



PO Box 675 • 61750 Chollita Road • Joshua Tree CA 92252
Phone (760) 366-8438 • Fax (760) 366-9528 • www.jbwd.com
An Equal Opportunity Provider

JOSHUA BASIN WATER DISTRICT
REGULAR MEETING OF THE BOARD OF DIRECTORS
WEDNESDAY APRIL 27, 2016 6:30 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.
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 March 16, 2016 Regular Meeting of the Board of Directors.
 - B. Approve Draft Minutes of the April 2, 2016 Regular Meeting of the Board of Directors.
7. UPDATE ON IMPLEMENTATION of ARTICLE 1.9, WATER SERVICE PERMIT APPLICATION
Recommend that the Board receive information on the requirement of obtaining a permit from the County prior to installation of meters on inactive account. Direct the General Manager on actions to be taken, if any.

8. UPDATE ON NEXTERSOLAR PROJECT, PROPOSED WILL SERVE LETTER AND WATER SUPPLY AGREEMENT
Recommend that the Board authorize the General Manager to execute the Will Serve Letter and Water Supply Agreement in substantially the same format as discussed.
 9. STANDING COMMITTEE REPORTS:
 - A. FINANCE COMMITTEE MEETING: President Fuller and Director Johnson. Next Meeting is scheduled for May 9, 2016.
 - B. WATER RESOURCES & OPERATIONS COMMITTEE: Vice President Luckman and Director Johnson. Next Meeting is scheduled for May 24, 2016
 - C. LEGISLATIVE AND PUBLIC INFORMATION COMMITTEE: Vice President Luckman and Director Unger: Kathleen Radnich, Public Outreach Consultant to report. Next meeting is scheduled for June 1, 2016.
 10. DISTRICT GENERAL COUNSEL REPORT
 11. GENERAL MANAGER REPORT
 12. FUTURE DIRECTOR MEETINGS AND TRAINING OPPORTUNITIES
 13. DIRECTOR REPORTS ON MEETINGS ATTENDED, COMMENTS/FUTURE AGENDA ITEMS
- 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 April 27 at 6:30 p.m.

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

March 16, 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

GUESTS 5

4. APPROVAL OF AGENDA

MSC Luckman/Reynolds, 5/0 to approve the agenda for the March 16, 2016 meeting.
Amended to move Agenda item 7 to Agenda item 8 until Mr. Metts arrives. Board will first proceed with Agenda Item 8.

| | |
|----------|-----|
| Fuller | Aye |
| Luckman | Aye |
| Johnson | Aye |
| Reynolds | Aye |
| Unger | Aye |

5. PUBLIC COMMENT
No public comment

6. CONSENT CALENDAR

MSC Luckman/Johnson, 5/0 to approve Draft Minutes of the March 2, 2016 regular Meeting of the Board of Directors.

| | |
|----------|-----|
| Fuller | Aye |
| Luckman | Aye |
| Johnson | Aye |
| Reynolds | Aye |
| Unger | Aye |

7. PRESENTATION AND DISCUSSION OF DRAFT CAPITAL IMPROVEMENT PLAN
Recommend that the Board receive for information only.

GM Sauer read the staff report for the Capital Improvement Plan that Mike Metts, Dudek Engineering, will be presenting on the Plan, including review of the methodology and ramifications for current and long term infrastructure maintenance, repair and replacement.

COMMENTS

Director Reynolds commented that this is a much needed dose of reality and he liked the analogy at \$500,000 per year it will only take 174 yrs. It hits hard and we need to start now and in 174 years we will have replaced them twice.

Mike Metts clarified that the 174 years was just to take the pipes that are smaller, which are the 4's and 6's that need to be increased to 8's. The second number was another 160 years to replace what's left.

Director Johnson expressed appreciation for the CIP planning.

Director Unger commented on how impressed she was by the work that went into this, the thoroughness of the CIP

President Fuller stated this is a first real baseline she has seen since being with the water district. It really is a great analysis of what we have and gives us a starting approach to it.

PUBLIC COMMENT

Gary Given, Joshua Tree: In the \$500K, and in the \$2M constant expenditure figure, are you building in inflation within the cost?

Mike Metts explained that it is tied to current dollars and to the Engineering News Record Construction Cost Index. So as these projects go forward, it's a living document, the ideal thing would be to update those as we go each year or every other year. But as the project comes up we can use the Engineering Cost Index to estimate what the numbers would be. Again before anything gets built, there is a process of preliminary design, design and developing true cost of what really needs to be done.

Gary Given, Joshua Tree: There is an engineering cost increase in the next 174 years.

Mike Metts confirmed that there is, but it would be unnecessary at this point to try and estimate those increases.

President Fuller commented that when we looked through it last time this was hopefully on the high side, When you got down to each project you would expect it to be, at least this year, under that cost.

Mike Metts replied that in Appendix B there are summary sheets. In this summary sheet there's the construction cost and a spreadsheet behind each of the summary sheets. We estimate the construction cost and then we add into that the contractor's cost, overhead, profit, insurance and bonds. Then we add in the soft cost, design, environmental, construction management, administrative and legal costs and if there are easements. These get added in and give us the overall number and because it's a planning number, we want that number to be conservative. We want that to be a number so that when you plan your budget you put in enough money to cover the project. Then when we bid it and take the lowest bid so the idea here is to be slightly conservative and come in under that number so you are never in a situation that you are over and didn't budget enough money to do the project.

GM Sauer commented on production and distribution, which did not include the shop, office building or the 5 emergency generators (between now and 2020 will be out of compliance with air quality regulations) and the most recent figure of \$1.6M to replace them. Our current rate structure enables us to do some operations or most of our operations up until this point. We have a new Director of Operations who is coming up with a new budget that identifies items that need to be done on an operational basis. We can import 500 acre feet of water with our existing rate structure per year. The Urban Water Management Plan, in my opinion, will indicate to the Board that we should be importing at least 1,100 acre feet per year. The current rate structure could fund a \$5M loan, pay the principal and interest and that \$5M would allow us to replace, using these estimates, 2 ½ miles of 4" pipeline rather than 13 miles of pipeline that was previously speculated. This is information that is changing the way we need to look at our running the district and I am hopeful that the Board, sometime in April, could have a planning session or a strategy session. Not to necessarily revisit the strategic plan but to move 2 or 4 years beyond the original strategic plan and take a look at where you want us to go. If we need to do \$500K a year in production and we are currently putting \$200K a year into the Pump Reservoir Maintenance Reserve Fund so we are \$300K short. If we want to do \$2M of pipeline replacement per year, after the first two or three years, we need to look at it and maybe that rate structure would enable us to continue to replace enough pipeline to spend that would cost \$1M to \$2M. We are getting information, rather than have a plan like the 2010 Urban Water Management Plan, that we didn't really look at until the Governor's Drought Restrictions. We need to look at where the Board wants us to go with the District, not only routine, annual and daily operational but capital improvement and maintaining it correctly.

Acting as Secretary GM Sauer called a special meeting on April 11, 2016 from 10a.m to 2p.m. at the Helen Grey Center to go over all information presented tonight.

PUBLIC COMMENT IS CLOSED

8. **DISCUSSION ON MOVING START TIME OF REGULAR BOARD MEETINGS** Recommend that the Board direct GM whether to leave regular meeting time:

Director Unger stated that because most elected Boards meet at 6 p.m. this should be the basis for discussion.

Director Johnson commented that Day Light Savings Time might be nice for a break and to go back when the clock goes back.

Director Reynolds commented that it has been 7 p.m. for his whole tenure and he is used to the time. As a working person, it gives him time to go home and change for the meeting.

Vice President Luckman stated that many times in the past few months, the Board gets home at 10:30 p.m. which is really late. 6 or 6:30 p.m. makes much more sense and doesn't think that 6:30 would be that much of a hardship on the public.

President Fuller commented that they could try 6:30 p.m. for a while and see how that goes and recognizes that it is much more difficult when people are working.

PUBLIC COMMENT

Richard Fountain, Joshua Tree: At one time, the Board tried shifting it but it didn't work and very seldom have the meetings gone past 9 p.m. or 10:00 p.m. Personally I would leave it at 7:00 p.m.

Karen Morton, Joshua Tree and Citizens Advisory Council member: Is flexible with the time but the time change needs to work for everyone.

PUBLIC COMMENT IS CLOSED

President Fuller suggested that 6:30 p.m. might work and if it proves to be too difficult for some of the Directors that we may need to relook at it again.

Director Reynolds agreed with the time change.

Director Unger commented that 6:30 p.m. is a good compromise.

District Council Gil Granito suggested to the time change to the Agenda for the next Board meeting for a formal action, a resolution that amends the regular meeting start time within the Administrative Codes accordingly. Add a Resolution to the next Board meeting Agenda at 6:30 p.m.

GM Sauer stated that currently the Administrative Code states that the Board meets at 7:00 p.m. So if we move to 6:30 p.m. then we are going to change the Administrative Code and this will be what the Resolution speaks to. Then after two meetings and you decide that it's not working and go back to 7:00 p.m. then we will need to do another Resolution to move it back to 7:00 p.m. correct?

District Council Gil Granito stated that if it doesn't work than the BOD can write another Resolution to change it back to 7:00 p.m.

President Fuller suggested that the Board bring it back to the table to see how the new time is working for everyone. If the time isn't working then the Board will type a new Resolution to change it back to the original time.

MSC Luckman/ Unger, 3/2 to approve the Board meeting start time to 6:30 p.m.

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|----------|-----|
| Fuller | Aye |
| Luckman | Aye |
| Johnson | No |
| Reynolds | No |
| Unger | Aye |

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. Kathleen Radnich gave update on Water Education Day.
- B. FINANCE COMMITTEE: President Fuller and Director Johnson. Next meeting is scheduled for March 28, 2016 Public is invited.
- C. WATER RESOURCES & OPERATIONS COMMITTEE: Vice President Luckman and Director Johnson. Next meeting is scheduled for March 28, 2016.

10. DISTRICT COUNSEL REPORT

No Report.

11. GM REPORT: GM Sauer gave the report and stated that the State Water Resource Board could possibly lift the conservation restrictions, especially in the Northern part of the state. March to October this District has to make a 20% reduction in production. From June 2015-February 2016 we are at 22.5%, which should be maintained for this year as well. GM Sauer met with County and Environmental Health and discussed wells and NextEra and if they are proposing to put a well in within a ¼ mile of well 16. There is an ordinance that states we have to review any well permits within a ¼ mile of any well. NextEra is in the process of finalizing their well permit and would be sending it to the County. GM Sauer was assured by the County that he will be advised when that has been received.

Director Zielke stated that as of today they had completed the floor cleanings of four reservoirs, inspections and subsequent coating application. Upon preliminary inspection we can go another 3 years.

FUTURE DIRECTOR MEETINGS AND TRAINING OPPORTUNITIES

- A. Mojave Water Agency Board of Directors Meeting March 24, 2016
- B. ASBCSD Meeting March 21, 2016

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

Director Johnson thanked Mike Metts and staff for the CIP and thank you to the MAC for a great job. Vice President Luckman reported on the Morongo Basin Pipeline Commission meeting last week that had election of officers and Vice President Luckman is the Chairwoman. President Fuller attended the Mojave Water Agency Board meeting on March 10, 2016. Main focus of the meeting was their forecast and tax assessments for 2016 and 2017.

President Fuller added to the next Board meeting Agenda the election of one of three candidates for the position of a regular Special District Member of the Local Agency Commission (LAFCO).

CLOSED SESSION

14. At this time the Board will go into Closed Session pursuant to Government Code Section 54957.6 to consult with the Board's designated representatives (Ad Hoc Negotiation Committee (Director's Johnson and Unger) with regard to potential compensation adjustments/increases to the District General Manager.

REPORT ON CLOSED SESSION

General Counsel reported that at approximately 8:20 p.m. the BOD went into Closed Session for the purpose set forth in Item 14 of tonight's agenda 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. Final action on any such adjustments would be considered at a future open session of a Regular Board Meeting. The Closed Session ended at approximately 8:44PM and the Board returned to the Open Session.

ADJOURNMENT

MSC Unger/Reynolds, 5/0 to adjourn the Regular Meeting of the Board of Directors of March 16, 2016 at 8:45 PM.

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|----------|-----|
| Fuller | Aye |
| Luckman | Aye |
| Johnson | Aye |
| Reynolds | Aye |
| Unger | Aye |

Respectfully submitted:

Curt Sauer, GM and Board Secretary

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

April 6, 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

GUESTS

4. APPROVAL OF AGENDA –
MSC/ Luckman/Reynolds 5/0 to Amend agenda to add a new agenda item prior to item #7. The new item for the agenda is as follows:
CONSIDER THE STAFF RECOMMENDATION TO AUTHORIZE THE GM TO ENTER INTO A CONTRACT WITH BEST, INC. TO PERFORM AN AMBIENT FLOW AND WATER CHEMISTRY SURVEY IN GEOPHYSICAL GAMMA RAY SURVEY AT WELL 14 FOR \$50,000 PLUS THE STANDARD 10% CONTINGENCY FOR A TOTAL NOT TO EXCEED \$55,000

| | |
|----------|-----|
| Fuller | Aye |
| Luckman | Aye |
| Johnson | Aye |
| Reynolds | Aye |
| Unger | Aye |

MSC/Reynolds/Luckman 5/0 to approve agenda as modified.

| | |
|----------|-----|
| Fuller | Aye |
| Luckman | Aye |
| Johnson | Aye |
| Reynolds | Aye |
| Unger | Aye |

5. PUBLIC COMMENT

Tom Baker, Joshua Tree – Mr. Baker read a statement (attached) for the BOD to reverse the new meter fees.

Al Marquez, Sun Fair Area, Joshua Tree: Mr. Marquez asked that the BOD refer back to him in 10 days on the next step for him to take in reference to his protest of the new meter fees.

PUBLIC COMMENT CLOSED

Gil Granito commented that Barbara Wells, Rate Consultant, did a supplemental report and the majority of the parcel owners did not protest the imposition of the basic monthly fee and the BOD adopted it.

6. CONSENT CALENDAR
(No Items)

6.5 CONSIDER THE STAFF RECOMMENDATION TO AUTHORIZE THE GM TO ENTER INTO A CONTRACT WITH BEST, INC. TO PERFORM AN AMBIENT FLOW AND WATER CHEMISTRY SURVEY IN GEOPHYSICAL GAMMA RAY SURVEY AT WELL 14 FOR \$50,000 PLUS THE STANDARD 10% CONTINGENCY FOR A TOTAL NOT TO EXCEED \$55,000

GM Sauer read the staff report on the above recommendation.

Gil Granito commented on the Brown Act that allows the BOD to add to the Agenda when immediate action needs to be taken by the BOD after the Agenda has been prepared and posted.

Director Reynolds asked for a breakdown on why this has to be done.

Director Zielke responded with the breakdown of the issues with well 14 and why action needs to be taken.

PUBLIC COMMENT

Richard Fountain, Joshua Tree asked about the effectiveness.

Al Marquez, Sun Fair, Joshua Tree read from the Brown Act about items not listed on the Agenda.

Tom Baker, Joshua Tree commented on the savings that could be applied in other areas.

PUBLIC COMMENT CLOSED

MSC Reynolds/Luckman 5-0 to authorize the GM to enter into a contract with Best, Inc. to perform ambient flow and water chemistry survey in geophysical gamma ray survey at well #14 for \$50,000 plus the standard 10% contingency for a total not to exceed \$55,000.

| | |
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| Fuller | Aye |
| Luckman | Aye |
| Johnson | Aye |
| Reynolds | Aye |
| Unger | Aye |

7. ELECTION OF ONE OF THREE CANDIDATES FOR THE POSITION OF REGULAR SPECIAL DISTRICT MEMBER OF THE LOCAL AGENCY FORMATION COMMISSION (LAFCO)

Recommend that the Board vote for Kimberly Cox, current incumbent.

MSC Reynolds/Luckman 5-0 approval vote of Kimberly Cox, LAFCO

| | |
|----------|-----|
| Fuller | Aye |
| Luckman | Aye |
| Johnson | Aye |
| Reynolds | Aye |
| Unger | Aye |

8. GENERAL MANAGER EMPLOYMENT AGREEMENT

Recommend that the Board approve the revised Employment Agreement with the District's General Manager, which has been negotiated pursuant to the guidelines provided by the Board, a copy of which is attached hereto.

Director Unger commented on the ADHOC that was formed to go over GM Sauer's new contract.

PUBLIC COMMENT

Gary Wilson, Joshua Tree commented that he was on the BOD that hired GM Sauer and did not vote to hire him.

Al Marquez, Sun Fair, Joshua Tree quoted GM Sauer's salary for the last couple of years and didn't agree with the percentage increase, vacation days or termination agreement that the BOD is voting on.

Tom Floen, Joshua Tree Praised GM Sauer for the job that he has done and that it is not unreasonable for a GM to earn the salary amount that the BOD is seeking for GM Sauer.

Tom Baker, Joshua Tree commented that he is in agreement to whatever is equitable for GM Sauer as long as it doesn't impact senior rate payers.

Cooki Bellsborough expressed an appreciation for democracy in action.

PUBLIC COMMENT IS CLOSED

Director Unger revisited the issues that Mr. Marquez had on GM Sauer's salary and how the ADHOC decisions came about.

Gil Granito commented that this was an effort to bring GM Sauer to compliance with a prevailing compensation rate for GM's.

Director Reynolds shared that GM Sauer asked to be brought on board at a considerable lower pay rate until he got up to speed.

MSC Unger/Johnson 5-0 to approve the revised Employment Agreement with the District's General Manager.

| | |
|----------|-----|
| Fuller | Aye |
| Luckman | Aye |
| Johnson | Aye |
| Reynolds | Aye |
| Unger | Aye |

9. 2nd QUARTER ENDING 12/31/15 FINANCIAL REPORT

Recommend that the Board accept and file.

Asst. General Mgr. Susan Greer read the finance report.

No Public Comment

MSC Johnson/Luckman 5-0 to accept and file the 12/31/15 Financial Report

| | |
|----------|-----|
| Fuller | Aye |
| Luckman | Aye |
| Johnson | Aye |
| Reynolds | Aye |
| Unger | Aye |

10. RESOLUTION ESTABLISHING THE TIME AND PLACE OF THE REGULAR MEETINGS OF THE BOARD OF DIRECTORS

Recommend that the Board adopt Resolution 16-956

GM Sauer read Resolution 16-956

Director Reynolds stated that the reasoning behind the 7:00 p.m. start time was that people work and it affords them the opportunity to participate in the meeting. By moving the meeting to an earlier time you are limiting the ability for individuals to attend.

Director Unger commented on the meeting times of the Morongo Basin Water Districts and Committees. Vice President Luckman supports the time change.

PUBLIC COMMENT

Tom Baker, Joshua Tree commented he supports the 6:30 p.m. change.

Cooki Bellsborough, Joshua Tree suggested that even though people are not in the immediate audience they may be participating by watching the meeting online or TV.

PUBLIC COMMENT CLOSED

MSC Unger/Luckman 4/1/0 approval of Resolution 16-956.

| | |
|----------|-----|
| Fuller | Aye |
| Luckman | Aye |
| Johnson | Aye |
| Reynolds | No |
| Unger | Aye |

11. 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 June 1, 2016. Kathleen Radnich gave update on Water Education Day.
- B. FINANCE COMMITTEE: President Fuller and Director Johnson. Next meeting is scheduled for April 25, 2016 Public is invited.
- C. WATER RESOURCES & OPERATIONS COMMITTEE: Vice President Luckman and Director Johnson. Next meeting is scheduled for April 25, 2016.

12. DISTRICT GENERAL COUNSEL REPORT

No Report

13. GENERAL MANAGER REPORT

GM Sauer gave his report and informed the BOD that the originally planned, strategy special meeting for April 11, 2016 has been postponed. He will email future dates to the BOD to confirm another date.

14. FUTURE DIRECTOR MEETINGS AND TRAINING OPPORTUNITIES

- A. Mojave Water Agency Board of Directors Meeting April 14, 2016 – Rebecca Unger
- B. ASBCSD Meeting April 18, 2016 – Director Reynolds
- C. ACWA Spring Conference in Monterey, CA – May 3-6, 2016

DIRECTOR REPORTS ON MEETINGS ATTENDED, COMMENTS/FUTURE AGENDA ITEMS

Director Unger attended Water Education Day.

Director Johnson attended the Mojave Agency Water District meeting on March 24th.

Director Reynolds did not attend any meetings but thanked everyone for attending the BOD meeting tonight.

Vice President Luckman attended the Finance Committee meeting and will be attending the Technical Advisory Committee Meeting on April 7, 2016.

President Fuller attended the March 23, 2016 Communications Committee meeting.

ADJOURNMENT

MSC Unger/Reynolds, 5/0 to adjourn the Regular Meeting of the Board of Directors of April 6, 2016 at 9:01 PM.

| | |
|----------|-----|
| Fuller | Aye |
| Luckman | Aye |
| Johnson | Aye |
| Reynolds | Aye |
| Unger | Aye |

Respectfully submitted:

Curt Sauer, GM and Board Secretary

**JOSHUA BASIN WATER DISTRICT
MEETING AGENDA REPORT**

Meeting of the Board of Directors

April 27, 2016

Report to: President and Members of the Board

Prepared by: Curt Sauer

TOPIC: Update on implementation of Article 1.9, Water Service Permit Application

RECOMMENDATION: That the Board receive information on the requirement of obtaining a permit from the County prior to installation of meters on inactive account. Direct the General Manager on actions to be taken, if any.

ANALYSIS: On February 17, 2016 the Board passed resolution 16-955, amending Section II and Article 13 of the District's rules and regulations, incorporating changes related to transitional and inactive accounts.

Article 1.9 states that a County assigned address and a county permit or proof of same be supplied.

However, district staff and at least two of our customers are apparently receiving different information concerning the need for a permit, from different county personnel. This situation is creating confusion for our customers.

General Manager Sauer will brief the Board on the situation.

**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 and March 2, 2016 we discussed the proposed Will Serve letter and Water Supply Agreement (WSA) which is attached to this staff report.

On March 2nd the Board decided, since NextEra's project had not been approved, and since NextEra had not yet filed a well permit application with the County, that they would not direct the General Manager to execute the will serve letter.

On April 6, 2016 during the GM report, I advised the Board that NextEra had advised me that they have finished their well permit application. The County advised them to not send the application to the County until after the project receives approval. I also advised the Board the tentative date for the Planning Commission to hear the project was April 21.

On April 21 the Planning Commission reviewed the project and voted 4 to 1 to approve the project.

During the February 17 Board meeting, we reviewed the Will Serve Letter and the Water Supply Agreement that has been created in order to sell water to NextEra for this project, as well as require NextEra to pay for the resupply of water taken from the aquifer.

When water service does commence to the Project, NextEra would pay for water service at the prevailing rate charged to other customers. In addition, the WSA provides that NextEra would agree to provide the funds necessary to replenish the aquifer in order to equalize the impact of water extracted 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.

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 State Water Project water to be placed in the Joshua Tree subbasin.



PO BOX 675
61750 CHOLLITA ROAD
JOSHUA TREE CA 92252
PHONE: 760.366.8438
FAX: 760.366.9528
JBWD@JBWD.COM

WILL SERVE LETTER

April __, 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

(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.

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 provision 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

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.