



PO Box 675 • 61750 Chollita Road • Joshua Tree CA 92252  
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JOSHUA BASIN WATER DISTRICT  
REGULAR MEETING OF THE BOARD OF DIRECTORS  
WEDNESDAY MARCH 2, 2016 7:00 PM  
61750 CHOLLITA ROAD, JOSHUA TREE, CALIFORNIA 92252  
AGENDA

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. DETERMINATION OF A QUORUM
4. APPROVAL OF AGENDA
5. PUBLIC COMMENT  
Members of the public may address the Board at this time with regard to matters within the Board's jurisdiction that are not listed on the agenda. State law prohibits the Board of Directors from discussing or taking action on items not included on the agenda. Members of the public will have the opportunity for public comment on any item listed on the agenda when it is addressed on the agenda. Please limit comments to three (3) minutes or less.
- Pgs. 1-7 6. CONSENT CALENDAR:  
Items on the Consent Calendar are considered routine in nature and will be adopted in total by one action of the Board of Directors unless any Board Member or any individual or organization interested in one or more consent calendar items wishes to be heard.
  - A. Approve Draft Minutes of the February 17, 2016 Regular Meeting of the Board of Directors.
- Pgs. 8-27 7. UPDATE ON NEXTERA SOLAR PROJECT, PROPOSED WILL SERVE LETTER AND WATER SUPPLY AGREEMENT  
Recommend that the Board authorize General Manager to execute the Will Serve Letter and Water Supply Agreement in substantially the same format as discussed.
- Pg. 28 8. UPDATE ON CONSERVATION EFFORTS/2016 TARGET ADJUSTMENTS BY SWRCB  
Recommend that the Board receive for information only.
9. STANDING COMMITTEE REPORTS:
  - A. LEGISLATIVE AND PUBLIC INFORMATION COMMITTEE: Vice President Luckman and Director Unger: Kathleen Radnich, Public Outreach Consultant to report. Next meeting is scheduled for April 6, 2016.

B. FINANCE COMMITTEE: President Fuller and Director Johnson. Next meeting is scheduled for March 28, 2016.

C. WATER RESOURCES & OPERATIONS COMMITTEE: Vice President Luckman and Director Johnson. Next Meeting is scheduled for March 28, 2016.

10. DISTRICT GENERAL COUNSEL REPORT
11. GENERAL MANAGER REPORT
12. FUTURE DIRECTOR MEETINGS AND TRAINING OPPORTUNITIES  
Mojave Water Agency BOD Meeting: March 10 – Victoria Fuller  
ASBCSD Meeting: March 21
13. DIRECTOR REPORTS ON MEETINGS ATTENDED, COMMENTS/FUTURE AGENDA ITEMS
14. CLOSED SESSION:  
At this time, the Board will go into Closed Session as follows:
  1. Pursuant to Government Code Section 54957 (b) (1) [Public Employee Performance Evaluation – Title: General Manager; and
  2. Pursuant to Government Code Section 54957.6 [To consult with the Board’s designated representatives (Ad Hoc Negotiation Committee-Directors Johnson and Unger) with regard to potential compensation adjustments/increases to the District’s General Manager.
15. REPORT ON CLOSED SESSION:  
General Counsel will provide an oral report on tonight’s Closed Session.
16. ADJOURNMENT

#### INFORMATION

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

Any person with a disability who requires accommodation in order to participate in this meeting should telephone Joshua Basin Water District at (760) 366-8438, at least 48 hours prior to the meeting in order to make a request for a disability-related modification or accommodation.

Materials related to an item on this Agenda submitted to the Board of Directors after distribution of the agenda packet are available for public inspection in the District’s office located at 61750 Chollita Road, Joshua Tree, California 92252 during normal business hours.

*This meeting is scheduled to be broadcast on Time Warner Cable Channel 10 on March 9 at 7:00 pm and March 16 at 7:00 pm.*

JOSHUA BASIN WATER DISTRICT  
Minutes of the  
REGULAR MEETING OF THE BOARD OF DIRECTORS

February 17, 2016

1. CALL TO ORDER: 7:00 PM

2. PLEDGE OF ALLEGIANCE

3. DETERMINATION OF QUORUM: Victoria Fuller Present  
Bob Johnson Present  
Mickey Luckman Present  
Mike Reynolds Present  
Rebecca Unger Present

STAFF PRESENT: Curt Sauer, General Manager  
Susan Greer, Assistant General Manager/Controller  
Seth Zielke, Director of Water Resources and Operations  
Keith Faul, GIS Coordinator

CONSULTANTS PRESENT: Kathleen Radnich, Public Outreach Consultant  
Gil Granito, District Counsel, Redwine & Sherrill  
Jerry Eagans,  
David O'Leary, USGS

GUESTS 21

4. APPROVAL OF AGENDA

MSC Luckman/Reynolds, 5/0 to approve the agenda for the February 17, 2016 meeting.

Fuller	Aye
Luckman	Aye
Johnson	Aye
Reynolds	Aye
Unger	Aye

5. PUBLIC COMMENT

Al Marquez, Joshua Tree: Mr. Marquez told a joke.

6. CONSENT CALENDAR

MSC Luckman/Johnson, 5/0 to approve Draft Minutes of the February 3, 2016 Regular Meeting of the Board of Directors.

Fuller	Aye
Luckman	Aye
Johnson	Aye
Reynolds	Aye
Unger	Aye

7. PRESENTATION BY USGS ON MONITORING ACTIVITIES FOR 2015

David O’Leary, Hydrologist with the USGS presented findings from 2015, including monitoring results at the recharge facility, other water quality findings, and upcoming geophysical data collection activities.

Public Comment:

A question was asked from the audience about Nitrate levels from the apartment complex approximately 100ft from the recharge ponds. Mr. O’Leary confirmed that nitrate levels at 16ft below the ground surface were naturally occurring, based on isotope fingerprinting.

Al Marquez, Joshua Tree: Mr. Marquez asked about the water inflow through the Yucca Barrier, and the nitrate content of that inflowing water.

Mr. O’Leary responded that according to the groundwater model, an estimated 83AF flows through the Yucca Barrier from west to east, and that the water has relatively low nitrate content because the eastern part of Yucca Valley is mostly undeveloped, and any nitrate has likely not yet made its way down to the water table.

GM Sauer clarified studies that indicate it may take from 45 to over 100 years for nitrate to reach the water table based on the degree of development in an area.

The Board received the presentation for information only.

8. UNITED STATES GEOLOGICAL SURVEY (USGS) STUDY CONTINUATION AT A COST OF \$63,450

GM Sauer gave the report. USGS has been working with JBWD since 2006 on a cooperative study, which includes data collection at existing unsaturated-zone monitoring sites at the recharge facility (JTUZ-3 and -4), continuation of the basin-wide water quality monitoring program, and groundwater –flow model applications, including a flow model between the Joshua Tree and Copper Mountain subbasins. The complete proposal from USGS for 2016 activities with a cost breakdown is included in the Agenda Packet.

MSC Luckman/Fuller 5/0 to approve \$63,450 extension to the Joint Funding Agreement with USGS.

Fuller	Aye
Luckman	Aye
Johnson	Aye
Reynolds	Aye
Unger	Aye

9. UPDATE ON NEXTERA SOLAR PROJECT, PROPOSED WILL SERVE LETTER AND WATER SUPPLY AGREEMENT

GM Sauer gave the report. GM Sauer presented a brief background of the drought regulations, the NextEra (JT Solar) project, the previous conditional will serve letter of October 2015, and current proposed draft will serve letter and water supply agreement. His recommendation is to move forward with the current draft will serve letter and water supply agreement included in the agenda packet, contingent on County approval of the project; particularly to avoid a well to be drilled into the aquifer by NextEra, as indicated as a potential alternative in the Initial Study.

Public Comment:

Tom O’Key, Joshua Tree: Mr. O’Key brought up the fact that the land for the proposed Joshua Tree Solar Farm is still owned by other people (not NextEra) and stated that the community adamantly opposes the

project, which he states offers nothing to the community of Joshua Tree. O'Key states JBWD should save and protect the water in our aquifers for drinking, and for the community citizens.

Karen Tracy, Joshua Tree: Ms. Tracy affirmed her agreement with Mr. O'key, and thanked the Board for the stipulations presented in the proposed will serve letter and water supply agreement to protect against a production well being drilled into the aquifer. Ms. Tracy encouraged the community to support and voice their opinion to San Bernardino County that NextEra is not wanted in the community of Joshua Tree.

Eva Soltes, Joshua Tree: Ms. Soltes wanted to go on record stating the community is opposed to the NextEra project in Joshua Tree and questioned whether, if in 9 months there is not a lift on drought regulations would the will serve letter expire? Ms. Soltes further emphasized that she questions why JBWD is even considering serving water to NextEra instead of preserving drinking water and the aquifers.

Judd Tucker, Joshua Tree: Ms. Tucker pointed out that the Joshua Tree citizens are being asked to cut back on water consumption due to the drought, and noted that the proceeds to NextEra/Joshua Tree Solar Farm and electricity generated will not benefit the community of Joshua Tree. Ms. Tucker stated that NextEra approached the Joshua Tree Chamber of Commerce in what appeared to be a bribe, asking what they could build to "get the community off our backs?" Ms. Tucker described NextEra as bullying the community and the JBWD.

Al Marquez, Joshua Tree: Mr. Marquez emphasized his opposition to the project. Marquez further stated his opposition of the project being in an urban area with homes and businesses, and so close to the National Park. Mr. Marquez suggested JBWD get adjudication on private wells to have more control over water being pumped from the aquifer.

David Fick, Joshua Tree: Mr. Fick requested clarification on what is being decided given the change in numbers in the water supply agreement from 49AF to 89 AF since October 2015 to the current documents in February 2016. Mr. Fick suggested the JBWD further research the process for well approval through the County of San Bernardino, and referenced a renewal of the drought proclamation at a recent Board of Supervisors meeting (agenda item #13). Mr. Fick pointed out that the only thing that had changed between October 2015 and February 2016 were the threats by NextEra to drill a well and suggested that NextEra was bullying the JBWD and reminded the Board that NextEra had solicited private well owners for water, which provides evidence that NextEra is willing to engage in illegal activity. Mr. Fick further stated that during the meeting with the County the attorney for NextEra stated the money for the sale of the airport goes to Joshua Tree; however Mr. Fick indicated the money will go to the current landowner, the ex-wife of Park Richardson, who lives in northern California, thus the community will not benefit financially from the sale of the land, and will also lose the historic airport.

#### Public Comment Closed.

GM Sauer answered questions brought up during public comment referring to the statement that NextEra is not currently the property owner, and clarifying that the water supply agreement is contingent upon NextEra being the property owner. GM Sauer's understanding is that the sale of the land to NextEra is contingent upon whether the County of San Bernardino approves the project.

GM Sauer encouraged continued water conservation and pointed out that the water to be used by NextEra would be replaced, to mitigate against water draw down in the aquifer.

GM Sauer indicated that the October 2015 Will Serve letter would go into effect when the drought regulations are lifted. The proposed February 2016 Will Serve letter and Water Supply Agreement removes reference to emergency drought regulations and conservation mandates because it is a commitment from the District to

supply the water rather than NextEra drilling a production well, and depleting the water in the aquifer without the mitigation to replenish the water supply.

GM Sauer stated the JBWD is looking into adjudication through the Sustainable Groundwater Management Act (SIGMA), and creating a Sustainable Groundwater Management Agency.

The difference between 49 AF in the October 2015 Will Serve letter and 89 AF in the February 2016 proposed Will Serve letter and Water Supply Agreement was derived from a recalculation of the numbers based on the numbers used in the Initial Study.

GM Sauer stated San Bernardino County Environmental Health looked at water quality with regards to well permits (as of January 21, 2016), not water quantity with regard to the state mandated drought regulations.

GM Sauer confirmed that NextEra and local well owners both informed him that NextEra was seeking to purchase water from private well owners.

President Fuller acknowledged that the Board meeting is a forum where the public has the opportunity to express their opinions, and is allowing additional public comment following the answers to questions and clarifications provided by GM Sauer.

Public Comment:

Tom O'Key, Joshua Tree: Mr. O'Key states that he believes the County has relinquished responsibility of following the State mandated drought regulations, and suggested JBWD defer to the State for answers regarding this situation. Mr. O'Key voiced his concern about the potential of the JT Solar Farm expanding, and questioned whether the requirement for NextEra not to drill a well is written into the agreement.

David Fick, Joshua Tree: Mr. Fick requested clarification on the summer pumping restrictions of pumping from the 2015 Will Serve Letter. Mr. Fick stated the renewal of the drought proclamation at the County Board of Supervisors occurred in early February (after January 21) and suggested it be investigated further with regard to well permits during state drought regulations.

Public Comment Closed.

GM Sauer clarified that the Water Supply Agreement stipulates that if JBWD provides water they will not use water from the well for the project. GM Sauer further indicated that NextEra has stated they do not intend to drill a well if JBWD serves water for the project.

The Water Supply Agreement accounts for NextEra being financially responsible for costs incurred during any time of use restrictions during the summer.

Gil Granito voiced his support for the proposed February 2016 Will Serve letter and Water Supply Agreement, stating it best diminishes impact to the aquifer, avoids NextEra drilling a production well, and acknowledged that JBWD is moving forward with adjudication.

Director Unger asked whether the October 2015 will serve letter was sufficient for the County. GM Sauer indicated that the letter was sufficient, but that because drought regulations were continuing, NextEra wanted more certainty with regards to obtaining water and therefore will subsequently apply for their own well permit with the County of San Bernardino.

Rob Bernheimer, Indian Wells, Ca, attorney representing NextEra responded to questions. Mr. Bernheimer acknowledged that the issue with the October 2015 Will Serve letter is a matter of timing. Mr. Bernheimer

stated that because of processing time, either the Water Supply Agreement needs to be in place or NextEra needs to move forward on the well permit to avoid a delay in obtaining water once the project is approved by the County.

Director Unger commented on the county recognized component: Sensitivity to community opposition. Unger has concerns that approving a new will serve letter under the pressure by NextEra with their proposal to drill a production well will set a precedent that JBWD can be bullied, and the way paved for future solar development. Director Unger also pointed out that the renewables element of the General Plan update has not yet been completed, which could impact whether or not the project actually conforms with the County General plan.

Mark Lundquist clarified comment period closed on the 10<sup>th</sup>, however, comments are still welcome until the next procedural event.

Director Reynolds expressed disdain for the ultimatum by NextEra for JBWD to serve water in spite of drought regulations or to seek a well permit.

Director Johnson stated he would like to support the state mandate to conserve water. Director Luckman reiterated the priority of protecting the water district, and thus to keep out the proposed production well, and leans towards supporting the proposed Will Serve letter and Water Supply Agreement.

President Fuller states it appears the proposed 2016 Will Serve and Water Supply Agreement will best protect the District and the aquifer, and requested an answer regarding the recent renewal of the drought proclamation at the County Board of Supervisors and whether that has any effect.

President Fuller emphasized that the goal and responsibility of the JBWD with the decision was not to increase revenue but to protect the aquifer.

President Fuller summarized the situation and decisions before the Board. Director Johnson suggested the item be tabled pending further information.

GM Sauer clarified direction as being to obtain further information by contacting the State Water Resources Control Board Division of Enforcement regarding impacts to the District of potentially not meeting state mandated water production reduction goals if the project is permitted, and the potential for an alternative compliance order. GM Sauer will also research the County's recent actions at the Supervisor's board meeting regarding the state drought guidelines, and any ramifications of drilling a production well during a drought.

MSC Luckman/Unger 5/0 to table Item #9.

Fuller	Aye
Luckman	Aye
Johnson	Aye
Reynolds	Aye
Unger	Aye

10. ADOPT RESOLUTION 16-955, AMENDING THE RULES AND REGULATIONS, AS AMENDED, INCORPORATING CHANGES RELATED TO TRANSITIONAL AND INACTIVE METER CHARGES GM Sauer gave the report. Rules and Regulations were amended to implement inactive meter charges. Discussion ensued regarding interpretation of regulations, and the permit requirement.

Public Comment:

Julian Gonzalez, North Joshua Tree: Mr. Gonzalez provided the Board with a written copy of his statement. Gonzalez spoke with Ed Dion of Land Use Services, who stated there is an agreement between the County and the JBWD regarding requiring a building permit when obtaining a water meter. Mr. Gonzalez asked about permits, as he had not been required to obtain a permit previously. Mr. Gonzalez further mentioned an Agricultural use permit.

Richard Fountain, Joshua Tree: Mr. Fountain stated he requested meters set for two properties in January 2016 and expressed his frustration at the delay and the idea of requiring a permit, because when he purchased the meters years ago the permit was not required, and when he requested to have them set in January, the building permit requirement was not in the Rules and Regulations.

GM Sauer responded reminding Mr. Fountain that he had been informed his request would be processed following the Board meeting. GM Sauer provided history of the water meters in question, pointing out that the parcels did not have county assigned addresses, and there is an unpaid bill on one parcel for \$171.00.

MSC Unger/Luckman 4/1 to adopt Resolution 16-955 with changes to Article 1.41 “after 12 months if non-use, water meters will be removed and account status will be changed to Inactive/Locked upon agreement with the customer in writing.”

Fuller	Aye
Luckman	Aye
Johnson	Aye
Reynolds	No
Unger	Aye

11. REQUEST THAT THE BOARD TAKE THE FOLLOWING ACTIONS: (1) APPROVE NEW JOB DESCRIPTIONS FOR HR/CONTRACT ADMINISTRATOR AND EXECUTIVE ASSISTANT, AND (2) AUTHORIZE HIRING OF SAME

Susan Greer gave the report, expressing the need for the positions.

Al Marquez, Sunfair Area, Joshua Tree: Mr. Marquez suggested that there may be more staff than needed already at the District and requested the Board consider the budget.

Director Johnson suggested a staff assessment survey, which had been requested previously, and continue temporary positions until the budget can be established to justify the positions.

Director Reynolds concurred with Director Johnson and would like a staffing assessment.

MSC Reynolds/Luckman 4/1 to approve new job descriptions for HR/Contract Administrator and Executive Assistant, and (2) authorize hiring of same:

Fuller	Aye
Luckman	Aye
Johnson	No
Reynolds	Aye
Unger	Aye

12. STANDING COMMITTEE REPORTS

A. LEGISLATIVE AND PUBLIC INFORMATION COMMITTEE: Vice President Luckman and



Director Unger: Kathleen Radnich, Public Outreach Consultant, gave the report. Routine recycle hazardous household waste collection is this Saturday. April 3<sup>rd</sup> is Water Education Day. The Next meeting is scheduled for March 2, 2016 at 9:30AM.

- B. FINANCE COMMITTEE: President Fuller and Director Johnson: There has not been a committee meeting since the last Board meeting. The next meeting is scheduled for February 29, 2016 at 10:00AM.
- C. WATER RESOURCES & OPERATIONS COMMITTEE: Vice President Luckman and Director Johnson: There has not been a committee meeting since the last Board meeting. The next meeting is scheduled for February 29, 2016 at 9:00AM.

14. DISTRICT COUNSEL REPORT

No Report.

15. GENERAL MANAGER REPORT

GM Sauer gave the report. GM Sauer provided dates for infrastructure maintenance and repair and water recharge. Water conservation targets have changed from 28% to 20%, and GM Sauer is looking into a space needs assessment.

16. FUTURE DIRECTOR MEETINGS AND TRAINING OPPORTUNITIES

Mojave Water Agency BOD Meeting, February 25: Mickey Luckman  
Next ASBCSD meeting: February 22: Mike Reynolds

17. DIRECTOR REPORTS ON MEETINGS ATTENDED, COMMENTS/FUTURE AGENDA ITEMS

Director Unger attended the February 11<sup>th</sup> Mojave Water Agency Board Meeting and provided a synopsis of the meeting.  
General Manager Evaluation ad hoc committee (Unger/Johnson) will be meeting on February 28<sup>th</sup>.

18. ADJOURNMENT

MSC Unger/Reynolds, 5/0 to adjourn the Regular Meeting of the Board of Directors of February 17, 2016 at 10:22 PM.

Fuller	Aye
Luckman	Aye
Johnson	Aye
Reynolds	Aye
Unger	Aye

Respectfully submitted:

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Curt Sauer, General Manager and Board Secretary

JOSHUA BASIN WATER DISTRICT  
MEETING AGENDA REPORT

Meeting of the Board of Directors

March 2, 2016

Report to: President and Members of the Board

Prepared by: Curt Sauer

TOPIC: Update on NextEra Solar Project, Proposed Will Serve Letter and Water Supply Agreement

RECOMMENDATION: That the Board authorize General Manager to execute the Will Serve Letter and Water Supply Agreement in substantially the same format as discussed

ANALYSIS:

On February 17 we discussed the proposed will serve letter and water supply agreement which is attached to this staff report.

The Board directed me to look into a resolution that was reportedly passed by the County on or about February 9 by the Board of Supervisors. I was also asked to contact the state and find some assurance that the District would not be subject to fines for not complying with the 2016 production targets should we supply water to NextEra.

I have located the resolution passed by the Board of Supervisors, which is included in your packet. The subject was Continuation of Local Drought Emergency. The recommendation was to: Continue the Emergency Proclamation, originally proclaimed by the Board of Supervisors on August 5, 2014, relating to the existence of a local drought emergency resulting from record dry conditions, as described in the Emergency Proclamation, which still exists and continues to be an emergency, for an additional period in accordance with Government Code section 8630(c).

I have reviewed the video of the meeting and as far as I know the Proclamation was passed during the consent calendar with no comments.

This proclamation continued the original proclamation of a Local Drought Emergency, dated August 5, 2014. That proclamation recognized the SWRCB's emergency regulations, with which we are so familiar. There was no reference in the proclamation to well drilling constraints for the County.

Last week I contacted Mathew Buffleben of SWRCB, Division of enforcement. I have been in contact with Mathew ever since our original Order to XXX in July of 2015. Mathew and I have had several discussions concerning our compliance over the past 7 months.

Matthew stated to me that he could not guarantee that the District would never receive a fine for non-compliance. However, he pointed out that JBWD had obtained a high degree of compliance to date, they are aware of our programs, and if we continued to stress our target goals we would be treated accordingly.

He also stated that in the entire state they had only issued 4 fines to 4 agencies. For your information let me mention that those agencies are not actually paying fines to the state. Rather there are negotiations underway so that the agencies would utilize the “fines” in their own districts to improve water conservation education and compliance.

I recommend that the Board again consider the draft will serve letter and Water Supply Agreement presented to the Board on February 17. I recommend the Board approve this course of action because it will place the District in the best possible position should the County approve the NextEra project.

STRATEGIC PLAN ITEM:

FISCAL IMPACT: \$70,000 estimated in revenue for the construction phase. Approximately \$46,000 estimated revenue to be used to buy SWP water to be placed in the Joshua Tree subbasin.

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF SAN BERNARDINO COUNTY, CALIFORNIA  
AND RECORD OF ACTION**

**13**

February 9, 2016

**FROM: GREGORY C. DEVEREAUX, Chief Executive Officer  
County Administrative Office**

**SUBJECT: CONTINUATION OF LOCAL DROUGHT EMERGENCY**

**RECOMMENDATION(S)**

Continue the Emergency Proclamation, originally proclaimed by the Board of Supervisors on August 5, 2014, relating to the existence of a local drought emergency resulting from record dry conditions, as described in the Emergency Proclamation, which still exists and continues to be an emergency, for an additional period in accordance with Government Code section 8630(c). (Presenter: Michael Antonucci, Emergency Services Manager, 356-3998)

**BOARD OF SUPERVISORS COUNTY GOALS AND OBJECTIVES**

**Ensure Development of a Well-Planned, Balanced, and Sustainable County.  
Provide for the Safety, Health and Social Service Needs of County Residents.**

**FINANCIAL IMPACT**

This action to continue the local drought emergency will not require the use of additional Discretionary General Funding (Net County Cost).

**BACKGROUND INFORMATION**

On August 5, 2014 (Item No. 24), the Board of Supervisors (Board), in accordance with Government Code section 8630, proclaimed the existence of a local drought emergency. The Board took this action in response to San Bernardino County experiencing drought conditions resulting from severe dry weather since 2012 and extremely low snowpack levels in California's mountains. For 2014, precipitation in some areas of the state was at the driest year of record. Risks associated with multi-year droughts can be health, safety and economic based, and may include catastrophic wildfires and impacts on agricultural water users.

Pursuant to Government Code section 8630(c), the Board shall review the need for continuing the local emergency at least once every 30 days until the Board terminates the local emergency. The Board last took action to continue the emergency on January 12, 2016 (Item No. 16). Approval of this recommendation would continue the local drought emergency for an additional period in accordance with Government Code section 8630(c).

**PROCUREMENT**

N/A

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Miles Kowalski, Deputy County Counsel, 387-5475) January 15, 2016; Finance (Tom Forster, Administrative Analyst, 387-4635) on January 20, 2016; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on January 25, 2016.

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF SAN BERNARDINO COUNTY, CALIFORNIA  
AND RECORD OF ACTION**

**24**

August 5, 2014

**FROM: GREGORY C. DEVEREAUX, Chief Executive Officer  
County Administrative Office**

**SUBJECT: PROCLAMATION OF A LOCAL DROUGHT EMERGENCY**

**RECOMMENDATION(S)**

Proclaim the existence of a local drought emergency resulting from record dry conditions that have persisted since 2012.

(Presenter: Michael Antonucci, Emergency Services Manager, 356-3998)

**BOARD OF SUPERVISORS COUNTY GOALS AND OBJECTIVES**

**Ensure Development of a Well-Planned, Balanced, and Sustainable County.**

**Maintain Public Safety.**

**Provide for the Health and Social Services Needs of County Residents.**

**FINANCIAL IMPACT**

This action proclaiming the local drought emergency will not require the use of additional Discretionary General Funding (Net County Cost).

**BACKGROUND INFORMATION**

San Bernardino County is currently experiencing drought conditions resulting from severe dry weather since 2012 and extremely low snowpack levels in California's mountains. For 2014, precipitation in some areas of the state is at the driest year of record. Risks associated with multi-year droughts can be health, safety and economic based, and may include catastrophic wildfires and impacts on agricultural water users. As such, the Board of Supervisors (Board) is being requested, in accordance with Government Code section 8630, to proclaim the existence of a local drought emergency threatening San Bernardino County. The following recent actions support the need for this proclamation:

- On January 15, 2014, the Secretary of the United States Department of Agriculture designated 27 California counties, including San Bernardino County, as natural disaster areas due to drought, which makes farm operators in these designated counties to be considered eligible for emergency loans from the U.S. Farm Service Agency for production losses.

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- On January 17, 2014, the Governor of the State of California proclaimed a state of emergency in the State of California due to current drought conditions.
- On June 17, 2014, the Board of Supervisors approved a \$1.1 million cost for a temporary connection to an adjacent water district to avoid an impact to the population served by the Glen Helen wells as a result of the significant water reduction in wells located in Glen Helen.
- On July 15, 2014, the State Water Resources Control Board approved an emergency regulation to ensure water agencies, their customers and state residents increase water conservation in urban settings or face possible fines or other enforcement.

Pursuant to Government Code section 8630(c), this proclamation must be reviewed at least once every 30 days until the Board terminates the local emergency. A copy of the local drought emergency proclamation will be forwarded to the Director of Cal OES and the Governor of California.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Phebe Chu, Deputy County Counsel, 387-5455) on July 22, 2014; Finance (Tom Forster, Administrative Analyst, 387-4635) on July 23, 2014; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on July 22, 2014.

JOSHUA BASIN WATER DISTRICT  
MEETING AGENDA REPORT

Meeting of the Board of Directors

February 17, 2016

Report to: President and Members of the Board

Prepared by: Curt Sauer

TOPIC: Update on NextEra Solar Project, Proposed Will Serve Letter and Water Supply Agreement

RECOMMENDATION: That the Board authorize General Manager to execute the Will Serve Letter and water Supply Agreement in substantially the same format as discussed

ANALYSIS:

On December 16 I advised the Board that NextEra intended to obtain a County permit to drill a well on their lands in order to supply water to the project since the emergency regulations were continuing through October 2016. We had further discussions at the Feb 3 Board meeting and we have now produced a draft Will Serve letter and Water Supply Agreement for your consideration.

These documents would commit the District to supplying water to the project only if the Project is approved by the County.

Generally speaking, when water service does commence to the Project, NextEra would pay for water service at the prevailing rate similar to that charged to other customers. In addition, the WSA provides that NextEra would agree to provide the funds necessary to replenish the groundwater basin in order to equalize the impact the water required to service the Project.

Finally, NextEra would be precluded from using water from a well on the Project site or on any adjacent property for the Project except in those instances when the District may be unable to provide the water as set forth in the WSA.

The Board may choose to direct the General Manager to follow the original Will Serve letter of October, 2015. Or direct the General Manager to proceed with this alternative approach, utilizing these draft documents as the basis for reaching a final agreement with NextEra. Or, some other direction that these discussions might create.

My recommendation to the Board is to proceed with the Will Serve and Water Supply Agreement included in this board packet.



**STRATEGIC PLAN ITEM:**

**FISCAL IMPACT:** \$70,000 estimated in revenue for the construction phase. \$Approximately \$46,000 estimated revenue to be used to buy SWP water to be placed in the Joshua Tree subbasin.

[JBWD LETTERHEAD]

**WILL SERVE LETTER**

February \_\_\_\_\_, 2016

Joshua Tree Solar Farm, LLC  
c/o NextEra Energy Resources, Inc.  
Attn: Jess Melin, Project Developer, Business Development  
700 Universe Blvd.  
Juno Beach, Florida 33408

Re: Will Serve Commitment  
APN: 060723119 and 607-364-06(collectively, "Property")

Dear Mr. Melin:

JT Solar Farm, LLC, a Delaware limited liability company ("JT Solar") proposes to construct and operate a twenty (20) megawatt alternating current solar photovoltaic generation facility on the Property ("Project"). JT Solar anticipates that the Project will require: (1) approximately thirty-four (34) acre feet of water during construction of the Project; (2) approximately two (2) acre feet of water per year for a twenty (20) year period to operate the Project; and (3) approximately twelve (12) acre feet of water to decommission the Project.

NextEra Energy Resources, Inc. ("NextEra"), an affiliate of JT Solar previously requested a will serve letter for the Project. On or about October 23, 2015 District issued a conditional will serve letter to NextEra for the Project ("Conditional Will Serve Letter"). Since that time, JT Solar has sought to establish more certainty regarding the service of water to the Project, and as such, JT Solar has requested that Joshua Basin Water District ("District") issue this will serve letter in the place and stead of the Conditional Will Serve Letter.

This letter constitutes a will serve commitment ("Commitment") by District to provide potable water necessary for the Project. The terms and conditions of the Commitment are as follows:

(1) The Commitment shall expire nine (9) months from the date of this letter unless the County of San Bernardino issues its final discretionary approval for the Project ("Project Approval). Upon expiration of the Commitment JT Solar must submit a new application for a new Commitment to the District for review and approval.

(2) The Commitment shall expire sixty (60) days after the Project Approval unless JT Solar executes the Water Supply Agreement in the same form and content as attached hereto as Exhibit "A" and by this reference incorporated herein.

(3) JT Solar shall, at its sole cost and expense, apply for and obtain all necessary consents, approvals, permits and authority as shall be required for the construction, installation and operation of the Project.

All rights, privileges, and conditions of this Commitment are made to JT Solar and are not assignable or transferable to another owner or property, provided that JT Solar may assign this Commitment with the prior written consent of the District, which consent shall not be unreasonably withheld. The District reserves the right to impose further requirements, which it deems appropriate. Should you have any questions, please contact the undersigned. Upon the execution of this letter by JT Solar the Conditional Will Serve Letter will be null and void and of no further force and effect.

JOSHUA BASIN WATER DISTRICT

By: \_\_\_\_\_  
Curt Sauer, General Manager

AGREED AND ACCEPTED BY:

JOSHUA TREE SOLAR FARM, LLC  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_

RECORDING REQUESTED BY  
WHEN RECORDED RETURN TO

JOSHUA BASIN WATER DISTRICT  
P.O. BOX 675  
JOSHUA TREE, CA 92252  
ATTN: Curt Sauer

NO FEE GOVT. CODE § 27383

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(Space above this line for Recorder's use only)

**Assessor's Parcel Numbers 607-231-19 and 607-364-06**

### **WATER SUPPLY AGREEMENT**

THIS WATER SUPPLY AGREEMENT ("Agreement") is made on this \_\_\_\_ day of \_\_\_\_\_, 2016 ("Effective Date"), by and between the JOSHUA BASIN WATER DISTRICT, a public agency of the State of California ("District") and JOSHUA TREE SOLAR FARM, LLC, a Delaware limited liability company ("JT Solar"). District and JT Solar are referred to in this Agreement collectively as the "Parties" and individually as a "Party."

#### **RECITALS**

A. JT Solar is the owner of certain real property located in County of San Bernardino, State of California and legally described on Exhibit "A" attached hereto and by this reference incorporated herein ("Property").

B. JT Solar proposes to construct and operate a twenty (20) megawatt alternating current solar photovoltaic generation facility on the Property ("Project").

C. JT Solar anticipates that the Project will require: (1) approximately thirty-four (34) acre feet of water for construction of the Project; (2) approximately two (2) acre feet of water per year for a twenty (20) year period to operate the Project; and (3) approximately twelve (12) acre feet of water to decommission the Project at the end of the term.

D. On or about October 23, 2015 District issued a conditional will serve letter for the Project ("Will Serve Letter"). JT Solar desires more certainty with respect to the service of water to the Project than set forth in the Will Serve Letter. JT Solar shall deposit money with the District to purchase eight-six (86) acre feet of water ("Wholesale Water") from such sources as are available to District, including, but not limited to, Mojave Water Agency. After purchase of the Wholesale Water, it is the intent of District to recharge the Wholesale Water in one or more basins within the District's service area.

E. JT Solar is desirous of having District provide domestic water to the Project and District is willing to provide such water on the terms and conditions set forth herein.

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NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The Recitals listed above are incorporated into this Agreement as though fully set forth herein.
2. The term of this Agreement shall commence on the Effective Date and end twenty (20) years thereafter (“Expiration Date”).
3. Within ten (10) business days of the Effective Date, JT Solar shall deliver to District the sum of Forty-Five Thousand Nine Hundred Twenty-Four Dollars (\$45,924.00) (“Wholesale Water Purchase Payment”) in immediately available funds (86 acre feet x \$534.00 per acre foot) to purchase the Wholesale Water, provided however, if the Mojave Water Agency water rate is less or more than Five Hundred Thirty-Four Dollars (\$534.00) on the Effective Date, the Wholesale Water purchase amount shall be eighty-six (86) acre feet times the amount Mojave Water Agency charges for Wholesale Water on the Effective Date. Notwithstanding the foregoing, the determination of when to purchase Wholesale Water and how, when and where the Wholesale Water shall be recharged shall be in District’s sole and absolute discretion. After the deposit of the Wholesale Water Purchase Payment with the District as provided herein, JT Solar shall not be entitled to a refund of such amount or any portion thereof.
4. The physical point of delivery of domestic water service shall be at the interconnection approximately shown on Exhibit “B” attached hereto and by this reference set forth herein (“Interconnection”). The Interconnection shall be the point of delivery of water supplies provided under this Agreement. The District may make modifications to the Interconnection as it deems necessary to the prudent operation of the Interconnection and the District water system, The District previously installed a pipeline and appurtenant facilities from a main to the Interconnection. On or after the Effective Date, JT Solar shall execute the District’s standard form application for water service (“Application”) and shall pay such amounts as shall be required by the Regulations (as that term is defined herein). Within a reasonable time after the completion of the Application and payment of funds required by the Regulations, if any, District may install at the Interconnection a two inch (2”) meter and such hydrants and appurtenances thereto as shall be required by the Regulations (“Facilities”), which Facilities shall be owned by the District. District shall invoice JT Solar for the Facilities along with the labor to install the same. JT Solar shall pay to District the sums shown on the invoice within ten (10) business days after the receipt thereof.
5. JT Solar shall be responsible for all costs and expenses incurred for the design, construction, operation and maintenance of all on-site water facilities on the JT Solar side of the meter. In addition thereto, JT Solar shall be responsible for the cost of operation, maintenance, modification, repair and/or replacement of the Interconnection and Facilities in accordance with the Regulations.
6. JT Solar shall, at JT Solar’s sole cost and expense, be responsible for compliance with the California Environmental Quality Act (“CEQA”) and all other applicable state and federal environmental laws and all federal and state requirements arising out of or in connection with the Project, including, without limitation, construction of on-site water facilities to be constructed

hereunder and for compliance with all conditions and mitigation measures which must be satisfied in connection with the same. As part of its obligation to fund the CEQA process, JT Solar shall prepare or cause to be prepared all instruments, documents, reports and other like or kind writings required to be prepared and/or filed by CEQA, provided, however, that the Parties acknowledge that the County of San Bernardino has conducted CEQA analysis of the Project in which the supply of water for the Project by the JBWD has been analyzed, and that the Parties further intend to rely upon such analysis to satisfy the requirements of CEQA as they might apply to this Agreement.

7. (a) District shall deliver up to eighty-six (86) acre feet of domestic water (“Minimum Quantity”) to the Property. During the months of July, August and September during the Construction Period (“Construction Months”), District has certain “Time of Use” restrictions from Southern California Edison (“SCE”). Should the demand for water from the Project require District to operate electrical pumping equipment during the Construction Months within a Time of Use period, JT Solar is willing and hereby agrees to pay any and all costs of SCE arising out of or in connection with District pumping equipment being operated in the Time of Use restricted period. District shall add such amount to a payment invoice after such amount has been reasonably determined by the District. The Parties agree that JT Solar shall be required to pay for additional Wholesale Water in ten (10) acre feet increments (“Ten Acre Feet Increment(s)”) after the District has delivered the Minimum Quantity or a Ten Acre Feet Increment to the Property. At or after the District has delivered the Minimum Quantity or a Ten Acre Feet Increment to the Property, District shall send written notice to JT Solar (“Deposit Notice”). The Deposit Notice shall provide that (i) District has delivered the Minimum Quantity or a Ten Acre Feet Increment to the Property, and (ii) JT Solar is required to pay to District an amount equal to ten (10) acre feet times the amount charged by Mojave Water Agency for wholesale water at the time of the Deposit Notice (“Additional Payment”). JT Solar shall, within thirty (30) days after receipt of the Deposit Notice, pay the Additional Payment to District. As set forth in Section 3 of this Agreement, the determination of when to purchase wholesale water with the Additional Payment and how, when and where such water shall be recharged shall be in District’s sole and absolute discretion.

(b) If by reason of Acts of God, earthquakes, droughts, floods, storms, explosions, fires, labor disputes, strikes, insurrection, war, riots, acts of the public enemy, or federal or state or local order, rule, or regulation, or any other cause outside of District’s control, District is prevented, in whole or in part, from the delivery of water to the Property, as provided herein, and provided that District has taken commercially reasonable, good faith efforts to deliver water to the Property notwithstanding any such event, then District may reduce delivery of water accordingly. If the force majeure event is system wide District may reduce delivery of water up to the same percentage the District reduces water delivery to its retail customers.

(c) The delivery of water may be suspended or curtailed in accordance with applicable law during any period of public emergency that is declared by District, provided that any such suspension or curtailment is reasonably related to such public

emergency, and that the suspension or curtailment of water service is not disproportionate to the suspension or curtailment of other water customers of the District during such public emergency.

(d) JT Solar shall not market, sell or make available the water provided hereunder to any person or entity within or without District's service area or sphere of influence, as amended from time to time, without first receiving the written approval of District, which approval may be withheld in District's sole and absolute discretion.

8. District will provide water to JT Solar at the Interconnection. The price for the water delivered by District shall be the same price charged by the District to its retail customers at the time water is delivered to the Property. If JT Solar uses water during the "Construction Period," JT Solar will pay the temporary water meter rate for such water. For purposes of this Agreement, the term "Construction Period" shall mean the period prior to the date all regulatory agencies permit the Project to be operated for the purpose set forth in Recital B above. JT Solar understands, acknowledges and agrees that District may, from time to time, increase its water rates and charges to its retail customers in accordance with California law. District will give JT Solar at least thirty (30) days notice prior to any increase of water rates. From time to time, District shall invoice JT Solar for water delivered to the Property and JT Solar shall pay to the District the sum shown in the invoice within ten (10) days after receipt thereof.

9. Except as otherwise provided herein, JT Solar shall comply with all District rules, regulations, ordinances, procedures and any like kind directives ("Regulations") with respect to water service, including, but not limited to, payment of applicable fees and charges in connection therewith. The provisions of the Regulations are incorporated herein by reference. Conversely, District will only provide service to the Project in accordance with the Regulations, as well as federal, state and local laws, rules, regulations, ordinances, and like directives, including restrictions related to the drought. In the event of a conflict between this Agreement and the Regulations, the Regulations shall control.

10. JT Solar shall, at its sole cost and expense, apply for and obtain all necessary consents, approvals, permits and authority as shall be required for the construction and installation of the Project and any on-site improvements described herein. JT Solar shall directly pay all costs associated with the construction of the on-site improvements (and any of them), including, but not limited to, furnishing of materials, and JT Solar shall keep District free and harmless from such costs.

11. District shall not be liable for the control, carriage, handling, use, disposal or distribution of water supplied or furnished under this Agreement past the Interconnection. District will not be liable for claims or damage of any nature whatsoever, including, but not limited to, property damage or personal injury, arising out of or connected with the control, carriage, handling, use, disposal or distribution of water supplied or furnished to JT Solar under this Agreement and JT Solar will indemnify, defend and hold harmless the District and its directors, officers, employees and agents from any such damage or claim of damages.

12. JT Solar hereby grants a perpetual non-exclusive easement to District in, on, over, under, upon, along and through the Property as may reasonably be required to construct, own, operate, maintain, replace, repair, enlarge, reconstruct, remove and improve the Facilities along with a right of reasonable access to and from such easement for the purpose of exercising the rights granted herein.

13. (a) District makes the following representations, warranties and covenants to JT Solar:

(i) District has the power and authority to enter into this Agreement and to perform its obligations and all necessary approvals and authorizations have been obtained that District must obtain to provide water to the Property.

(ii) This Agreement constitutes a legal, valid and binding obligation of the District and is enforceable against the District in accordance with its terms.

(iii) Subject to the provisions set forth in this Agreement, after the Wholesale Water Purchase Payment as set for in paragraph 3 above, District shall provide up to eighty-six (86) acre feet of water required for Project construction, operation and decommissioning as detailed herein.

(b) JT Solar makes the following representations, warranties and covenants to District:

(i) JT Solar has the power and authority to enter into this Agreement and to perform its obligations and all necessary approvals and authorizations have been obtained that JT Solar must obtain to enter into this Agreement.

(ii) This Agreement constitutes a legal, valid and binding obligation of JT Solar and is enforceable against JT Solar in accordance with its terms.

14. This Agreement shall terminate and be of no further force and effect as of the Expiration Date.

15. The rights granted to JT Solar hereunder constitute the right to take domestic water only and shall not be interpreted as a sale, transfer or assignment of any of District's water rights.

16. JT Solar may, during the term of this Agreement, drill and outfit one (1) or more wells on the Property ("Wells"). JT Solar covenants and agrees that JT Solar will not construct any Wells on the Property, or the real property adjacent to the Property, inclusive of assessor parcel number 0607-364-06 ("Adjacent Property"), for purpose of providing water for the Project from the Wells on the Property or Adjacent Property for use on the Property, except for those instances where District cannot provide the water set forth in this Agreement. Nothing herein shall waive or release District's right to challenge the use of water for other purposes or for transport of water off the Property and/or Adjacent Property or for compliance with the Regulations and/or the District's groundwater management plan with respect to the drilling of the Wells and the



Parties toll any statute of limitations or equitable claims, including laches in connection with the equitable claims.

17. Concurrently with the execution of this Agreement by JT Solar, JT Solar shall deliver to District a current preliminary report (“PR”) affecting the Property dated within thirty (30) days of the delivery thereof to District. The District will notify JT Solar of any title exceptions within the PR which must be subordinated to the lien of this Agreement. Notwithstanding the foregoing, any monetary liens or liens of any covenants, conditions and restrictions must be subordinated to the lien of this Agreement. JT Solar shall have a period of thirty (30) days after the receipt of written notice to cause the subordination of the items listed in District’s notice, as well as any monetary liens or liens of any covenants, conditions and restrictions.

18. (a) The following events shall be deemed to be acts of default (“Acts of Default”) by either Party under this Agreement regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency, or other proceeding which has or might have the effect of preventing such Party from complying with the terms of this Agreement:

(i) Failure to pay any sums to be paid hereunder within ten (10) days after written notice of such failure has been given to the defaulting Party;

(ii) Failure to comply in any material respect with any material term of this Agreement, other than the payment of sums to be paid hereunder, without curing such failure within ten (10) business days after written notice thereof if such failure can reasonably be cured within said ten (10) business day period; or if such failure cannot reasonably be cured within the ten (10) business day period, and such Party shall not have commenced to cure such failure within said period and shall not thereafter with reasonable diligence and good faith proceed to cure such failure;

(iii) Filing, or consent to the filing of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy by a Party, for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction; or a Party shall make an assignment for the benefit of creditors; or a Party shall consent to the appointment of a custodian, receiver, trustee, or other officer with similar powers, for substantially all of a Party’s property, or be adjudicated insolvent; or an order for relief shall be entered against a Party in any case or proceeding for liquidation or reorganization or otherwise to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up or liquidation of all or any part of a Party’s property; or any petition for any such relief shall be filed against a Party and shall not be dismissed within forty-five (45) days.

(b) Upon the occurrence of any Act of Default, the non-defaulting Party may, at its option, and in addition to any other rights the non-defaulting Party may have at law or in equity, enforce, by all proper and legal suits and other means, its rights hereunder, including, without limitation, the collection of sums due hereunder, and should it be

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necessary for such Party to take any legal action in connection with such enforcement, the defaulting Party shall pay such Party all costs, including reasonable attorneys' fees so incurred, all without prejudice to any remedies that might otherwise be used by either Party for recovery of arrearage of sums due hereunder, damages as herein provided, or breach of covenant.

(c) Upon the occurrence of any Act of Default by JT Solar which results in a material failure by JT Solar to meet its payment obligations set forth in this Agreement, District may, at its election, within ten (10) business days after written notice of such Act of Default has been given to JT Solar, cease delivery of water service to the Property until such Act of Default is cured.

19. (a) All notices provided for hereunder shall be in writing and mailed (registered or certified, postage prepaid, return receipt requested), or by express carrier (return receipt requested) or hand delivered to the Parties at the addresses set forth below or at such other addresses as shall be designated by such Party and a written notice to the other Party in accordance with the provisions of this Section. All such notices shall, if hand delivered, or delivered by express carrier, be deemed received upon delivery and, if mailed, be deemed received three (3) business days after such mailing.

**DISTRICT:**

Joshua Basin Water District  
Attention: General Manager  
Post Office Box 675  
Joshua Tree California 92252

**JT Solar:**

Joshua Tree Solar Farm, LLC  
c/o NextEra Energy Resources, LLC  
Attn: Joshua Tree Solar Business Manager  
700 Universe Blvd.  
Juno Beach, FL 33408

(b) This instrument, together with the exhibits attached hereto and other writings referenced herein, contains the entire agreement between the Parties relating to the subject matter hereof and supersedes any and all prior agreements between the Parties, oral or written, and any and all amendments thereto. Any oral representations or modifications concerning this instrument shall be of no force and effect, excepting a subsequent modification in writing, signed by the Parties to be charged.

(c) In the event of any litigation or other action between the Parties arising out of or relating to this Agreement or the breach thereof, the prevailing Party shall be entitled, in addition to such other relief as may be granted, to its reasonable costs and attorneys' fees.

(d) If any provision of this Agreement shall be ruled invalid, illegal or unenforceable, the Parties shall: (i) promptly negotiate a substitute for the provision which shall, to the greatest extent legally permissible, effect the intent of the Parties in the invalid, illegal or unenforceable provision, and (ii) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with subsection (i) above to give effect to the intent of the Parties without the invalid, illegal or unenforceable provision. To the extent the Parties are unable to negotiate such changes, substitutions or additions as set forth in the preceding sentence, and the intent of the Parties with respect to the essential terms of the Agreement may be carried out without the invalid, illegal or unenforceable provision, the balance of this Agreement shall not be affected, and this Agreement shall be construed and enforced as if the invalid, illegal or unenforceable provision did not exist.

(e) Each Party hereto agrees to execute and deliver such other documents and perform such other acts as may be necessary to effectuate the purposes of this Agreement.

(f) This Agreement is entered into within the State of California, and all questions concerning the validity, interpretation and performance of any of its terms or provisions or any of the rights or obligations of the Parties hereto shall be governed by and resolved in accordance with the laws of the State of California.

(g) The terms and provisions set forth in this Agreement shall be deemed provisions, terms and/or covenants running with the Property in accordance with applicable law and shall pass to and be binding upon the successor owners of the Property. This Agreement shall burden the Property and is binding upon the Parties and their successors, assigns and all persons acquiring ownership of any interest in, or any portion of the Property. This Agreement shall benefit the Property and inure to the benefit of the owners of the Property. As such, all successor owners of the Property will have any of the rights, responsibilities and liabilities of JT Solar, as if such person or entity originally executed this Agreement in place and stead of JT Solar. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to such terms and conditions regardless of whether such terms and conditions are set forth in such contract, deed or other instrument. No transfer of the Property shall relieve JT Solar of any responsibility or liability under this Agreement.

(h) The provisions of the Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attribution to such Party as the source of the language in question.

(i) Time is of the essence of this Agreement and each and every term and provision thereof.

(j) This Agreement shall be construed as if prepared by all of the Parties hereto. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived.

(k) No delay on the part of any Party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise of any other right, power or privilege hereunder.

(l) Each individual executing this Agreement hereby represents and warrants that he or she has the full power and authority to execute this Agreement on behalf of the named Parties.

(m) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute but one instrument.

(n) If any amount due District hereunder is not paid when due, JT Solar shall pay to District an additional ten percent (10%) for each payment due as an administrative process charge. The Parties agree that this late charge represents a fair and reasonable estimate of the costs that District will incur by reason of late payment by JT Solar. Acceptance of any late charge shall not constitute a waiver of JT Solar's default with respect to the overdue amount or prevent District from exercising any of the other rights and remedies available to District. Any payment not paid when due shall bear simple interest at the rate of ten percent (10%) per annum (provided such amount shall not exceed the maximum rate allowed under California law) from the date due until paid in full.

(o) The Parties agree that any action or proceeding to enforce or relating to this Agreement shall be brought exclusively in the State courts located in San Bernardino County, California, or the Federal court located in Riverside County, California and the Parties hereto consent to the exercise of personal jurisdiction over them by any such courts for purposes of any such action or proceeding.

(p) Nothing in this Agreement will be construed to create an association, company, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation or liability.

(q) This Agreement will not be construed to create any third party beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successor, transferees and assignees and no other person or entity will be entitled to rely on or receive any benefit from this Agreement or any of its terms.

(r) Each Party to this Agreement will indemnify, defend and hold harmless the other Party and its respective directors, officers, employees and agents from and against any and all liability, losses, claims, damages, expenses, demands, settlements and costs including, but not limited to, interest, penalties, attorneys' and expert witness fees, consulting fees and litigation costs of any nature arising out of the Party's performance under this Agreement and caused by any negligent act or omission, willful misconduct or violation of law of or by the Party, or the Party's employees, agents, contractors and subcontractors.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the day and year first set forth above.

**JT SOLAR:**

**JOSHUA TREE SOLAR FARM, LLC**  
**a Delaware limited liability company**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Its:** \_\_\_\_\_

**DISTRICT:**

**JOSHUA BASIN WATER DISTRICT,**  
**a public agency of the State of California**

**By:** \_\_\_\_\_  
**Curt Sauer, General Manager**

JOSHUA BASIN WATER DISTRICT  
MEETING AGENDA REPORT

Meeting of the Board of Directors

March 2, 2016

Report to: President and Members of the Board

Prepared by: Curt Sauer

TOPIC: Update on Conservation efforts / 2016 Target Adjustments by SWRCB

RECOMMENDATION: Receive for information only.

ANALYSIS: This community's efforts to reduce consumption, thereby enabling the District to closely adhere to state mandated reduction in production has been a success. To the best of my knowledge, of the three urban water suppliers in the Morongo Basin, Joshua Basin has been the most successful.

Staff will review community participation, staff efforts to reduce consumption / production, our top institutional performers and explain 2016 targets now in place through October.

Presentation is still being developed as of posting date of February 26.

STRATEGIC PLAN ITEM:

FISCAL IMPACT: