCY INVOLVEMENT: None

FINANCING: None

Submitted by: Scott Heule, General Manager



ACWA Health Benefits Authority

ACWA Health Benefits Authority
May 2010

Overview of ACWA HBA Restructure Review of HBA Bylaws and Joint Powers Authority Agreement

BACKGROUND

Over the years ACWA HBA has sponsored and provided administrative services for employee benefit coverage with insurance carriers for medical, dental, vision, disability, life and employee assistance programs. These programs were all fully insured until 2009. In 2009, after having established sufficient reserves in the medical PPO program and maintaining large group enrollment numbers in the medical and dental PPO programs, these programs were converted to a self-funded platform.

The introduction of the self-funded platform has increased the fiduciary responsibilities of the Trustees and the advisory bodies to the Trustees. The existing structure of the Trustee board requires that each Trustee-participate in at least one HBA sponsored program. The structure of the ACWA-Insurance and Personnel Committee requires that at least one of the two members from each ACWA region participate in at least one HBA sponsored program. Members of the ACWA Finance Committee are not required to participate in any HBA plan.

CURRENT SITUATION

As directed by the Trustees at the meeting on December 17, 2009, the HBA Bylaws and Joint Powers Agreement were redrawn to reflect the proposed changes for strengthening the HBA structure in fulfilling its fiduciary responsibility to the participating membership. As the changes in the new structure are fairly significant it was felt that the documents needed to be amended and restated in lieu of solely amending them. Attached is a summary of the changes that are included in the new documents, based on 2010 input from the Trustees on February 3rd and March 25th; and from a trustee workgroup on April 23rd.

TRUSTEE ACTION ON May 4, 2010

After fully reviewing and discussing the documents, the Trustees adopted the amended and restated Bylaws and JPA Agreement.

CURRENT ACTION REQUIRED

These documents are now presented to the membership of the ACWA Health Benefits Authority for ratification.

Bylaws:

The Bylaws designate that all groups below have representation from both large and small employer groups from both the northern and southern sections of the State of California. In addition to outlining the groups below the document outlines the mechanical functions of meetings, quorums, notices and voting while abiding to the terms of the Brown Act and following Roberts Rules of Order.

1) Structure of Governing Bodies

Membership

- Oversight of JPA Agreement and structure
- Elects the members of the Board of Directors
- Elections are done by mailed ballots

Board of Directors

- Consists of 11 members
 - President of Board of Directors
 - Vice President of Board of Directors
 - Eight members at large (with representation from North, South, large and small agencies)
 - Chair of the ACWA Insurance and Personnel Committee, or designee if Chair does not participate in the self-funded medical or dental plans
- Rotating four year terms
- For continuity, grandfather current Trustees who participate in the self funded plans into the new Board of Directors
- Eligible persons must be enrolled in one of the self funded plans (medical or dental)
- Oversight of plans, rates, budgets, audits and administration

2) Structure of Advisory Committees

Health Benefits Program Committee

- Consists of seven representatives from participating agencies, appointed by the President of the Board of Directors and ratified by the entire Board. Three members from the north, 3 members from the south and at least one member from each region with 20 or more employees and one with less than 20 employees
- Chaired by a member of the Board of Directors

- Advisory capacity to Board of Directors on the medical plans in terms of rates, benefits and administration

Ancillary Benefits Program Committee

- Consists of seven representatives from participating agencies and appointed by the President of the Board of Directors and ratified by the entire Board. Three members from the north, 3 members from the south and at least one member from each region with 20 or more employees and one with less than 20 employees
- Chaired by a member of the Board of Directors
- Advisory capacity to Board of Directors on the dental, vision, life and AD&D, disability and employee assistance plans in terms of rates, benefits and administration

Finance and Audit Committee

- Consists of seven representatives from participating agencies and appointed by the President of the Board of Directors and ratified by the entire Board. Each representative will have professional or practical experience in finance.
- Chaired by a member of the Board of Directors
- Advisory capacity to Board of Directors on financial issues such as the annual budget, annual audit, investment and reserve policies

Joint Powers Authority Agreement

The first 5 pages are largely unchanged in outlining the government codes under which the JPA was formed, the purpose, the parties to the agreement and the powers of the Authority. Streamlined the definition of "Agency" ...

Pages 6, 7 and 8 outline the structure of the Board of Directors as referenced in the Bylaws. These pages outline the powers of the Board of Directors and the officers of the Authority.

Page 9 references the new advisory committees as set forth in the Bylaws.

The rest of the agreement is largely unchanged in that the Articles reference the same topics, duties and responsibilities as before but references to the advisory committees and the Board of Directors were changed to reflect the new bodies established.

BYLAWS
OF THE
ASSOCIATION OF CALIFORNIA WATER AGENCIES
HEALTH BENEFITS AUTHORITY
AMENDED AND RESTATED AS OF JUNE 1, 2010

These Bylaws of the Board of Directors of the Association of California Water Agencies Health Benefits Authority are adopted pursuant to Article 26 of the Joint Exercise of Powers Agreement as Amended and Restated effective June 1, 2010.

ARTICLE I—DEFINITIONS

The definition of terms used in these Bylaws shall be those definitions contained in the Joint Exercise of Powers Agreement creating the Association of California Water Agencies Health Benefits Authority unless the context requires otherwise.

ARTICLE II—PRINCIPAL OFFICES

The principal office for the transaction of business of the Authority is hereby fixed and located at 910 K Street, Sacramento, California 95814. The location of the principal office may be changed by resolution of the Board of Directors from time to time.

ARTICLE III—MEMBERSHIP

Section 1. Composition and Selection. Membership in the Authority shall be composed of one Representative from each Agency participating in any of the Benefit Coverage offered by the Authority. The Representative shall be the General Manager, or if notified otherwise, President or Chairman of the governing body. Each participating Agency shall appoint at least one alternate Representative who is a member of the governing body to serve in the absence of the regular Representative. The alternate shall have the same authority to represent the District as the regular Representative who is absent

Section 2. Duration of Membership. An Agency may continue its membership in the Authority as long as it continues its participation in any of the Benefit plans offered through the Authority and maintains its active membership in the Association of California Water Agencies.

Section 3. Special Meetings. Special meetings of the Membership, for the purpose of taking any action permitted by statute or by the Agreement creating the Authority, may be called at any time by the

President, or by the Vice President in the absence or disability of the President, or by three (3) Members of the Board of Directors of the Authority or by not less than 25% of the Membership. Upon request in writing that a special meeting of the Membership be called for any proper purpose, directed to the President, Vice President, or Secretary of the Authority, by any person or persons entitled to call a special meeting of the Membership, the officer receiving such request forthwith shall cause notice to be given to the Member Agencies that a meeting will be held at a time requested by the person or persons calling the meeting, not less than thirty-five (35) or more than sixty (60) days after receipt of the request. Notice of any special meeting shall be given in compliance with the Ralph M. Brown Act, California Government Code Section 54950, et seq. Such notice shall specify the place, date and hour of such meeting, the nature of the business to be transacted, and if applicable, the names of nominees for the Board of Directors intended at the time of the notice to be presented for election. No business other than that specified in the notice of a special meeting may be transacted at that meeting.

Section 4. Place of Meetings. Meetings of the Membership shall insofar as possible be held at the location of the Association of California Water Agencies' Spring or Fall Conference and at a time immediately before or after such conference. Meetings at other times shall be held at locations designated by the President of the Board of Directors or approved by the written consent of 25% or more of Membership given either before or after the meeting and filed with the Secretary of the Authority.

Section 5. Quorum. At any meeting, the presence in person by the Representative or alternate of at least 20% of the Member Agencies shall constitute a quorum for the transaction of business. The Agencies present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal from the meeting of enough Agencies to leave less than a quorum. If any action taken (other than adjournment) is approved by a number of Agencies at least equal to a majority of the Agencies required to constitute a quorum, except for actions specifically requiring more than a majority, the validity of such action shall not be subject to question on the basis that a quorum was not present at the time such action was taken.

Section 6. Adjourned Meetings.

(a) Adjournment. Any Membership meeting, whether or not a quorum is present may be adjourned from time to time by the vote of a majority of the Representatives or their alternates present, but in the absence of a quorum, except as provided in Section 6 of this Article III, no other business may be transacted at such a meeting.

(b) Notice. When any Membership meeting is adjourned for forty-five (45) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Except as specifically provided herein, or by the Ralph M. Brown Act, it shall not be necessary to give any notice of the time and place of the adjourned meeting or of the business to be transacted there at, other than by announcement of the time and place thereof at the meeting at which such adjournment is taken and posting such notice as required by Section 54955 of the Government Code.

Section 7. Nominations of Board of Directors. Member Agencies, who participate in one of the self-funded plans offered through the Authority, may nominate one of its Directors or Management Staff for Membership on the Board of Directors in the following manner:

(a) On forms provided by the Authority, an Agency may place into nomination its Director or Management Staff for any open position with the written concurrence of at least three Agencies which are Members of the Authority in addition to the nominating Agency.

- (b) Nomination forms must be completed and received by the Authority no later than the date specified on the nomination form.
- (c) This Agency nomination process shall be the sole method for placing candidates into nomination for Membership on the Board of Directors or officer positions.

Section 8. Ballot by Mail. In conformance with the following rules, the Health Benefits Authority shall conduct elections for Board Membership or Board Officers by written ballots submitted during the Balloting Period

- (a) **Balloting Period.** The Board of Directors shall set dates for the opening and closing of the Balloting Period and the date and place for a ballot count. The Board shall publish the dates for the Balloting Period and circulate ballot forms no later than 30 days prior to a 30 day ballot period. All ballots must be received by the closing date of the Ballot Period.
- (b) **Ballot Delivery.** The Board of Directors shall cause one ballot to be mailed to each Member Agency by first class mail not less than ten (10) business days prior to the opening date of the Balloting Period.
- (c) **Election.** The Board of Directors shall provide public notice of the date and place for the ballot count in conformance with the Ralph M. Brown Act. The date of this ballot count shall be within 30 days of the close of the balloting period. All interested Members may attend the ballot tabulation.
- (d) **Valid Election.** For an election to be valid, the Inspectors of election must receive completed ballots from no less than 20% of the Membership on or before the closing of the Ballot Period. Each Member Agency shall have one vote for each open position. . . Ballots will only be accepted when signed by the designated agency Representative appointed according to Article III, Section 1 of these Bylaws.
- (e) **Certification and Publication.** Upon completion of the ballot tabulation, the Inspectors of election shall prepare a written certification of the election results and present it to the Secretary of the Board of Directors who shall publish the results to the Membership.

Section 9. Inspectors of Election.

- (a) **Appointment.** In advance of any Balloting Period, the Board of Directors may appoint any persons, other than nominees for office, as inspectors of election. The number of inspectors shall be three (3), at least one of whom shall be a voting Member of the Board of Directors. In case any person appointed as inspector fails to appear or fails or refuses to act, a vacancy shall be deemed to exist, and on the request of any Agency, shall be filled by appointment by the Board of Directors in advance of the election date.
- (b) **Duties.** The duties of such inspectors shall include: determining the current number of Agencies; receiving all ballots; counting and tabulating all ballots; determining the results; preparing the election certification; and all other such acts as may be proper to conduct the election or vote with fairness to all Member Agencies.
- (c) **Procedure.** The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical at the time and place designated for the election. The decision, act or certificate of a majority of the inspectors shall be effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein.

ARTICLE IV — BOARD OF DIRECTORS

Section 1. Number of Members. The authorized number of Members of the Board of Directors shall be eleven (11).

Section 2. Composition and Selection.

(a) The Board of Directors shall consist of eleven members, as provided in the Bylaws. The members of the Board of Directors shall be ten members elected by the Membership so that there are five members from the Northern region, five members from the Southern region, and the Chair of the ACWA Insurance and Personnel Committee or his/her appointee, who shall serve in accordance with the terms of the ACWA board. Each region must have at least one member with less than twenty employees participating in HBA Benefit Coverage and one member with twenty or more employees participating in HBA Benefit Coverage. Any eligible person must be enrolled in one of the HBA self-funded plans. The Board of Directors is responsible for defining the areas of the Northern and Southern regions and may periodically review and modify by majority vote of this Board.

(b) **Terms of Office.** Board of Directors first elected by the Membership in 2010 shall serve as follows:

Board of Directors

Position		Term
1 Nominee	North Region Member *	2 years
1 Nominee	North Region Member *	4 years
1 Nominee	North Region member with less than 20 Employees	4 years
Position		Term
1 Nominee	South Region Member *	4 years
1 Nominee	South Region Member *	4 years
1 Nominee	South Region member with less than 20 Employees	4 years

* Between the two North region positions, the person receiving the highest number of votes will fill the 4 year position and the person receiving the next highest will fill the 2 year position.

(c) For 2012 and later each election shall be for a 4 year term and the Membership shall elect 5 Members

Officers of the Board of Directors. The officers of the Authority shall be the President of the Health Benefits Authority; the Vice President of the Health Benefits Authority, however in the absence of the President, the Vice President shall preside over the meeting(s); The Executive Director/Secretary and the Treasurer. For the period preceding January 1, 2012, the current HBA Trustees participating in the HBA medical plans shall serve on the Board of Directors as follows: One each - Northern and Southern Regions

with 20 or more employees and one each - Northern and Southern Region with no size designation. Once elected by the Membership the Board of Directors will elect their own officers. Furthermore, for the period preceding January 1, 2012, the current HBA Chair shall serve as the President of the Board of Directors and the current HBA Vice Chair will serve as the Vice President of the Board of Directors.

(d) Removal. The unexcused absence of a Member of the Board of Directors from two consecutive meetings shall be the cause for the removal of said Member and appointment of a new Member to the Board of Directors by the remaining Members of the Board.

Section 3. Vacancies. A vacancy or vacancies on the Board of Directors shall be deemed to exist in case of death, incapacity, resignation, expiration of the term of the office or resignation from the office that is the basis for selection to be a Member, removal by the Agency that the Board Member represents or when the Agency represented by the Board Member ceases to be a Member of the Authority. Vacancies in the positions of Board Member shall be filled in the manner provided for regular appointment of such persons in these Bylaws.

Section 4. Regular Meetings. Regular meetings of the Board of Directors shall be scheduled at least quarterly and in accordance with the Brown Act. The Board shall meet at the Authority's principal office or at such other place as may be designated by the Board of Directors. The time and place of the regular Board meetings shall be established by action of the Board taken from time to time. Such action shall be taken at least 30 days before the first regular meeting established by action. At least 15 days prior to the first meeting established by action of the Board, a copy of such action shall be provided in accordance with the Brown Act to each Board Member, and each Agency, and provided in accordance with the Brown Act to each interested member of the public or representative of the media who has requested, in writing, written notice of Authority meetings, and posted at the Authority office in a location that is freely accessible to members of the public.

(a) Notice. Before each regular meeting, the Secretary shall prepare a written agenda in accordance with the Brown Act. A copy of the agenda shall also be provided in accordance with the Brown Act to each Board Member, and each Agency, and provided in accordance with the Brown Act to each interested member of the public or representative of the media who has requested in writing written notice of meetings, at least ten (10) days before the regular meeting.

(b) Quorum. At any meeting, the presence in person by at least a majority of Board Members shall constitute a quorum for the transaction of business. A majority of all of the Members of the Board shall be required to approve any resolution or motion, unless a different voting requirement to approve a particular action is specified under laws of the State of California, in the JPA Agreement or elsewhere in these Bylaws.

Section 5. Special Meetings. Special meetings of the Board of Directors, for the purpose of taking any action permitted by statute or the Agreement creating the Authority may be called at any time by the President or by the Vice President in the absence or disability of the President, or by three (3) Members of the Board and shall be held in accordance with the Brown Act.

Section 6. Quorum. At any meeting, the presence in person by at least a majority of Board Members shall constitute a quorum for the transaction of business. A majority of all of the Board Members shall be required to approve any resolution or motion, unless a different voting requirement to approve a particular action is specified under laws of the State of California, in the Agreement creating the Authority or elsewhere in these Bylaws.

Section 7. Record of Vote. Except where action is taken by the unanimous vote of all Board Members present and voting, the ayes, noes and abstentions taken upon the passage of all resolutions, motions or other action shall be entered upon the minutes.

Section 8. Adjourned Meetings. Any Board of Directors meeting, whether or not a quorum is present, may be adjourned from time to time by (a) the loss of a quorum, (b) the vote of a majority of the Board Members present, or (c) by declaration of the President, or by the Vice President in the absence or disability of the President, that the meeting is adjourned when the agenda has been completed and there is no further business to come before the Board.

Section 9. Authority to Act on Matters Not on the Agenda. The Board of Directors shall take no action on any item not appearing on the posted agenda, except under the following conditions: (a) upon a determination by a two-thirds vote of the Board, or, if less than two-thirds of the Board Members are present, a unanimous vote of those Board Members present, that the need to take action arose subsequent to the agenda being posted, except with respect to amending or restating these Bylaws; or (b) the item was posted for a prior meeting of the Board occurring not more than five (5) calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

Section 10. Oral Information Reports. Any Board Member may make an oral report for the purpose of informing the Board of any matter of interest to the Authority. The Board may also call upon the Secretary, staff, consultants or legal counsel for oral informational reports on matters not on the agenda. Unless the Board makes the determination required under Article IV Section 9 of these Bylaws, there shall be no action on matters covered in such oral reports.

Section 11. Public Forum. Every agenda for a regular meeting shall provide an opportunity for members of the public to directly address the Board on items of interests that are within the subject matter jurisdiction of the Board and which do not appear on the agenda. The Board may discuss, but not take action, on any matter raised during the public forum, unless the Board first makes the determination set forth in Article IV Section 9 of the Bylaws. It is the general policy of the Board to refer complaints to the Secretary for resolution. If the complaint cannot be resolved, the Secretary will place it on a meeting agenda for consideration by the Board. In order to facilitate public participation during the public forum session of the meeting, the Board may limit the total amount of time allocated for public comment on a particular issue, and may limit the time allocated for public comment of an individual speaker.

Section 12. Closed Sessions. A closed session may be held on any subject authorized under provisions of the Brown Act. Subject to the Brown Act, the agenda for a regular or special meeting may include the following standard language: "A closed session may be held at the discretion of the Board of Directors on any subject matter authorized under the Brown Act, including but not limited to pending litigation, property acquisition negotiations, the appointment, employment, evaluation of performance, or dismissal of an Authority employee, or the hear complaints of charges brought against an employee." The Board shall not keep minutes of its closed session.

ARTICLE V—STANDING COMMITTEES

Section 1. There shall be established the following Standing Committees: Health Benefits Program Committee, the Ancillary Benefits Program Committee, and the Finance and Audit Committee appointed

by the Board of Directors. These Committees shall meet from time to time as directed by the Board, and shall make recommendations to the Board based upon the expertise of its Members.

(a) Health Benefits Program Committee. The Health Benefits Program Committee shall be chaired by a member of the Board of Directors and composed of seven committee members appointed by the Board President and ratified by the Board of Directors.

(1) **Composition.** The Health Benefits Program Committee shall be composed of at least three Members from the Northern Region, three Members from the Southern Region. Each Region must have at least one Member with less than twenty employees participating in HBA Health Benefits Program and one Member with more than twenty employees participating in HBA Health Benefits Program.

(2) **Duties.** The Health Benefits Program Committee shall advise the Board of Directors regarding the implementation, maintenance, renewals and administration of the HBA Health Plans. It will monitor the Health Benefits Program policies established for participation in the Health Benefits Program including eligibility, underwriting, and other participation criteria. It will make recommendations to the Board of Directors, as requested by the Board.

(b) Ancillary Benefits Program Committee. The Ancillary Benefits Program Committee shall be chaired by a member of the Board of Directors and composed of seven committee members appointed by the Board President and ratified by the Board of Directors.

(1) **Composition.** The Ancillary Benefits Committee shall be composed of at least three Members from the Northern Region, three Members from the Southern Region. Each region must have at least one Member with less than twenty employees participating in HBA Ancillary Benefits Programs and one Member with more than twenty employees participating in HBA Ancillary Benefits Programs.

(2) **Duties.** The Ancillary Benefits Program Committee shall advise the Board of Directors regarding the implementation, maintenance, renewals and administration of the following HBA Ancillary Programs: Group term life and AD&D; Employee Assistance Plan; Dental and Vision plans; and, Long Term and Short Term Disability plans. It will monitor the implementation and maintenance of these plans, and when asked, provide recommendations to the Board of Directors regarding plan administration.

(c) The Finance and Audit Committee. The Finance and Audit Committee shall be composed of seven (7) members, each of whom shall have professional or practical experience in finance. The committee will be chaired by a member of the Board of Directors. The committee members will be appointed by the Board President, ratified by the Board of Directors and the Board of Directors shall specify the duties delegated to this Committee. These shall include, but not be limited to, reviewing and advising the Board of Directors on issues such as the annual budget, annual audit, investment and reserve policies.

Section 2. Vacancies. The President of the Board of Directors shall appoint committee members to fill seats made vacant on these Committees for any reason including resignation, removal, expiration of terms of office in their respective Agencies or for any other cause consistent with the Authority's Bylaws. These appointments will be ratified by the Board of Directors

Section 3. Meetings. The Board of Directors shall direct each Committee to meet as needed for the proper administration of the Authority.

Section 4. Term of Office. Committee Members shall serve at the will of the Board of Directors for terms consistent with the needs of the Authority and as long as the Agency they represent remains a Member of the Authority.

ARTICLE VI—OFFICERS OF THE AUTHORITY

Section 1. Officers.

- (a) President.** The Board of Directors shall elect a President of the Authority for four year terms. In the event the President so elected ceases to be a Member of the Board, the resulting vacancy in the office of President shall be filled at the next regular meeting of the Board held after such vacancy occurs. In the absence or inability of the President to act, the Vice President shall act as President. The President, or in his or her absence the Vice President, shall preside at and conduct all meetings of the Board, and shall chair the Board. The President shall be ex-officio a member of all the standing committees.
- (b) Vice President.** The Board of Directors shall elect a Vice President of the Authority for four year terms. In the event the Vice President so elected ceases to be a Member of the Board, the resulting vacancy in the office of Vice President shall be filled at the next regular meeting of the Board held after such vacancy occurs. In the absence or inability of the President to act, the Vice President shall act as President, and when so acting shall have all the powers of and be subject to all the restrictions of the President.
- (c) Executive Director/Secretary.** The Executive Director/Secretary shall have the general administrative responsibility for the activities of the Authority and shall hire or cause to be hired necessary employees thereof, subject to prior authorization of each position by the Board, and shall be responsible for all minutes, notices and records of the Authority and shall perform such other duties as may be assigned by the Board of Directors. This person shall be selected by, and serve at the will of, the Board of Directors.
- (d) Treasurer.** The Treasurer shall be appointed by the Board of Directors. The duties of the Treasurer shall be as set forth in Articles 14 and 15 of the Joint Powers Agreement.
- (e) Other Officers.** The Board of Directors shall have the power to appoint such other officers as may be necessary to carry out the purposes of this Agreement.

Section 2. Removal and Resignation.

- (a) Removal.** Any officer may be removed from their officer position, without cause, by the Board of Directors at any regular or special meeting thereof by a two-thirds vote of the Members of the Board.
- (b) Resignation.** Any officer or Board Member may resign at any time by giving written notice to the President or Executive Director/Secretary of the Authority, without prejudice, however, to the rights, if any, of the Authority under any contract to which such officer is a party. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

ARTICLE VII—MISCELLANEOUS

Section 1. Checks and Drafts. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payment to the Authority, shall be signed and endorsed by the Treasurer and a Board Member, or by such other person or persons and in such manner as from time to time shall be determined by the Board of Directors.

Section 2. Contracts. All contracts of the Authority may be executed by the President or the Vice President of the Authority or a designee appointed by the Board of Directors.

Section 3. Rules of Procedure for Meetings. Notwithstanding any provision of these Bylaws to the contrary, all meetings of the Board of Directors including, without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Brown Act, and in accordance with Roberts Rules of Order.

Section 4. Inspection of Authority Records. The accounting books and records, the list of Member's designated Representatives, and minutes of proceedings of the Board of Directors and Membership meetings and all other committees of the Authority shall be open to the inspection of any Member at any reasonable time. Such inspection by a Member may be made in person or by agent or attorney, and the right of inspection includes the right to copy and make extracts.

Section 5. Construction. If there is any inconsistency between a provision of these Bylaws and a provision of the Agreement creating the Authority, the provision of the Agreement shall govern.

Section 6. Fiscal Year. Unless and until changed by resolution of the Board of Directors, the fiscal year of the Authority shall be the period from January 1 of each year to and including the following December 31.

ARTICLE VIII—AMENDMENTS

Amendments to these Bylaws, other than amendments changing the authorized number of Members of the Board of Directors, may be adopted by the Board of Directors. Any amendment adopted by the Board of Directors shall be on the agenda of the next meeting of the Membership for ratification or may be ratified by the Membership through the mailed voting process.

**JOINT EXERCISE OF POWERS AGREEMENT
CREATING THE
ASSOCIATION OF CALIFORNIA WATER AGENCIES
HEALTH BENEFITS AUTHORITY
Amended and Restated as of June 1, 2010**

THIS JOINT EXERCISE OF POWERS AGREEMENT (the "Agreement") amends and restates the Agreement originally dated as of May 1, 1994, by and among water districts and agencies organized and existing under the laws of the State of California, herein-after collectively referred to as the "Agencies" and individually as an "Agency" which are parties signatory to this agreement and listed in Appendix "A", which is attached hereto and made a part hereof. Said Agencies are sometimes referred to herein as "parties."

RECITALS

WHEREAS, Section 6500 et seq. of the Government Code of the State of California (Government Code) provides that two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, Section 989 et seq. of the Government Code, more particularly Section 990.4 thereof, provides that a local public entity may self-insure, purchase insurance through an authorized carrier, or purchase insurance through a surplus line broker, or any combination of these; and

WHEREAS, Section 990.8 of the Government Code provides that two or more local entities may, by a joint powers agreement, provide insurance for any purpose by any one or more of the methods specified in Section 990.4 of the Government Code; and

WHEREAS, each of the parties to this Agreement desire to join together with the other parties for the purpose of pooling their purchasing needs for health benefit coverage for their employees to provide said employees with a comprehensive Health Benefit Plan at a lower cost than might be available generally to the parties individually; and

WHEREAS, it appears economically feasible and practical for the parties to this Agreement to do so;

NOW, THEREFORE, for and in consideration of all of the mutual benefits, covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE 1—DEFINITIONS

The following definitions shall apply to the provisions of this Agreement:

"Agency" or "Agencies" or "Member" or "District" shall mean those entities of local government empowered by law, commonly known as **"Water Agencies"** to provide water-related services within the State of California, who are signatories to this Agreement, including any amendments thereto, and members of the Association of California Water Agencies.

"Ancillary Benefit Programs" shall mean the dental, vision, life and AD&D, Employee Assistance Plan, LTD, and Short Term Disability programs offered by the HBA to its members.

"Ancillary Benefit Program Committee" shall mean the Committee designated by the Board of Directors.

"Treasurer" shall mean the individual who is so appointed by the Board of Directors.

"Authority" shall mean the Association of California Water Agencies Health Benefits Authority.

"Benefit Coverage" shall mean employee benefits coverage provided through the HBA's Health and Ancillary Benefit Programs.

"Board of Directors" or **"Board"** shall mean the governing body of the Authority.

"Contributions" shall mean any health insurance premium or cash contribution required to maintain or fund the Health Benefit Plans.

"Executive Director/Secretary" shall mean the employee of the Authority who is employed by the Board of Directors.

"Finance and Audit Committee" shall mean the Committee of the Authority appointed by the Board of Directors.

"Health Benefit Programs" shall mean the medical care offered by the HBA to its members.

"Health Benefits Authority" shall mean the Joint Powers Authority created by and among the Public Agencies who are signatory to the Joint Exercise of Powers Agreement.

"HBA Employee Benefit Trust (EBT)" shall mean the tax exempt Trust established by the HBA to hold certain Plan assets of the HBA Welfare Benefit Coverage.

"Health Benefit Program Committee" shall mean the Committee of the Authority appointed by the Board of Directors.

"Member" shall mean Agency members of the Health Benefits Authority.

"Program Rules" shall mean those rules as established by the Board of Directors regarding participation in HBA programs.

"Representative" shall mean the individual designated as the individual representing a participating Agency or District.

"Standing Committees" shall mean the Health Benefit Program Committee, Ancillary Benefit Program Committee, and the Finance and Audit Committee, as formed by the Board of Directors pursuant to Article 11 herein.

ARTICLE 2—PURPOSE

This Agreement is entered into by the Agencies pursuant to Sections 990.4, and 990.8 of the Government Code and Section 6500 et seq. of the Government Code in order to enable those Agencies to pool their purchasing needs to provide their employees with comprehensive and economical health and welfare benefits through its Health Programs and Ancillary Programs.

This purpose shall be accomplished through the exercise of the common powers of such Agencies jointly in the creation of a separate entity, the Association of California Water Agencies Health Benefits Authority (the "Authority"), to combine the employees of the participating Agencies collectively into a single pool for the purposes of negotiating and providing Welfare Benefit Coverage including administrative services related to the welfare benefit coverage and to provide various administrative activities relative to the management of the pool and purchasing of insurance, including, but not limited to billing participating Agencies for premiums, making premium payments to the insurance carrier and determining eligibility for coverage of individual employees and their dependents.

It is the further purpose of this Agreement to provide, to the extent permitted by law, for the inclusion at a subsequent date of such additional agencies organized and existing under the laws of the State of California who qualify as an Agency as may desire to become parties to the Agreement and members of the Authority, and who agree to the participation rules applicable to the Welfare Benefit Coverage elected.

ARTICLE 3—PARTIES TO THE AGREEMENT

Each party to this Agreement certifies that it intends to and does contract with all other parties who are signatories of this Agreement and, in addition, with such other parties as may later be added as parties to and signatories of this Agreement pursuant to Article 18. Each party to this Agreement certifies that the deletion of any party from this Agreement, pursuant to Articles 19 and 20 shall not affect this Agreement nor such party's intent to contract as described above with other parties to the Agreement then remaining. Each party to the Agreement must at all times participate in the Welfare Benefit Coverage offered hereunder.

ARTICLE 4—TERM OF AGREEMENT

(a) This Amended and Restated Agreement shall become effective on June 1, 2010 in full force and effect and a legal, valid and binding obligation of each Agency, who were signatories on or before May 31, 2010, and for Agencies who submit to the Authority an executed counterpart of this Agreement, together with a certified copy of a resolution of the governing board of each such Agency agreeing to the terms of this Agreement and the execution and delivery hereof, and shall continue subject to the terms of this Agreement until and unless terminated as hereinafter provided.

ARTICLE 5—THE AUTHORITY

As provided in Section 6500 et seq. of the Government Code, the Authority shall be a public entity separate from each of the Agencies possessing the common powers of the Agencies. The debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of any of the Agencies.

ARTICLE 6—POWERS OF AUTHORITY

- (a) The Authority shall have the powers common to Agencies and is hereby authorized to do all acts necessary for the exercise of said common powers to provide comprehensive and economical health benefit coverage, including, but not limited to, any of the following:
- (1) To pay all Authority expenses, including, without limitation, insurance premiums, benefit plan claims, administration and operation expenses;
 - (2) To determine and select all health benefit plans or insurance policies necessary to carry out the programs of the Authority. The determination shall include the scope of such plans or policies; and to determine the method such plans or policies are to be insured or self insured in conformance with 990 et seq. of the Government Code for providing a health benefit plan to the parties to this agreement;
 - (3) To establish contribution rates for Agencies and to modify those rates from time to time upon written notice to the Agencies. Such contribution rates shall be established to fund the premiums to the insurance carrier and to fund self insured health benefits, Authority expenses, and a reasonable Authority reserve not to exceed the maximum reserve permitted by law;
 - (4) To assess Agencies in accordance with Program Rules for the purpose of recoupment of deficits due to insufficiency of contribution rates in the previous policy or plan year or to pay dividends to participating Agencies as declared by the Board of Directors.
 - (5) To establish such rules and regulations as may be necessary in administering the business of the Authority;
 - (6) To borrow money to carry out the purposes of the Authority and to pledge, assign or hypothecate any of the Authority assets to secure such loans subject to Article 5 of the Agreement;
 - (7) To accept, compromise, arbitrate or otherwise settle any obligation, liability or claim involving the Authority, including, but not by way of limitation, any claim for contributions or other sums payable hereto, and to enforce or contest any other obligation, liability or claim by appropriate legal proceedings if, in the sole discretion of the Directors, it is in the interest of the Authority to do so, or to assign any such claim and allow the assignee to institute legal or arbitration proceedings in its own name to enforce collection;

- (8) To require any person with obligation or rights hereunder to furnish, or permit an audit of, any reasonable information, data and documents that are pertinent in verifying the accuracy of contribution and acting upon claims for benefits under the Health Benefit Plan, or which are otherwise pertinent in administering the Authority;
 - (9) To publish, file and distribute all reports required by law;
 - (10) To determine all questions relating to eligibility for benefits, how benefits will be provided and similar questions. Such determinations shall be binding on all persons, except as may otherwise specifically be provided herein or in regulations duly adopted by the Board;
 - (11) To retain or employ attorneys, accountants, actuaries, auditors, office personnel, professional administrators and consultants and other suitable agents and employees;
 - (12) To exercise all powers granted under any insurance contract purchased with Authority funds;
 - (13) To decline or terminate the participation of an Agency in the Health Benefit or Ancillary Benefit Programs if there are repeated delinquencies or other failures to comply with the terms of the corresponding Program, this Agreement or the Bylaws provided for in Article 24;
 - (14) To enforce all obligations of Agencies to make contributions including assessments to the Authority by any means the Authority deems appropriate and to collect such contributions at such rates as may be established from time to time;
 - (15) To adopt uniform, specific, reasonable and diligent collection procedures with respect to Agencies who are delinquent in the payment of contributions or assessments;
 - (16) To cause to be prepared the operating budget of the Authority for each fiscal year;
 - (17) To receive and review periodic accounting of all funds under Articles 14 and 15 of the Agreement;
 - (18) To conduct on behalf of the Authority all business of the Authority which the Authority may conduct under the provisions hereof and pursuant to law;
 - (19) To implement such other powers and functions as are provided for in this Agreement or in the Bylaws.
- (b)** Except as otherwise provided herein, such powers shall be exercised subject only to such restrictions upon the manner of exercising such power as are imposed upon any participating agency in the exercise of similar powers, as provided in Section 6509 et seq. of the Government Code.
- (c)** Notwithstanding the foregoing, the Authority shall have any additional powers conferred under the Government Code or other applicable law, insofar as such additional powers may be necessary to accomplish the purposes set forth in Article 2 hereof.

ARTICLE 7—BOARD OF DIRECTORS

- (a) The Authority shall be governed by the Board of Directors which is hereby established and which shall be elected by the Representatives from each Member Agency.
- (b) Each Member of the Board shall serve until a successor is appointed or elected.
- (c) Each Member of the Board shall have one vote.
- (d) In any instrument in writing in the name of the Authority, the Board of Directors shall be bound by the record of votes and / or signatures of any six Directors, and all persons, partnerships, corporations and associations may rely thereon that such instrument has been duly authorized in accordance with this Agreement unless otherwise authorized by resolution of the Authority.
- (e) To the extent permitted by law, no Director shall be liable for any action on good faith taken or omitted nor for any act or omission of any other Director. The Authority shall indemnify and hold harmless the Directors to the extent and in the amounts provided by the laws of the State of California from and against all claims, damages and losses, and expenses arising out of the performance by the Directors of any duty or responsibility undertaken or performed in connection with the obligations of the Directors arising out of the Agreement. The funds of the Authority shall be used to defend, indemnify and hold harmless the Authority and any Director for actions taken within the scope of the Authority. Notwithstanding any provision of the Agreement, the Authority shall have the right to purchase insurance to provide coverage for its Directors and employees with respect to the foregoing.

ARTICLE 8—POWERS OF THE BOARD OF DIRECTORS

Subject to their powers of allocation and delegation set forth elsewhere in this Agreement and to Article 6 hereof, the Board of Directors of the Authority shall have exclusive authority to control and manage the operation and administration of the Authority and its assets. The Board of Directors may exercise all lawful powers appropriate to the exercise of their authority hereunder, including the following powers and functions:

- (a) To pay all Authority expenses, including , without limitation, insurance premiums, benefit plan claims, administration and operation expenses;
- (b) To determine and select all health benefit plans or insurance policies necessary to carry out the programs of the Authority. The determination shall include the scope of such plans or policies; and to determine the method such plans or policies are to be insured or self insured in conformance with 990 et seq. of the Government Code for providing a health benefit plan to the parties to this agreement;
- (c) To establish contribution rates for Agencies and to modify those rates from time to time upon written notice to the Agencies. Such contribution rates shall be established to fund the premiums to the insurance carrier and to fund self insured health benefits, Authority expenses, and a reasonable Authority reserve not to exceed the maximum reserve permitted by law;

- (d) To assess Agencies in accordance with Program Rules for the purpose of recoupment of the deficits due to insufficiency of contribution rates in the previous policy or plan year or to pay dividends to participating Agencies as declared by the Board of Directors;
- (e) To establish such rules and regulations as may be necessary in administering the business of the Authority including such recommendations of the Standing Committees or the ACWA Insurance and Personnel Committee as may be deemed appropriate;
- (f) To borrow money to carry out the purposes of the Authority and to pledge, assign or hypothecate any of the Authority assets to secure such loans subject to Article 5 of the Agreement;
- (g) To accept, compromise, arbitrate or otherwise settle any obligation, liability or claim involving the Authority, including, but not by way of limitation, any claim for contributions or other sums payable hereto, and to enforce or contest any other obligation, liability or claim by appropriate legal proceedings if, in the sole discretion of the Directors, it is in the interest of the Authority to do so, or to assign any such claim and allow the assignee to institute legal or arbitration proceedings in its own name to enforce collection;
- (h) To require any person with obligation or rights hereunder to furnish, or permit an audit of, any reasonable information, data and documents that are pertinent in verifying the accuracy of contribution and acting upon claims for benefits under the Health Benefit Plan, or which are otherwise pertinent in administering the Authority;
- (i) To publish, file and distribute all reports required by law;
- (j) To determine all questions relating to eligibility for benefits, how benefits will be provided and similar questions. Such determinations shall be binding on all persons, except as may otherwise specifically be provided herein or in regulations duly adopted by the Board;
- (k) To retain or employ attorneys, accountants, actuaries, auditors, office personnel, professional administrators and consultants and other suitable agents and employees;
- (l) To exercise all powers granted under any insurance contract purchased with Authority funds;
- (m) To decline or terminate the participation of an Agency in the Health Benefits Plan if there are repeated delinquencies or other failures to comply with the terms of the Health Benefit Plan, this Agreement or the Bylaws provided for in Article 24;
- (n) To enforce all obligations of Agencies to make contributions to the Authority by any means the Authority deems appropriate and to collect such contributions at such rates as may be established from time to time by the Board;
- (o) To adopt uniform, specific, reasonable and diligent collection procedures with respect to delinquent Agencies;
- (p) To cause to be prepared the operating budget of the Authority for each fiscal year;
- (q) To receive and review periodic accounting of all funds under Articles 14 and 15 of the Agreement;

- (r) To conduct on behalf of the Authority all business of the Authority which the Authority may conduct under the provisions hereof and pursuant to law;
- (s) To implement such other powers and functions as are provided for in this Agreement or in the bylaws.

ARTICLE 9—MEETING OF THE BOARD OF DIRECTORS

- (a) **Meetings.** The Board shall provide for its regular, adjourned regular and special meetings or upon call of the President of the Authority; provided, however, that it shall hold at least one regular meeting annually as set forth in the bylaws.
- (b) **Minutes.** The Secretary shall cause minutes of regular, adjourned regular and special meetings to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Board. Copies of such minutes shall be available on request to the parties to this Agreement.
- (c) **Quorum.** At any meeting, the presence in person by at least a majority of Board Members shall constitute a quorum for the transaction of business. A majority of all of the Members of the Board shall be required to approve any resolution or motion, unless a different voting requirement to approve a particular action is specified under laws of the State of California, in the JPA Agreement or elsewhere in these Bylaws.
- (d) **Compliance with the Brown Act.** All meetings of the Board, including, without limitation, regular, adjourned regular and special meeting, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, Sections 54950 et seq. of the Government Code of the State of California, or any successor legislation thereto (the "Brown Act").

ARTICLE 10—OFFICERS OF THE AUTHORITY

- (a) **President.** The Board of Directors shall elect a President of the Authority for four year terms. In the event the President so elected ceases to be a member of the Board, the resulting vacancy in the office of President shall be filled at the next regular meeting of the Board held after such vacancy occurs. The President, or in his or her absence the Vice President, shall preside at and conduct all meetings of the Board, and shall chair the Board of Directors. . The President shall be ex-officio a member of all the standing committees.
- (b) **Vice President.** The Board of Directors shall elect a Vice President of the Authority for four year terms. In the event the Vice President so elected ceases to be a member of the Board, the resulting vacancy in the office of Vice President shall be filled at the next regular meeting of the Board held after such vacancy occurs. In the absence or inability of the President to act, the Vice President shall act as President.
- (c) **Executive Director/Secretary.** The Executive Director/Secretary shall have the general administrative responsibility for the activities of the Authority and shall hire or cause to be hired all necessary employees thereof, subject to prior authorization of each position by the

Board of Directors, and shall be responsible for all minutes, notices and records of the Authority and shall perform such other duties as may be assigned by the Board of Directors. This person shall be selected by, and serve at the will of, the Board of Directors.

(d) Treasurer. The Treasurer shall be appointed by the Board of Directors. The duties of the Auditor shall be as set forth in Articles 14 and 15 of this Agreement.

(e) The Board of Directors shall have the power to appoint such other officers as may be necessary to carry out the purposes of this Agreement.

ARTICLE 11—STANDING COMMITTEES

There shall be established the following Standing Committees: Health Benefit Program Committee, the Ancillary Benefit Program Committee, and the Finance and Audit Committee, each appointed by the Board of Directors. The number of members of each Committee and its duties shall be set forth in the Bylaws. These Committees shall meet from time to time as directed by the Board of Directors, and shall make recommendations to the Board of Directors based upon the expertise of its members.

ARTICLE 12—INSURANCE COVERAGE

(a) The Authority shall purchase or otherwise arrange for workers' compensation coverage, unemployment, health and welfare benefits or other such coverage for the employees of the HBA.

(b) The Authority shall purchase directors and officers and fiduciary liability insurance coverage for officers of the Authority with regard to the performance of their duties as officers of the Authority.

ARTICLE 13—IMPLEMENTATION OF BENEFIT COVERAGE

(a) The Board of Directors shall review and approve all participation rules and guidelines applicable to the Benefit Coverage offered by the Authority.

(b) These rules and guidelines shall apply to all member agencies seeking participation in any of the Benefit Coverage offered by the Authority.

(c) The HBA shall maintain participation rules and guidelines in a Program Policy Manual.

ARTICLE 14—ACCOUNTS AND RECORDS

(a) Annual Budget. The Board of Directors shall adopt an annual operating budget prepared pursuant to Article 6(a)(16) of this Agreement.

(b) Funds and Accounts. The Treasurer of the Authority shall establish and maintain such funds and accounts as required by the Board and as required by generally accepted auditing standards. Books and records of the Authority in the hands of the Treasurer shall be open to

any inspection at all reasonable times by authorized Representatives of Agencies and as otherwise required by law.

- (c) Treasurer's Report.** The Treasurer, within 120 days after the close of each fiscal year, shall give a complete written report of all financial activities for such fiscal year to the Board of Directors and make copies of such report available to parties to this Agreement on request.
- (d) Annual Audit.** The Treasurer shall provide for a certified, annual audit of the accounts and records of the authority, which audit shall be made by a Certified Public Accountant and shall conform to generally accepted auditing standards. A report thereof shall be filed as a public record in the office of the Authority. Such report shall be filed within six months of the end of each year or years under examination.

ARTICLE 15—RESPONSIBILITY FOR MONIES

- (a)** The Treasurer of the Authority shall have the custody of and the duty to disburse the Authority's funds including all funds held in the Health Benefits Authority Employee Benefits Trust (Trust) on a non-discretionary basis and subject to the direction provided by the Board of Directors of the Trust who shall have sole authority as to their use and disposition. The Treasurer shall have the authority to delegate the signatory function of the Treasurer to such persons as are authorized by the Board of Directors.
- (b)** A bond in the amount determined adequate by the Board shall be required for all officers and personnel who have charge of, handle, or have access to any property of the Authority, such bond to be paid for by the Authority.
- (c)** The Treasurer of the Authority shall assume the duties required by the JPA Act as may be amended, including the following duties:
 - (1) To receive and acknowledge receipt for all money of the Authority and to place it in the treasury of the Authority;
 - (2) To be responsible upon his or her official bond for the safekeeping and disbursement of all the Authority's money so held by him or her;
 - (3) To pay, when due, out of money of the Authority so held by him or her, all sums payable on outstanding bonds and coupons of the Authority.
 - (4) To pay any other sums due from the Authority;
 - (5) To verify and to report in writing on the first day of July, October, January and April of each year to the Authority and, on request, to Agencies the amount of money held for the Authority, the amount of receipt since the last report and the amount paid out since the last report.
- (d)** All funds received by the Authority hereunder shall be invested in accordance with the Authority's investment policy by the Board of Directors in any instrument declared by state law to be permissible as an investment for any local public agency in the State of California or deposited in such bank or banks as the Board of Directors may designate for that purpose, and

all withdrawals shall be made only by check signed by not less than two individuals with signatory authority as authorized by the Bylaws of the Authority or unanimous vote of the Board of Directors.

- (e) The Directors of the HBA Employee Benefit Trust shall have sole authority to invest Trust assets in a prudent manner.

ARTICLE 16—RESPONSIBILITIES OF THE AUTHORITY

The Authority shall perform the following functions in discharging its responsibilities under this Agreement:

- (a) Maintain and administer the Benefit Coverage in instruments offered to the Authority's member agencies.
- (b) Assist each Member's Representative with the implementation of the Welfare Benefit Coverage applicable to the member agency.
- (c) Review the Benefit Coverage to maintain their fiscal integrity.
- (d) Such other responsibilities as deemed necessary by the Board of Directors.

ARTICLE 17—RESPONSIBILITIES OF MEMBERS

Members shall have the following responsibilities:

- (a) Each Member shall appoint an employee of the Member to be responsible for the implementation and maintenance of the applicable program function and to serve as a liaison between the Member and the Authority as to the programs in which it participates.
- (b) Each Member shall maintain its own set of records regarding the programs in which it participates.
- (c) Each Member shall pay its premium and or contributions within thirty (30) days of the invoice date. After withdrawal or termination, each Member or its successor shall pay promptly to the Authority its share of any additional premium, when and if required of it by the Board of Directors under Article 21 or 22 of this Agreement.
- (d) Each Member shall provide the Authority with such other information or assistance as may be necessary for the Authority to carry out Benefit Coverage provided under this Agreement.
- (e) Each Member shall in any and all ways cooperate with and assist the Authority, and any insurer of the Authority, in all matters relating to this Agreement and covered claims and will comply with all Bylaws, rules and regulations adopted by the Board of Directors.

ARTICLE 18—NEW MEMBERS

Staff designated by the Board of Directors shall review and approve all Agency requests for participation by those Agencies who agree to adhere to the applicable Program Rules specified in Article 1 in the definition of "Agency" or "Agencies". Qualifying entities may be added as parties to this Agreement and become Agencies upon (i) the filing by the entity of an executed Appendix A to this Agreement, together with a certified copy of the resolution of the governing body of such entity agreeing to the terms of this Agreement and the execution and delivery hereof. Upon satisfaction of such conditions, the Board of Directors shall file such executed Appendix A of this Agreement as an amendment hereto, effective upon the date such filing. Agencies denied participation may appeal to the Board of Directors for reconsideration as a participating Agency.

ARTICLE 19—WITHDRAWAL

An Agency may withdraw as a party to this Agreement to be effective on the first day of any month by providing written intention of withdrawing to the Secretary at least 60 days prior to the proposed effective date of the withdrawal. Any such withdrawal shall be effective only upon receipt of the notice of withdrawal by the Secretary who shall acknowledge receipt of such notice of withdrawal in writing and shall file such notice as an amendment to this Agreement effective upon the proposed filing date, or such other date as the Board of Directors may designate which is not more than 90 nor less than 60 days from the notice in order to bring such notice of withdrawal in compliance with the terms hereof.

ARTICLE 20—CANCELLATION

- (a) Notwithstanding any other provision of this Agreement, the Board of Directors shall have the right to cancel any Agency's participation in any Benefit Coverage of the Authority if the Agency is more than 30 days in arrears in the payment of monthly contributions for Benefit Coverage.
- (b) Notwithstanding any other provision of this Agreement, the participation of any Agency, including participation in the programs of the Authority, shall cease and be cancelled automatically whenever such Agency's membership in the Association of California Water Agencies ceases. Such automatic cancellation shall not relieve the Agency of its responsibilities as provided for in Article 21 (b).

ARTICLE 21—EFFECT OF WITHDRAWAL OR CANCELLATION

- (a) The withdrawal or cancellation of any Agency from this Agreement shall not terminate this Agreement and an Agency by withdrawing or being cancelled pursuant to Articles 19 and 20 shall not be entitled to payment or return of any contribution, consideration or property paid, or donated by the Agency to the Authority, or to any distribution of assets.
- (b) The withdrawal or cancellation of any Agency pursuant to Articles 19 and 20 shall not terminate its responsibilities with respect to the payment of its share of contributions due or in arrears at the time of such withdrawal or cancellation.

ARTICLE 22—TERMINATION AND DISTRIBUTION.

- (a) This Agreement may be terminated by the Board of Directors subject to ratification by the written consent of three-fourths of the Membership within 90 days of the Board of Directors' approval of the motion to terminate the Agreement, provided, however, that this Agreement and the Authority shall continue to exist for the purpose of concluding all functions necessary to wind up the affairs of the Authority.
- (b) The Board of Directors is vested with all powers of the Authority for the purpose of winding up and dissolving the business affairs of the Authority.
- (c) Upon termination of this agreement, all assets of the Authority shall be distributed only among those parties that have been signatory's hereto during the 12 months preceding the date upon which the written consent required by paragraph (a) hereof was determined to have been completed by the Board of Directors. The Board of Directors shall determine such distribution within six months after all other business of the Authority has been concluded.

ARTICLE 23—TERMINATION OF THE AUTHORITY

The Authority may be terminated or its powers changed, restricted or eliminated by the Board of Directors along with the written consent of three-fourths of the Membership.

ARTICLE 24—BYLAWS AND GOVERNING DOCUMENTS

The Bylaws shall be effective upon ratification of this Agreement. Each party to the Agreement shall receive a copy of the Bylaws and other such governing documents.

ARTICLE 25—NOTICES

Any notice or instrument authorized or required to be given or delivered pursuant to this Agreement shall be deemed to have been given or delivered when the same is deposited in any United States Post Office, postage prepaid, or is shipped by United Parcel Service, addressed to the principal office of the respective Agency and shall be deemed to have been received by the Agency to whom the same is addressed at the expiration of three business days after deposit in the United States Post Office of delivery to or pick up at the Authority's principal office by United Parcel Service.

ARTICLE 26—AMENDMENT TO THE AGREEMENT

Except as provided by Article 18 hereof, this Agreement may be amended by the Board of Directors subject to ratification by the written consent of a majority of the Agencies within 90 days of the Board 's approval of the motion to amend the Agreement.

ARTICLE 27—AGREEMENT NOT EXCLUSIVE

This Agreement shall not be exclusive and shall not be deemed to amend or alter the terms of other agreements entered into by or among any of the Agencies, except as the terms of this Agreement shall conflict therewith, in which case the terms of this Agreement shall prevail.

ARTICLE 28—CONFLICT OF INTEREST CODE

The Board of Directors by resolution shall adopt a Conflict of Interest Code as required by law.

ARTICLE 29—PROHIBITION AGAINST ASSIGNMENT

No Agency may assign any right, claim or interest it may have under this Agreement and no creditor, assignee or third party beneficiary of any Agency shall have any right, claim or title or any part, share, interest, fund, premium or asset of the Authority, except as otherwise provided for under Article 6 (e).

ARTICLE 30—COUNTERPARTS

This Agreement may be executed by the Agencies in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

ARTICLE 31—CHOICE OF LAW

This Agreement shall be governed by the laws of the State of California.

ARTICLE 32—SEVERABILITY

If one or more clauses, sentences, paragraphs, provisions or articles of the Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Agencies that the remainder of the Agreement shall not be affected thereby.

ARTICLE 33—HEADINGS

The titles of articles and paragraphs of this Agreement are for convenience only, and no presumption or implication of the intent of the parties as to the construction of this Agreement shall be drawn therefrom.

ARTICLE 34—AGREEMENT COMPLETE

The foregoing constitutes the full and complete Agreement of the parties. There are no oral understandings or agreements not set forth in writing herein.

ARTICLE 35—ADOPTION

The parties to this Agreement evidence their adoption of this Agreement by (1) executing Appendix A, which is attached to and made a part of this Agreement and (2) by providing the Authority a copy of a formal resolution from its governing body adopting the amended and restated Agreement as of June 1, 2010, or such later date as specified in its resolution.

Appendix A

ACWA	Chino Basin WCD
ACWA-JPIA	Chowchilla WD
Alameda County WD	Citrus Heights WD
Alpaugh ID	City of Blue Lake
Alta ID	City of Buellton
Amador WA	City of Fillmore
American River FCD	City of San Juan Bautista
Angiola WD	City of Tehachapi
Antelope Valley-East Kern WA	Clearlake Oaks CWD
Aromas WD	Coastside CWD
Banta-Carbona ID	Consolidated ID
Bay Area Water Supply & Conserv Dist	Contra Costa WD
Bella Vista WD	Corcoran ID
Belridge WSD	Cordia ID
Berrenda Mesa WD	Cottonwood WD
Big Bear Area Regional Wastewater	Crescenta Valley WD
Big Bear City CSD	Crestline-Lake Arrowhead WA
Big Bear MWD	Crestline Village WD
Biggs-W Gridley WD	Cucamonga Valley WD
Bighorn-Desert View WA	Del Paso Manor WD
Bodega Bay PUD	Del Puerto WD
Bolinas Community PUD	Delano-Earlimart ID
Boron CSD	Delhi County WD
Borrego WD	Desert WA
Brookstrail Township CSD	Diablo Water District
Browns Valley ID	Dunnigan WD
Buena Vista WSD	East Bay MUD
Burney WD	East Contra Costa ID
Butte WD	East Orange CWD
Byron-Bethany ID	East Valley WD
Cachuma Oper & Maint Board	El Toro WD
Calaveras CWD	Elk Grove Water Services
Calaveras PUD	Elsinore Valley MWD
Calleguas MWD	Fair Oaks WD
Camrosa WD	Fallbrook PUD
Carlsbad MWD	Firebaugh Canal WD
Carmichael WD	Foothill MWD
Carpinteria Valley WD	Forresthill PUD
Casitas MWD	Forestville WD
Castaic Lake WA	Frazier Park PUD
Castroville WD	Fresno ID
Cawelo WD	Fresno Metro Flood Control Dist.
Centerville CSD	Friant Power Authority
Central Basin MWD	Friant Water Authority
Central California ID	Georgetown Divide PUD
Central Coast WA	Glenn Colusa ID
Central San Joaquin WCD	Golden Hills CSD
Central WD	Goleta WD
Channel Island Beach CSD	Grassland WD
Chino Basin Watermaster	Greenfield CWD

Appendix A

Helix WD
Henry Miller Reclamation Dist #2131
Hi-Desert WD
Hidden Valley Lake CSD
Humboldt Bay MWD
Humboldt Bay Harbor Rec
Humboldt CSD
Idyllwild WD
Indian Wells VWD
Irvine Ranch WD
Ivanhoe ID
Ivanhoe PUD
James ID
Joshua Basin WD
Jurupa CSD
Kanawha WD
Kaweah Delta WCD
Kern CWA
Kern Tulare / Rag Gulch
Kings CWD
Kings River Conservation District
Kings River Water District
Kern Tulare WD
Kinneloa ID
Kirkwood Meadows PUD
La Canada ID
La Habra Heights CWD
La Puente Valley CWD
Laguna Beach CWD
Laguna ID
Lake Arrowhead CSD
Lake Don Pedro CSD
Lakeside Irrigation WD
Lakeside WD
Las Virgenes MWD
Le Grand CSD
Littlerock Creek ID
Los Alamos CSD
Lost Hills WD
Lower San Joaquin Levee District
Madera/Chowchilla WPA
Madera ID
Madera WD
Main San Gabriel Basin Wtrmstr
Maine Prairie WD
Malaga CWD
Mammoth CWD
Marina Coast WD
Mariposa PUD
McKinleyville CSD
Merced ID

Mid-Peninsula WD
Millview CWD
Mission Hills CSD
Mission Springs WD
Mojave PUD
Mojave WA
Montara Water & Sanitary District
Montecito Sanitary District
Montecito WD
Monterey Peninsula WMD
Mountain Gate CSD
MWD of Orange County
Nevada ID
Newhall CWD
North Coast CWD
North Delta Water Agency
North Kern WSD
North of the River MWD
North San Joaquin WCD
Oakdale ID
Olivenhain MWD
Orange Cove ID
Orange CWD
Orchard Dale WD
Orland-Artois WD
Pacheco WD
Padre Dam MWD
Pajaro Valley WMA
Pajaro/Sunny Mesa CSD
Palm Ranch ID
Palmdale WD
Panoche WD
Paradise ID
Patterson ID
Pebble Beach CSD
Pescadero Reclamation Dist. #2058
Phelan Pinon Hills CSD
Pico WD
Pinedale CWD
Planada CSD
Porterville ID
Princeton-Codora-Glenn ID
Quartz Hill CWD
Rainbow MWD
Ramirez WD
Rancho California WD
Rand Communities WD
Reclamation District #108
Reclamation District #2068
Reclamation District #999
Reclamation District #1000

Appendix A

Reclamation District #1004	Terra Bella ID
Redwood Valley CWD	The West Side ID
Richvale ID	Thermalito Water & Sewer
Rincon Del Diablo MWD	Three Valleys MWD
Rio Alto Water District	Trabuco Canyon WD
Rio Linda-Elverta Community WD	Tranquility ID
Riverdale ID	Tri-Dam Project
Rosamond Community Services Dist	Tulare ID
Rosedale-Rio Bravo WSD	Tulare Lake Basin WSD
Rowland WD	Tulelake ID
Sacramento Suburban WD	Tuolumne Utilities District
San Andreas SD	Twentynine Palms WD
San Benito CWD	United WCD
San Bernardino VMWD	Upper San Gabriel Valley MWD
San Bernardino VWCD	Vallecitos WD
San Francisquito Creek JPA	Valley Center WD
San Gabriel Basin WQA	Valley CWD
San Gabriel CWD	Valley of the Moon WD
San Gabriel Valley MWD	Vandenberg Village CSD
San Geronimo Pass WA	Ventura River CWD
San Juan Water District	Vista ID
San Luis & Delta-Mendota WA	Walnut Valley WD
Santa Ana Watershed PA	Weaverville CSD
Santa Clara VWD	West Basin MWD
Santa Fe ID	West Kern WD
Santa Margarita WD	West Valley WD
Santa Maria Valley WCD	West Stanislaus ID
Santa Ynez River WCD	Westborough WD
Saucelito ID	Western MWD
Scotts Valley WD	Wheeler Ridge-Maricopa WSD
Semitropic WSD	WRD of Southern California
Serrano WD	Yolo County FC & WCD
Shafter-Wasco ID	Yorba Linda WD
Solano County WA	Yuima MWD
Solano ID	
Soquel Creek WD	
South Coast WD	
South Feather Water & Power (hydro)	
***South Feather Power (water)	
South Montebello ID	
South San Joaquin ID	
South Sutter WD	
South Tahoe PUD	
Southern San Joaquin MUD	
Stockton East WD	
Stone Corral ID	
Sutter Extension WD	
Tehachapi-Cummings CWD	

***BIG BEAR MUNICIPAL WATER DISTRICT
REPORT TO BOARD OF DIRECTORS***

MEETING DATE: June 17, 2010

AGENDA ITEM: 7A

SUBJECT:

CONSIDER APPROVAL OF A RESOLUTION OF THE BOARD OF DIRECTORS OF BIG BEAR MUNICIPAL WATER DISTRICT TRANSFERRING FUNDS UNAPPROPRIATED AS OF JUNE 30, 2010 TO THE DISTRICT'S CONTINGENCY RESERVE ACCOUNT, AFFIRMING INVESTMENT POLICY, APPROVING THE DISTRICT'S BUDGET AND ESTABLISHING THE APPROPRIATIONS LIMIT FOR THE FISCAL YEAR COMMENCING JULY 1, 2010

RECOMMENDATION:

The General Manager and the Budget/Finance Committee (Directors Fashempour and Murphy) recommend approval of the budget.

DISCUSSION/FINDINGS:

At the June 3rd Board meeting the draft budget was presented to the Board of Directors and a discussion was held to obtain comments regarding the upcoming fiscal year budget. The only change made at the meeting was a correction to Professional Services. Approval of the budget as revised is now recommended. The appropriations limit has been calculated and posted in accordance with required procedures. Once approval is given, the budget will be forwarded to the County of San Bernardino for filing.

OTHER AGENCY INVOLVEMENT: None

FINANCING: None

Submitted by: Scott Heule, General Manager

RESOLUTION NO. 2010-05

A RESOLUTION OF THE BOARD OF DIRECTORS OF BIG BEAR MUNICIPAL WATER DISTRICT TRANSFERRING FUNDS UNAPPROPRIATED AS OF JUNE 30, 2010 TO THE DISTRICT'S CONTINGENCY RESERVE ACCOUNT, AFFIRMING INVESTMENT POLICY, APPROVING THE DISTRICT'S BUDGET AND ESTABLISHING THE APPROPRIATIONS LIMIT FOR THE FISCAL YEAR COMMENCING JULY 1, 2010

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF BIG BEAR MUNICIPAL WATER DISTRICT as follows:

Section 1. Contingency Reserves

(a) The District has previously established a contingency reserve account for each discrete fund of the District. The continued existence of such contingency reserve accounts is hereby affirmed.

(b) All moneys previously appropriated to any fund of the District which are not expended as of June 30, 2009 shall be appropriated to the contingency reserve account of each respective District fund.

(c) Unless moneys are being accumulated as reserve, appropriations to the various contingency reserve accounts shall be expended for usual and necessary expenses chargeable to each of the respective funds.

Section 2. Investment Policy

The investment policy adopted by the District on November 7, 1996, is hereby affirmed for the fiscal year commencing July 1, 2010.

Section 3. Budget

The budget attached hereto and hereby incorporated by this reference as Exhibit A, is hereby approved for the fiscal year commencing July 1, 2010.

Section 4. Appropriations Limit

The appropriations limit of the District under California Constitution Article XIII B for the fiscal year commencing July 1, 2010, is \$10,892,665.93

PASSED, APPROVED AND ADOPTED this 17th day of June 2010.

Paula Fashempour, President

ATTEST:

Vicki Sheppard, Secretary to the Board

(SEAL)

***BIG BEAR MUNICIPAL WATER DISTRICT
REPORT TO BOARD OF DIRECTORS***

MEETING DATE: June 17, 2010

AGENDA ITEM: 7B

SUBJECT:

CONSIDER APPROVAL OF SECOND READING BY TITLE ONLY OF AN ORDINANCE OF THE BOARD OF DIRECTORS OF BIG BEAR MUNICIPAL WATER DISTRICT RELATING TO DIRECTORS' COMPENSATION

RECOMMENDATION:

The General Manager and the Administrative Committee (Directors Fashempour & Suhay) recommend approval of the second reading of this ordinance.

DISCUSSION/FINDINGS:

As discussed in the last Board meeting, the Committee is recommending that each Director be paid not more than \$148.00 for each day's attendance at meetings of the Board and Committees thereof, and for each day's service rendered as Director by request of the Board, not exceeding a total of six days in any calendar month. Each calendar year, the compensation shall be increased annually in January, but not decreased, in the amount of the change in the Consumer Price Index Urban Wage Earners of Los Angeles, Riverside, and Orange County, California. However, in no event shall the increase exceed five percent. The Committee is recommending that the Ordinance second reading be adopted.

OTHER AGENCY INVOLVEMENT: The cost will be taken from the Administrative Program Budget, Director Compensation line item.

FINANCING: None

Submitted by: Scott Heule, General Manager

ORDINANCE NO. 44

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF
BIG BEAR MUNICIPAL WATER DISTRICT
AMENDING ORDINANCE NO. 39
AS IT RELATES TO DIRECTORS' COMPENSATION**

**BE IT ORDAINED BY THE BOARD OF DIRECTORS OF BIG BEAR
MUNICIPAL WATER DISTRICT as follows:**

1. Purpose.

This ordinance amends the ordinance establishing directors' compensation to make increases permissive rather than mandatory.

2. Amendment.

Section 2 of Ordinance No. 39 is amended and reenacted to read as follows:

"Section 2."

Each director shall be paid not more than \$148.00 for each day's attendance at meetings of the board and committees thereof, and for each day's service rendered as director by request of the board, not exceeding a total of six days in any calendar month. Each calendar year, the compensation shall be increased annually in January, but not decreased, in the amount of the change in the Consumer Price Index Urban Wage Earners of Los Angeles, Riverside, and Orange County, California. However, in no event shall the increase exceed five percent (5%)."

3. Other.

Except as provided herein, Ordinance No. 39 is reaffirmed and readopted. This ordinance is effective sixty days from adoption.

PASSED, APPROVED AND ADOPTED on June 17, 2010.

Paula Fashempour, President

ATTEST:

Vicki Sheppard, Secretary

[SEAL]

***BIG BEAR MUNICIPAL WATER DISTRICT
REPORT TO BOARD OF DIRECTORS***

MEETING DATE: June 17, 2010

AGENDA ITEM: 7C

SUBJECT: CONSIDER APPROVAL OF REQUEST TO ASSIST IN FUNDING THE SANTA ANA RIVER SUCKER FISH TASK FORCE

RECOMMENDATION:

The General Manager and the Watershed/Lake Improvement Committee (Directors Eminger & Murphy) recommend approval of this request.

DISCUSSION/FINDINGS:

The Santa Ana Sucker Fish is a small endangered fish with habitat in the river bottom of the Santa Ana and San Gabriel Rivers. Recent proposals from the Federal Fish and Wildlife Service propose to designate large areas of the river bottom for habitat protection and restoration, including introducing new fish populations. Large tracts of this proposed designation are coincident with land used by our partner agencies, San Bernardino Valley Municipal Water District, Bear Valley Mutual Water Company and San Bernardino Valley Water Conservation District among others. Several of these agencies, including ours, have joined a Task Force (SAS Task Force) to identify alternative locations and develop recovery plans that will accomplish the necessary protections without impacting their water operations.

The SAS Task Force effort is limited to what can be accomplished by the end of this year at which time the Fish and Wildlife Service must publish their recovery plan and mapping showing designated fish habitat. Legal aspects of SAS Task Force are being provided by Best, Best and Krieger and Downey Brand law firms. Richard Katz is coordinating the efforts of two water agency lobbyists (paid for by their respective agencies) that are working Washington to get a favorable outcome. Economic analysis and responses to the Fish and Wildlife Service economic analysis is being performed by John Husing. All fisheries biology and development of plans for recovery of the SAS populations is being performed by Roy Leidy of PBS&J. Leidy's work includes development and construction of two or more new fish rearing runs at the Riverside-Corona Resource Conservation District facilities in Corona.

The total cost for the efforts of the SAS Task Force is estimated at \$406,000 (see attached). If all of the 13 agencies currently participating share these expenses equally, the cost per agency would be \$31,300. The District has already committed to \$5000. The task force appreciates having the District participation and asked that the District be present to represent the upper portion of the watershed when a formal presentation is made to the Resource Conservation District. As was discussed previously, the ramifications of the current approach for the SAS habitat designation plan will be hugely negative for San Bernardino Valley Municipal Water District, Bear Valley Mutual Water Company and the Conservation District, and include potential loss of water spreading facilities and added expenses for mitigation for pipeline projects.

The District is not directly impacted by the proposed action by the Fish and Wildlife Service. However, the Watershed/Lake Improvement Committee recommends that the District contribute \$20,000, including the \$5000 already committed to help address the indirect impacts that would affect us as our partners work through this difficult and potentially disruptive issue.

OTHER AGENCY INVOLVEMENT: As noted above

FINANCING: Finances could come from the Lake Improvement Fund.

Submitted by: Scott Heule, General Manager

MEMORANDUM

To: Santa Ana Sucker Task Force (list of agencies attached)

From: David Aladjem, Downey Brand LLP
Greg Wilkinson, Best Best & Krieger LLP

Date: June 1, 2010

Subject: Potential Conflicts of Interest – Santa Ana Sucker Task Force

As all of you know, last year the U.S. Fish & Wildlife Service issued a draft rule designating most of the Santa Ana River and much of the San Gabriel River as critical habitat for the Santa Ana sucker (*Catostomus santaanae*). The group of public and private agencies listed above are coordinating their efforts through the Santa Ana Sucker Task Force (Task Force) to respond to the proposed designation through a concerted biological, economic, legal and political strategy. Attached to this memorandum is a proposed cost-sharing and joint defense agreement for the Task Force effort for review by your respective legal counsel and, it is hoped, approval by the appropriate governing boards.

The purpose of this memorandum is to clarify our firms' roles in the Task Force effort. Best Best & Krieger LLP represents the City of Riverside and Western Municipal Water District of Riverside County (Western); Downey Brand LLP represents the San Bernardino Valley Municipal Water District (Valley District). Our two firms have taken the lead, on behalf of our respective clients, in organizing the Task Force and retaining consultants. Subject to approval by the various governing boards, it is proposed that Best Best & Krieger (BB&K) and Downey Brand's fees associated with this effort will be paid by the Task Force members (including our respective clients). However, we will not represent the Task Force members; instead, each firm will only represent its current clients.

It is important for each of you to understand this point. Downey Brand, for instance, will continue only to represent Valley District in this effort. Best, Best & Krieger, likewise, will continue to represent only Western and the City of Riverside. Neither Firm will have an attorney-client or other relationship with any other member or members of the Task Force as a result of this effort. Thus, absent the joint defense agreement attached to this Memorandum, any communications by Task Force members other than Valley District to Downey Brand or Western and the City of Riverside with BB&K are public documents. Similarly, neither Downey Brand nor BB&K will have a duty of loyalty or duty of confidentiality to any Task Force members other than their clients as a result of this effort. Consequently, no member of the Task Force may seek to disqualify Downey Brand or BB&K on the ground that it represents any member of the Task Force other than their clients as described above

It is also important that Valley District (with regard to Downey Brand LLP) and Western Municipal Water District of Riverside County and the City of Riverside (with regard to Best Best & Krieger LLP) understand several other points. To the extent that other members of the Task Force have agreed to pay a portion of our fees in this effort, Rule 3-310(F) of the California Rules of Professional Conduct requires us to obtain your consent to our accepting payment from those Task Force members on your behalf. Rule 3-310(F) provides, in relevant part:

“A member shall not accept compensation for representing a client from one other than the client unless:

- (1) There is no interference with the member's independence of professional judgment or with the client-lawyer relationship; and
- (2) Information relating to representation of the client is protected as required by Business and Professions Code section 6068, subdivision (e); and
- (3) The member obtains the client's informed written consent.”

The Rules of Professional Conduct require us to inform you in writing “of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to” you of payment of your fees by the other Task Force members. We believe that there are three potential adverse consequences that could occur from this arrangement, although we also believe that none of these is likely to occur.

First, other members of the Task Force could try to manage or control our representation of you, which would, if allowed, interfere with our independent judgment in representing you or with our attorney-client relationship with you. We will not allow that to happen. We understand that the Task Force intends to operate by consensus, which satisfies our respective obligations to our clients. However, in the event of a disagreement with the proposed course of action by Valley District, Mr. Aladjem will continue to represent Valley District only. Similarly, in the event of a disagreement with the proposed course of action by either Western or the City of Riverside, Mr. Wilkinson will continue to represent those agencies only.

Second, other Task Force members may seek to obtain confidential information that we gather on behalf of Western, the City of Riverside or Valley District through the proposed process. An attorney is bound by California Business and Professions Code Section 6068(e)(1) to “maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.” To protect such information, we are proposing that all members of the Task Force enter into a cost-sharing and joint defense agreement, which will require all members of the Task Force to hold information that they obtain from either Best Best & Krieger LLP, Downey Brand LLP or otherwise in this process confidential.

Third, it is possible that one or more members of the Task Force could, in the future, decide not to contribute to the payment of our legal fees. In that event, you would need to take over payment of our fees. Because this was the situation prior to the formation of the Task Force, we do not believe that you would find that circumstance detrimental.

In summary, we believe that the proposed arrangements are beneficial for Task Force members other than Western, the City of Riverside and Valley District in that they will benefit from the work of Best Best & Krieger LLP and Downey Brand LLP. We also believe that the proposed arrangements are beneficial for Valley District, City of Riverside and Western because other members of the Task Force will pay a portion of the costs of this effort. As noted above, however, there are potential disadvantages for each member of the Task Force. If your organization is willing to proceed with the Task Force, we ask that you execute the consent below (which may be executed in counterparts).

CONSENT

I, _____, represent that I am authorized on behalf of _____ to execute this Consent. _____, after having had the opportunity to consult with independent counsel of its choice, acknowledges receipt of the foregoing written disclosure and agrees to the foregoing arrangements. If _____ is a client of either Best Best & Krieger LLP or Downey Brand LLP, _____ hereby consents to the partial payment of counsel's fees by members of the Task Force. If _____ is not a client of either Best Best & Krieger LLP or Downey Brand LLP, _____ hereby acknowledges that the Task Force does not create any attorney-client relationship with either law firm and that Best Best & Krieger LLP will continue only to represent the City of Riverside and Western in this matter while Downey Brand LLP will continue only to represent Valley District in this matter.

_____ Date: June __, 2010.

Santa Ana Sucker Task Force Members

Bear Valley Mutual Water Company
Big Bear Municipal Water District
City of Colton
City of Highland
City of Redlands
City of Riverside Public Utilities
City of San Bernardino Municipal Water Department
East Valley Water District
Orange County Public Works
Riverside County Flood Control and Water Conservation District
San Bernardino County Flood Control District
San Bernardino Valley Municipal Water District
San Bernardino Valley Water Conservation District
Southern California Edison
Western Municipal Water District of Riverside County
Yucaipa Valley Water District

**Santa Ana Sucker Critical Habitat Designation
Proposed Scopes of Work (Consolidated)**

May 19, 2010

The following table summarizes the proposed scopes of work and costs for the Santa Ana Sucker Critical Habitat Designation Task Force through December 31, 2010.

Discipline	Scope	Task Cost	Total
Biology (PBS&J Roy Leidy, Camm Swift, Jonathan Baskin, Kerwin Russell)	Task 1 – General Assistance	\$38,100	
	Task 2 – Meeting Participation	\$25,200	
	Task 3 - SAS Enhancement Plan and Project Implementation	\$104,600	
	Task 4 – Alternative Streams Investigation	\$26,400	
	Task 5 – Responses to USFWS Economic Study	\$5,800	\$200,100
Legal (BB&K and Downey Brand)	Task 1 – General Coordination	\$39,600	
	Task 2 – Preparation of Comments on Economic Analysis	\$38,703	
	Task 3 – Preparation of Enhancement Project	\$79,361	
	Task 4- Review and Advice on Final Rule	\$13,200	\$170,864
Advocacy (Richard Katz)	Task 1 – Coordination of Advocacy Efforts	\$36,000	\$36,000
		Grand Total	\$406,964

Notes:

1. All costs associated with the preparation of the Economic Analysis performed by John Husing are covered by Valley District under an existing contract.
2. It is anticipated that implementation costs associated with development of SAS habitat at RCRCO or Cal Poly Pomona, in addition to costs for additional studies (i.e. genetics study) would be covered by the mitigation fund established and supported by Valley District and Western Municipal Water District.

Allocation Options

As of May 19, 13 agencies have committed to providing initial funding of \$5,000. All of those funds (\$65,000) will be applied to the costs shown in the table. If we assume that the same number of agencies agree to participate in the project through the end of the year, the total cost per agency would be \$31,300. As more agencies choose to join, the cost per agency would be reduced accordingly, or vice versa.

REVISED SCOPE OF WORK AND BUDGET

22 April 2010

ACTIVITIES ASSOCIATED WITH RESPONDING TO THE PROPOSED RESEIGNATION OF CRITICAL HABITAT FOR THE SANTA ANA SUCKER

Task 1. General Consulting Assistance

PBS&J (Leidy and colleagues) will assist the Santa Ana Sucker (SAS) Task Force, as requested, with assignments not included in other tasks. Budgeting for this task assumes that this task covers two time periods: 1 April through 30 June 2010 and 1 July through 31 December 2010. The period from 1 April through 30 July 2010, a period of 13 weeks, assumes an average labor commitment of 4 hours per week (\$11,700 labor). Other direct costs are estimated at \$1,000 for this same period (air fare, rental car, etc.). Total budget through 30 June 2010: \$12,700. Post 30 June through 31 December 2010 labor budget (26 weeks) with the same assumptions: \$23,400. Other direct costs: \$2,000. Total budget from July through December: \$25,400. Grand total budget (Labor and other direct costs) for this task from 1 April through 31 December 2010: \$38,100.

Task 2. Attendance as SAS Conservation Team and Other Relevant Meetings

This task has been consolidated into this scope of work and budget from PBS&J Project No. 100012843 which was initiated on 1 March 2010. Leidy will attend up to 10 meetings of the SAWPA Santa Ana Sucker Conservation Team (including the Restoration Working Group) and the Southern California Native Aquatic Fauna Working Group between 1 March 2010 and 31 December 2010 for the purpose of providing input to the interested parties on the introduction of the SAS in the Santa Ana River watershed, and to gather information on the proposed activities of these groups. Each attendance is expected to be a one-day event. Leidy will summarize in writing the content of each meeting related to SAS issues along with any recommendations for actions on the part of the SAS Task Force. Each meeting is expected to require up to 8 hours in travel and meeting time, plus travel expenses (airfare, rental car and gas, one meal, and personal vehicle mileage). Labor budget (meetings plus write-ups) at 9 hours per meeting plus 0.5 hours administrative time per meeting: \$20,900 (Before 30 June 2010: \$5,225; Post 30 June 2010: \$15,675). Other direct costs: \$4,300 (Before 30 June: \$1,075; Post 30 June 2010: \$3,225). Total labor and other direct before 30 June: \$6,300. Total labor and other direct costs post 30 June 2010: \$18,900. Total labor and other direct costs from 1 March through 31 December 2010: \$25,200.

Task 3. SAS Enhancement Plan and Project Implementation

There are two phases to this task.

Phase 1

Leidy, working closely with Sam Fuller, is charged with developing a plan to enhance the survival of the SAS population within its existing range in the Santa Ana River basin. The focus geographically will be from the Rialto Drain downstream to the Imperial Highway. This is the reach of the Santa Ana River that currently supports or recently supported the SAS and the reach that will have the greatest probability of implementing a successful project. The plan may include upland sites within this general river reach. The plan will contain appropriate adaptive management elements focused in the short-term on stabilizing the SAS population in the Santa Ana River. The goal is to have one on-the-ground project in place by the end of September 2010. Specific constraints and milestones of the plan are:

- The project must be completed by 30 September 2010;
- The project design must avoid any permitting requirements (other than permission from the USFWS to capture, move, rear, and reintroduce SAS) to meet the schedule (i.e., no 404, 401, 1602, or other permits);
- The project should focus on improving spawning and/or juvenile rearing habitat for the SAS, if feasible;
- Leidy et al. will meet with the USFWS (Ren Lohofener, Pacific Southwest Regional Director) to present the plan and request approval to move SAS to the project site, if necessary;
- Leidy et al. will request concurrence from the California Department of Fish and Game (Curt Taucher, Regional Manager), and will also request that CDFG release up to \$200,000 in funding already provided by San Bernardino Valley Municipal Water District and Western Municipal Water District to CDFG under the terms of the water rights settlement with CDFG; and
- Post-project monitoring and O&M will be required.

To assist with Phase I, Leidy will engage the expert services of Dr. Camm Swift (ENTRIX, Inc.), Dr. Jonathan Baskin (San Marino Environmental Associates), and Kerwin Russell (Riverside-Corona Resource Conservation District), as necessary, to design the project. Phase 1 has substantial unknowns at this time relative to the difficulty of implementing a project. If the process goes smoothly (for example, the project can make use of existing facilities at the RCRCDD), then the cost will be less than the cost estimated herein. Leidy has budgeted a moderate level-of-effort, but by no means a highly complicated or expensive scenario. Planning

for Task 3, Phase 1, is to be completed prior to 30 June 2010. The budget is based on all activities undertaken prior to 1 July 2010 and does not include Phase 1 construction-related planning or construction implementation. The budget breakdown is presented in the attached table. The total budget prior to 1 July 2010: \$39,120. The total budget for the period from July through December 2010: \$65,480. Total Task 3, Phase 1 budget for 2010: \$104,600.

Phase 2

Phase 2 is a longer term continuation of Phase 1 that will occur over a two to three-year schedule at a funding level of approximately \$100,000 to \$150,000 per year. Phase 2 will develop additional projects that enhance and stabilize the SAS population within its existing range in the Santa Ana River basin. Project undertaken during this phase may require permitting and may focus on any activity that enhances SAS survival or improves habitat. Phase 2 is not budgeted at this time and will not be budgeted until Phase 1 is completed and we know better the level-of-effort required to continue with additional projects.

Task 4. Alternative Streams Investigation

This task will focus on evaluating the feasibility of establishing SAS populations elsewhere in the Santa Ana River basin outside of the current range of the species. New refugia for the SAS will be evaluated taking into consideration the following:

- Location relative to the parent population and existing infrastructure;
- Selection criteria for evaluating the suitability of specific locations to support viable populations of the SAS over time, including a risk analysis of potential threats; and
- Financial and institutional requirements to create, maintain, and monitor SAS populations at selected locations.

Leidy et al. will evaluate a select number of tributaries to the Santa Ana River that may contain the PCEs necessary to support an introduced SAS population in the future. This investigation will be at the reconnaissance level and the product will be a report presenting the results. Task 4 will be initiated prior to 30 June 2010, and will be completed prior to the end of calendar year 2010. Leidy will use experienced, mid-level fish biologists from PBS&J to assist with this task to contain costs. Approximately 25 streams will be evaluated. The evaluation will also include site visits to confirm environmental conditions. A records search of resource agency files may also be required.

The labor costs incurred prior to 1 July 2010 will be for information gathering and site visits. This cost is estimated at \$11,200. Other direct costs prior to 1 July: \$3,500. Total budget prior to

1 July: \$14,700. Completion of the report following 30 June 2010 is estimated at \$11,200. Other direct costs after 30 June: \$500. Total budget after 30 June: \$11,700. Total budget for task: \$26,400.

Task 5. Additional Responses to the Economic Study

Leidy will provide additional comments, if necessary, on the draft economic study issued by the USFWS. This effort is estimated at 24 hours labor (\$5,400) plus other direct costs (\$400), for a total budget of \$5,800.

Budget Summary for the Proposed Scope of Work

Task	1 March-30 June (\$)	1 July-31 December (\$)	Total (\$)
1	12,700	25,400	38,100
2	6,300	18,900	25,200
3	39,120	65,480	104,600
4	14,700	11,700	26,400
5	5,800	0	5,800
Total	78,620	121,480	200,100

Legal Budget/Scope
Santa Ana Sucker Critical Habitat Designation

Task 1 – General Coordination

This task involves general coordination efforts with the Santa Ana sucker task force and attendance at the monthly task force meetings. For purposes of the budget/scope, we have assumed that the task force will meet monthly from April through September and then meet in either October or November.

Task 2 Preparation of Comments on Economic Analysis

Task 2.1 involves legal coordination with John Husing as he prepares his comments based on the project descriptions submitted by participating agencies. We anticipate that most of those comments will focus on the economic impacts of critical habitat designation, but we anticipate some need to work with Husing to establish the legal framework for his analysis.

Task 2.2 involves the attendance at the Fish & Wildlife Service hearing on the economic analysis.

Task 3. Preparation of Enhancement Project

Task 3.1 involves legal coordination with Roy Leidy as he works with Camm Swift and John Baskin to develop the proposed Santa Ana sucker enhancement project.

Task 3.2 involves preparing for and meeting with officials at the Fish & Wildlife Service to obtain their consent to the implementation of the project(s) developed by Leidy, Swift and Baskin.

Task 3.3 involves the negotiation of a safe harbor agreement, a 10(j) population designation, or other legal/regulatory means to ensure that the Santa Ana task force parties' projects are fully protected from limits caused by the enhancement efforts.

Task 4. Review and Client Advice on Final Rule

This task involves review of the final critical habitat designation rule once it is issued by the Fish & Wildlife Service and advising the Santa Ana sucker task force about potential avenues in light of that designation.

Santa Ana Sucker Critical Habitat Designation -- Legal Budget

Task	April 1 to June 30, 2010		July 1 to December 31, 2010		Contingency (10%)	Total
	Hours	Fees/Costs	Hours	Fees/Costs		
Task 1 -- General Coordination	50	\$15,000	70	\$21,000	\$3,600	\$39,600
Task 2 -- Preparation of Comments on Economic Impacts of Designation						
Task 2.1 Coordination with John Husing	30	\$9,000	70	\$21,000	\$2,103	\$32,103
Task 2.2 Attendance at FWS Hearing	0	\$0	20	\$6,000	\$600	\$6,600
Task 3 -- Preparation of Enhancement Project						
Task 3.1 Coordination with Roy Leidy	50	\$15,000	25	\$7,500	\$755	\$23,255
Task 3.2 Meetings with FWS	25	\$7,500	20	\$6,000	\$603	\$14,103
Task 3.3 Negotiation of Safe Harbor Agreement	30	\$9,000	100	\$30,000	\$3,003	\$42,003
Task 4 Review and advice on Final Rule	0	\$0	40	\$12,000	\$1,200	\$13,200
Total	185	\$55,500	345	\$103,500	\$11,864	\$170,864

DRAFT

April 21, 2010

The purpose of this letter is to summarize and confirm the term and conditions of the agreement by Richard Katz Consulting Inc, ("Consultant") and XXXXX ("Client").

SCOPE OF SERVICES

The Client retains Consultant to provide strategic advice as it relates to the Federal Governments effort on the Santa Ana Sucker Critical Habitat Designation. Consultant shall offer a critical political overlay to the efforts of the government relations team representing XXXXXXXXXX in Washington, DC. Efforts shall include but not be limited to review of current strategy, assistance in developing new and innovative strategy going forward, and coordination of efforts with federal, state and local entities.

PROFESSIONAL FEES

In compensation for the services performed by Consultant on behalf of Client, as outlined above, Client agrees to pay Consultant a monthly retainer of \$5,000 per month for 90-days and then \$3,500 per month until the issue is resolved.

REIMBURSEMENT OF EXPENSES INCURRED

Client will reimburse Consultant on a monthly basis for any out-of-pocket expenses reasonably incurred by Consultant on its behalf including, but not limited to, document reproduction charges, facsimile charges, long distant telephone calls, travel expenses and messenger fees. Consultant will send a statement of expenses incurred each month. No expenditure in excess of Three Hundred Dollars (\$300.00) per month will be made without prior written consent from Client.

TERMINATION

Either party upon thirty (30) days written notice to the other party may terminate this agreement. In the event of such termination, Consultant shall bill Client for all professional services, independent contractor expenses and other costs incurred up to the date of termination.

NO REPRESENTATION THAT PERMITS OR SERVICES WILL BE APPROVED OR SUCCESSFUL

It is impossible to predict the approval or non-approval of any action, which requires discretionary government action. Consequently, while consultant will conscientiously perform all of its responsibilities outlined above, we cannot and do not make any representation to Client that any of the services discussed herein will be granted, acknowledged or approved by any governmental or public jurisdiction. Client acknowledges that none of its obligations under this letter agreement is dependent or conditioned upon approval of any service.

Consultant, its employees and associates, shall not be individually or collectively liable to client, or any party claiming through Client, for any damages resulting from the denial of any discretionary permits or from errors or omissions in connection with any services provided hereunder for any reason other than willful misconduct.

Consultant shall not be liable to Client, or any party claiming through Client, for any damages resulting from the denial of the application of any governmental approval or service.

ATTORNEY'S FEES

In the event that any litigation is commenced concerning any provision of this letter agreement, the prevailing party will be entitled to recover, in addition to any other relief granted by the court, a reasonable sum for its attorney's fees incurred in the litigation.

CONCLUSION

We believe that the above terms and conditions accurately summarize our agreement for the performance of services related to the project. If you concur, please indicate your approval and acceptance by dating, signing and returning this letter agreement. We have enclosed a signed copy of this letter for your records.

We are very pleased that we are able to be of service to you and look forward to working with you.

All the Best,

Richard Katz

AGREED AND ACCEPTED;

By: _____
XXXXXXXXXXXXXXXXXXXX Date

**PROPOSAL TO THE
RIVERSIDE-CORONA RESOURCE CONSERVATION DISTRICT
FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE
OF ADDITIONAL NATIVE FISHES SPAWNING AND REARING
FACILITIES**

**SUBMITTED JOINTLY BY THE
SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
AND THE
WESTERN MUNICIPAL WATER DISTRICT
ON BEHALF OF THE
SANTA ANA SUCKER TASK FORCE**

JUNE 2010

**PROPOSAL TO THE
RIVERSIDE-CORONA RESOURCE CONSERVATION DISTRICT
FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE
OF ADDITIONAL NATIVE FISHES SPAWNING AND REARING
FACILITIES**

INTRODUCTION

The Santa Ana sucker (*Catostomus santaanae*), a fish endemic to several Southern California coastal watersheds, is listed under the federal Endangered Species Act (ESA) as a threatened species (65 FR 19686; 12 April 2000). It is also designated as a Species of Special Concern by the California Department of Fish and Game (Special Animals, July 2009). In the Santa Ana River (SAR) watershed, the Santa Ana sucker (SAS) is currently virtually exclusively restricted to the mainstem SAR from the Rialto Drain downstream to the Imperial Highway, a river distance of only 30 miles. This limited geographic range exposes the SAS to the potential for losses in abundance in the event of chemical spills or other catastrophic events.

The U.S. Fish and Wildlife Service (FWS), the federal agency responsible for the management of the SAS under the ESA has yet to identify a recovery team or to prepare a recovery plan for the SAS. Notwithstanding the absence of a recovery “blueprint” for the SAS, conservation activities for this fish have already been undertaken by: 1) the Santa Ana Sucker Conservation Team pursuant to the *Santa Ana Sucker Conservation Program*; 2) the Riverside-Corona Resource Conservation District (RCD) under its ESA section 10(a)(1)(A) permit (research and recovery) issued by the FWS; and 3) land use protections included in the FWS-approved *Western Riverside County Multi-species Habitat Conservation Plan*. These efforts are undoubtedly helpful to the species; however, the abundance of the SAS in the SAR continues to vary, sometimes dramatically depending on the year and location being monitored (see Figure 10 in Haglund et al. 2010: Draft Annual Report to the Santa Ana Sucker Conservation Team). It is clear, moreover, that achieving the ESA’s goal of recovering the SAS will require: 1) additional populations established in suitable habitats within the species’ historic range; and 2) substantial

scientific understanding of the needs of the SAS during each life-stage. The goal of this proposal is to address both of these requirements in a cost-effective manner that moves the species significantly forward on the road to recovery.

OBJECTIVE

The objective of this proposal is to expand the native fishes spawning and rearing facilities currently operated by the RCD under its ESA section 10 permit for the purpose of maintaining genetically diverse founder stocks of the SAS for supportive breeding purposes including research, education, and recovery of the species. In so doing, the project will generate fish that can be used to augment existing populations and new populations of SAS (without creating/aggravating genetic introgression) and fish that can be used to better understand the species, thereby assisting with recovery.

RATIONALE

For well over 20 years it has been recognized that many species of fish from the arid southwestern United States could be benefited by artificial propagation. (Rinne et al. 1986). For many fish species, captive breeding and stocking have produced positive results, for example, the razorback sucker, June lake sucker, and Colorado pikeminnow. The development of supportive breeding for conservation purposes has developed new methodologies to protect the genetic integrity of rare fishes while long-term recovery measures are underway. The supportive breeding of fishes at risk like the SAS should be viewed as a *temporary* safeguard measure while awaiting the implementation of permanent measures for protecting the SAS in restored habitats (Philippart 1995 and numerous other authors). The SAS supportive breeding program is, therefore, not comparable to the traditional hatchery programs aimed at simply producing fish for commercial and recreational fishing purposes. In fact, this proposal excludes the concept of a fish "hatchery" or fish "farm" where fish are bred by artificial means. Rather, the proposal includes the use of semi-natural water bodies (raceways) where the fish reproduce naturally and from which fish may be transplanted into natural waterbodies on a regular basis.

SAS produced by the proposed expanded spawning and rearing facilities will be used for the following purposes (subject to FWS approval):

- 1) Maintenance of one or more populations of SAS derived from SAR founder stocks (and potentially populations from other watersheds like the San Gabriel River), consistent with sound principles of genetic management and fish husbandry;
- 2) Source fish for genetic studies among fish from different locations;
- 3) Source fish for physiological and ecological research studies to determine the preferred water temperature and water quality conditions, water velocity preferences for different life stages, spawning substrate preferences, habitat preferences, etc.
- 4) Source fish for educational purposes; and
- 5) Source fish for future repatriation to restored habitats within the historical range of the SAS with perennial flow and hydraulic continuity with existing populations.

Because the SAS has a short lifespan when compared to most fish species and because the problem of genetic introgression is of concern, it is critical that any long-term supportive breeding program be conducted in a manner that guarantees the retention of morphological, physiological, ecological, behavioral, and genetic characteristics of the species. Therefore the development of appropriate methods for genetic management during breeding and rearing is of paramount importance (Williamson and Wydoski 1994 on FWS genetic management guidelines; Wydoski 1995 on FWS genetics management plans). This proposal does not delve into the details of how the genetic integrity of the SAS will be achieved. Numerous similar plans have been developed for similar species by the FWS and will be consulted during the process of developing a suitable "Genetic Integrity Plan." This proposal envisions the development and implementation of such a plan independently of the spawning and rearing activities proposed herein. Preparation of a Genetic Integrity Plan would, however, be the first order of business prior to actually placing SAS in the new proposed facilities.

RESPONSIBILITIES OF THE PARTIES

San Bernardino Valley Municipal Water District (Valley District) and Western Municipal Water District (Western), upon the consent of the California Department of Fish and Game (DFG), propose to use funding currently reserved for SAS conservation activities pursuant to the *Seven Oaks Dam Water Rights Settlement Agreement* to construct, operate, and maintain the proposed

new spawning and rearing facilities and all related activities to be undertaken by the RCD. All such activities would be under the supervision of the FWS pursuant to section 10 of the ESA.

Subject to discussions with RCD staff, engineering requirements, and other costs, Valley District and Western propose to construct 3 to 6 new spawning and rearing raceways at the RCD headquarters compound. The exact number of new raceways to be constructed will depend on various factors including cost per raceway, FWS approval, RCD staff availability for O&M, and the number of fish required to implement the various scientific programs noted previously. Currently, Valley District and Western envision retaining a local contractor under RCD supervision to construct the facilities to the required specifications, unless the RCD has the personnel available to complete construction by 30 September 2010. Once constructed, the RCD would operate the facilities pursuant to plans developed by Valley District, Western, and the RCD and approved by the FWS. The new facilities would be permitted under the RCD's current section 10 permit or a new permit issued by the FWS to the RCD, if required.

Specifically, the RCD would be responsible for the following:

- 1) Site selection for the raceways and appurtenant facilities;
- 2) All operation and maintenance of the new facilities, including water supply delivery and water quality, daily operations, handling and movement of fish within the facilities, nutrition and feeding (if required), fish health management, recordkeeping, security, compliance with the ESA section 10 permit requirements, and repairs to facilities as needed;
- 3) Coordination and communication with Valley District and Western staff assigned to implement and/or monitor the various research investigations and other activities that are undertaken using SAS produced at the new facilities;
- 4) Accounting, project management, and invoicing.

Valley District and Western would be responsible for the following:

- 1) Funding all RCD activities related to this proposal, including the costs of construction, operation and maintenance, and record keeping;

- 2) Consultations with RCD staff in the development of any SAS research studies or other activities that involve fish produced at the new facilities;
- 3) Coordination with the RCD in reporting to the FWS and the DFG on permitted and funded programs;
- 4) Project management related to programs funded by or undertaken by Valley District and Western at the new facilities or that use fish produced at the new facilities, for example, genetic studies using SAS from the new facilities, but conducted elsewhere.

PROPOSAL BUDGET

The following budget is subject to further refinement in consultation with RCD staff. All costs include labor and direct costs.

- 1) Construction of up to 6 new raceways similar in design to the raceways now in use.
\$120,000
- 2) Annual facilities O&M.
\$40,000
- 3) Consultations with Valley District and Western on research designs, fish spawning and rearing objectives, facilities management, and other planning-related activities.
\$10,000
- 4) Consultations with Valley District, Western, FWS, and DFG, as required regarding permit issues, fish collection, and fish disposal.
\$10,000
- 5) Accounting, project management, and invoicing.
\$5,000

Costs associated with specific new studies or other activities not included herein will be negotiated with the RCD prior to authorization.