

San Geronio Pass Water Agency

DATE: October 19, 2023
TO: Finance and Budget Committee
FROM: Lance Eckhart, General Manager
BY: Tom Todd, Jr., Chief Financial Officer
SUBJECT: CONSIDERATION OF AGENCY NON-PROFIT

RECOMMENDATION

Staff have no recommendation at this time.

BACKGROUND

The Board expressed interest in forming a wholly owned non-profit for a number of reasons, including flexibility to sponsor conferences and other activities and events not specifically related to water.

ANALYSIS

The matter was referred to the Agency's legal counsel, Jeff Ferre. Attached to this report is his memo investigating the matter.

FISCAL IMPACT

In his memo, Mr. Ferre estimates that it would cost approximately \$6,000 to form the non-profit. There would also be an annual filing fee for the non-profit and a variety of ongoing costs that are unknown at this time.

It is expected that the initial funds would come from the Agency. Future revenue sources besides the Agency are unknown at this time.

ATTACHMENTS

Memo from Jeff Ferre



Jeffry F. Ferre
(951) 826-8271
jeff.ferre@bbklaw.com

Memorandum

To: President and Members of the Board
San Gorgonio Pass Water Agency

From: Jeff Ferre

Date: August 25, 2023

Re: Options/Benefits
Potential Formation Of A Nonprofit

BACKGROUND

The Agency is often approached by entities seeking a sponsorship or contribution. As with any expenditure, the Agency is limited to using public funds only in furtherance of the mission of the Agency. The Agency's mission is to import supplemental water and to protect and enhance local water supplies for use by present and future water users and to sell imported water to local water districts within the service area of the Agency.

Under Section 101-15 of the Agency Act, the Agency has a number of powers including, but not limited to, the power to make contracts, to employ labor, and do all acts necessary for the full exercise of the powers set forth in the Agency Act.

Pursuant to Article 16, Section 6 of the California Constitution, the Agency is prohibited from making a gift of public money or a thing of value to any individual or entity. However, expenditures of public funds which involve an incidental benefit to private persons are not prohibited gifts if the funds are expended for a public purpose of the Agency. That is, the gift prohibition is not applicable where the expenditure, while incidentally beneficial to a private recipient, promotes a valid and substantial public purpose within the authorized mission of the public agency expending the funds. (Ops.Cal.Atty.Gen, No. 05-309, 12/6/05) Therefore, the Agency is authorized to expend public funds for a sponsorship or contribution so long as said expenditure furthers the mission of the Agency.

ISSUE

Would it be beneficial for the Agency to form a nonprofit corporation through which the Agency could pay for sponsorships or contributions?

Would the use of non-rate revenue by such a nonprofit help to establish legally, and/or make it clear to the public, that said expenditures are being used for a public purpose and that rate revenue is not being used for such causes?

CONCLUSIONS

1. The formation and use of a nonprofit corporation by the Agency is permitted and could be used as a conduit for expending public funds for sponsorships and contributions.
2. There is an attendant cost to forming a nonprofit as well as costs to make yearly filings and pay ongoing fees to keep the nonprofit in good standing.
3. The Agency is already authorized to pay for sponsorships and contributions that further the mission of the Agency with or without a nonprofit.

NEXT STEPS

The Board may wish to consider if the benefits of using a separate nonprofit outweigh the costs and commitment of resources/personnel which would be necessary to form and maintain a nonprofit.

NONPROFIT EXAMPLE

An example of such a nonprofit is the Beaumont-Cherry Valley Recreation And Park Improvement Corporation, which is commonly referred to as the "Foundation." The bylaws of the Foundation refer to the following authorities and structure:

The Foundation was organized under the Nonprofit Public Benefit Corporation Law pursuant to Section 501(c)(3) of the Internal Revenue Code. The public purposes of the Foundation include, but are not limited to, the following:

- (a) To strengthen the resources of the Beaumont-Cherry Valley Recreation and Park District;
- (b) To promote the knowledge of the general public concerning programs sponsored by the Beaumont-Cherry Valley Recreation and Park District; and
- (c) To receive, invest and utilize funds and property acquired through the solicitation of contributions, donations, grants, gifts, bequests and the like for the purposes for which the Foundation was formed.

SUMMARY OF FORMATION PROCEDURES AND COSTS

Here is a summary of the basic steps and costs that the Board should be aware of before deciding whether to proceed with formation of a nonprofit.

1. Choose a name for the nonprofit and designate an agent for service of process;
2. Draft and file Articles of Incorporation with the California Secretary of State;
3. Draft bylaws;
4. Select the initial directors, which could be the Agency Board;
5. Hold the first meeting of the nonprofit's board;
6. Obtain an EIN/Tax ID;
7. Apply for Federal Tax Exemption;
8. Once an IRS determination letter is received, file Form 3500A with the California Franchise Tax Board
9. Within 30 days of receipt of any assets, prepare and file the Form CT-1 with the California Office of Attorney General, Registry of Charitable Trusts.

Here are some estimates for the costs/fees for formation of a nonprofit and to maintain the nonprofit in good standing:

Formation Costs

Fillings - for example, Secretary of State, IRS, etc. - Approximately \$1,000.00
Attorney/Paralegal Time - Approximately \$5,000.00
Total – Approximately \$6,000.00

Annual Fees

For example, Secretary of State filing, etc. – Approximately \$250.00

SOURCE AND USE OF FUNDS

It has been discussed that the nonprofit could perhaps be funded with non-rate revenues, for example, revenue from leases for cell antennas. The nonprofit would then fund community events (still tied to water) but such a funding plan would avoid taking funds out of other Agency accounts.

Some legal questions has been raised as to whether and how to fund such a nonprofit. It is my understanding that this would not be a situation where the nonprofit would raise funds from third parties or members of the public. Rather, the idea would be to transfer revenue received by the Agency from cell tower leases and use those funds to fund the nonprofit's activities. Such activities could involve putting on community events or sponsoring a third party's community event (both of which would still need to be tied to the mission of the Agency). Here are the legal considerations:

1. Would it be possible to transfer revenue received by the Agency from cell tower leases to a nonprofit to further the Agency's mission?

Yes. So long as the Agency has not previously placed restrictions on the use of non-rate revenue from a particular account.

2. Would an initial transfer of such funds require there to be regular/subsequent transfers from the Agency to the nonprofit?

No. This could be a one-time contribution.

3. Once the funds are transferred, could they be transferred back if the Agency needed those funds or in a situation where the nonprofit were to be wound up?

No. Once the funds are contributed to the nonprofit, they cannot be returned to the Agency unless the nonprofit fails to comply with a written and agreed upon condition of the contribution, or in the event of a dissolution of the nonprofit if the nonprofit's bylaws authorize the allocation of remaining funds back to the Agency.

List of Sponsorships and Memberships and Miscellaneous Related Items

GL#5560011 – Dues – Permits – Assessments

Beaumont Chamber Dues	355.00
Banning Chamber Dues	330.00
Calimesa Chamber Dues	125.00
Water Education Foundation membership	6,500.00
Southern California Water Coalition Dues	1,000.00
Urban Water Institute Dues	1,250.00
Public Policy Institute of California	6,500.00

GL#5560021 – Sponsorships

Beaumont State of City	725.00
Banning State of City	850.00
Calimesa State of City	500.00
Yucaipa Valley Chamber dinner	500.00
Beaumont Chamber Annual Banquet	500.00
Banning Chamber Installation	530.00
Beaumont Recreation and Parks Fishing Derby	500.00
Banning Chamber Breakfast	500.00

GL#5610011 – Water Conservation - Schools

Solar Boar Challenge	5,000.00
----------------------	----------

GL# 5630001 – Public Relations and Outside Communications

Cherry Festival Booth	200.00
-----------------------	--------