

# ***San Geronio Pass Water Agency***

**DATE:** November 6, 2023

**TO:** Board of Directors

**FROM:** Lance Eckhart, General Manager

**BY:** Tom Todd Jr., Chief Financial Officer  
Jeff Ferre, General Counsel

**SUBJECT: Authorize Formation of a Nonprofit Corporation to Fund Sponsorships and Events Through the Use of Non-Rate Revenue**

## **RECOMMENDATION**

The Finance and Budget Committee has brought this matter forward to the full Board for consideration. The F & B Committee recommends that the Board authorize the formation of a nonprofit corporation to fund sponsorships and events through the use of non-rate revenue.

## **PREVIOUS CONSIDERATION**

- October 25, 2023 – The Finance and Budget Committee discussed the matter and decided to present it to the Board.

## **BACKGROUND**

The Agency is often approached by entities seeking a sponsorship or contribution. For example, the Agency is often approached for donations and/or participation in Chamber events, States of the City events, the Fishing Derby, the Solar Boat Challenge, and the Cherry Festival.

The Agency is already authorized to pay for such sponsorships and contributions that further the mission of the Agency, with or without a nonprofit. However, the F & B Committee has discussed the benefits of making such contributions through a nonprofit in order to have a clear line between Agency operations (funded by tax/rate revenue) and nonprofit operations (funded with non-rate revenue). It has also been discussed that there may be certain tax advantages for donations to the Agency of real property. The Agency would not give tax advice. It should also be noted that there are not currently any anticipated donations to the Agency.

## **ANALYSIS**

### **Furthering the Mission of the Agency**

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/mission of the Agency. The Agency's mission is to import supplemental water and to enhance local water supplies. Under Section 101-15 of the Agency Act, the Agency has the power to make contracts, employ labor, and do all acts necessary for the full exercise of the powers set forth in the Agency Act.

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. Examples include: (1) making a presentation at a Chamber event; (2) manning a booth at a community event; or (3) conducting an Agency event to get the word out about future projects, conversation, storage, etc.

### Formation of a Nonprofit

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. Other public agencies have formed nonprofits under the Nonprofit Public Benefit Corporation Law pursuant to Section 501(c)(3) of the Internal Revenue Code. Here is a sampling of some of the basic steps for formation:

1. Choose a name for the nonprofit;
2. Draft and file Articles of Incorporation and draft bylaws;
3. The directors of the nonprofit could be the Agency Board members (the nonprofit board could hold meetings on a quarterly basis before or after an Agency Board meeting);
4. Obtain an EIN/Tax ID;
5. Apply for Federal Tax Exemption;

### **FISCAL IMPACT**

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

#### Formation Costs/Annual Fees

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

#### Source of Funds

The nonprofit could be funded with non-rate revenues, for example, revenue from leases for cell antennas. The nonprofit could then fund community events (still

tyed to the Agency mission). An initial transfer of such funds would not require there to be regular/subsequent transfers from the Agency to the nonprofit. However, once funds are transferred, they could not be transferred back to the Agency.