

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

**DATE:** January 8, 2024

**TO:** Board of Directors

**FROM:** Lance Eckhart, General Manager

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

**SUBJECT:** Board Direction and Action on Next Steps for Formation of a Nonprofit

## **RECOMMENDATION**

The Board provide follow up direction on the structure of the nonprofit corporation.

## **PREVIOUS CONSIDERATION**

- Board Meeting - December 4, 2023: The Board reviewed recommendations by Legal Counsel and made suggestions.
- Board Meeting – November 6, 2023: The Board authorized the formation of a nonprofit.

## **BACKGROUND**

At the November 6, 2023 Board meeting, the Board took action to authorize the formation of a nonprofit corporation which could be used for purposes such as funding sponsorships and events through the use of non-rate revenue and could potentially be used as an instrument for the acceptance of property donations.

At the December 4, 2023 Board meeting, the Board provided direction to staff and legal counsel on certain decisions that need to be made for the formation of a nonprofit under the Nonprofit Public Benefit Corporation Law pursuant to Section 501(c)(3) of the Internal Revenue Code. The Board had some follow up questions and requested that staff and legal counsel return to the Board with some further information.

## **ANALYSIS**

Set forth below are the decisions Staff would request that the Board provide direction on, as well as some draft answers to help guide the discussion and action:

1. What should be the name of the nonprofit?

Answer from December Board meeting:

Pass Water Agency Foundation, aka "PWA Foundation"

2. In connection with development of the Articles of Incorporation and Bylaws, what is the stated purpose of the nonprofit?

Answer from December Board meeting (Board's proposed change indicated in underlining):

(a) To promote the knowledge and implementation of the Agency's mission which is established through the Agency's strategic plan. The Agency's mission is to import supplemental water and to enhance local water supplies.

(b) To accept the transfer of, and utilize, non-rate revenue received by the Agency from cell tower leases and other non-rate revenue sources.

(c) To utilize such non-rate revenue to fund the nonprofit's activities including 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).

(d) To receive, invest and utilize property acquired through the solicitation of contributions, donations, grants, gifts, bequests and the like for the purposes for which the Foundation was formed.

3. How would the nonprofit be governed?

Answer from December Board meeting (Board's proposed change indicated in underlining):

The board of the nonprofit would be the same as the Agency Board, which is comprised of seven (7) elected Board members.

The nonprofit would not have any "ex-officio" (additional) board members, nor any separate "members."

The nonprofit board could hold meetings annually. For the first twelve months after formation, said meetings would be held quarterly. Said meetings could be held before or after an Agency Board meeting.

4. In connection with filing the applications for tax exemption, would the annual gross receipts of the nonprofit exceed \$50,000 in any of the next three (3) years?

Answer from December Board meeting:

Since there is a possibility the annual gross receipts could exceed \$50,000, the Board requested further information on the difference in the filing requirements.

The long form application (28 pages) requires much more detailed information than the short form (3 pages). For example, the “Your Specific Activities” section in the short form has 12 questions but the same section in the long form has 51 questions.

## **FISCAL IMPACT**

As mentioned during the November 6, 2023 Board meeting, 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. Here are some estimates for the costs/fees for formation of a nonprofit and to maintain the nonprofit in good standing:

### Formation Costs - Filings - 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

Audits, Audit Reviews, or Audit Compilations - \$500 - \$5,000

## **ACTION**

The Board provide follow up direction on the structure of the nonprofit corporation.