



JOSHUA BASIN WATER DISTRICT
REGULAR MEETING OF THE BOARD OF DIRECTORS
WEDNESDAY, MAY 18, 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 April 27, 2016 Special Meeting of the Board of Directors.
7. **FOLLOW UP WITH “YOU TUBE PLAN”**
 Recommend that the Board receive for information only. No action required.
8. **GOVERNOR BROWN’S MAY 9 EXECUTIVE ORDER; MAKING WATER CONSERVATION A CALIFORNIA WAY OF LIFE**
 Recommend the Board receive for information only. Draft Regulations will be discussed by General Managers.

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9. **UPDATE ON NEXTERA SOLAR 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.
10. **STANDING COMMITTEE REPORTS**
 - A. **FINANCE COMMITTEE MEETING:** President Fuller and Director Johnson. Next Meeting is scheduled for May 31, 2016.
 - B. **WATER RESOURCES & OPERATIONS COMMITTEE:** Vice President Luckman and Director Johnson. Next Meeting is scheduled for May 31, 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.
11. **DISTRICT GENERAL COUNSEL REPORT**
12. **GENERAL MANAGER REPORT**
13. **FUTURE DIRECTOR MEETINGS AND TRAINING OPPORTUNITIES**
14. **DIRECTOR REPORTS ON MEETINGS ATTENDED, COMMENTS/FUTURE AGENDA ITEMS**
15. **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.

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

April 27, 2016

1. **CALL TO ORDER:** 6:30 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
Gerry Eagans, Redwine & Sherrill

GUESTS 23

4. **APPROVAL OF AGENDA – MSC/ Luckman/Reynolds 5/0 to approve the Agenda**

Fuller	Aye
Luckman	Aye
Johnson	Aye
Reynolds	Aye
Unger	Aye

5. **PUBLIC COMMENT**

Al Marquez, Sun Fair Area, Joshua Tree, stated that the BoD doesn't have to meet at 6:30 p.m. just because other agencies are. It is still difficult for rate payers to attend the BOD meetings even at 7:00 p.m.

Steve Tuttle, N. Joshua Tree, referenced a BoD meeting in March where the GM mentioned the 5 generators that will need to be replaced in 2020 at 1.6M and suggested that there are other alternatives and asked the BOD to look at it again.

Tom O'Key, Joshua Tree, referenced past wins that the citizens of Joshua Tree have won against big businesses and they will continue to do so in order to protect Joshua Tree.

David Fick, Joshua Tree, suggested that the BoD establish a YouTube account since the Time Warner contract is coming to an end. Also, that the Alta Mira Project was approved on April 7th and was appealed on April 18th and is still in the appeal duration period.

Jett Tucker, Joshua Tree, agreed that the BoD needs to be on YouTube since a lot of individuals in Joshua Tree do not have TVs.

PUBLIC COMMENT CLOSED

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.

MSC/ Reynolds/Johnson 5/0 to approve the March 16, 2016 Minutes of the Regular Meeting of the Board of Directors with the following changes:

Director Zielke to Director of Operations Zielke and to add the number 12 to the Future Meetings and Training Opportunities paragraph. Approve the April 2, 2016 Minutes of the Regular Meeting of the Board of Directors.

Fuller	Aye
Luckman	Aye
Johnson	Aye
Reynolds	Aye
Unger	Aye

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 accounts. Direct the General Manager on actions to be taken, if any.

General Manager Sauer stated that 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. While we are improving communications with the County, the present requirement to have a permit is causing consternation with our customers that want to stay involved in the District. Until this is resolved a suggestion would be for the BOD to tell General Manager Sauer to temporarily waive it or bring it back to the BOD to Amend the Resolution so that individuals can get their address and have a meter installed and be streamlined with the County or leave it the same.

PUBLIC COMMENTS

Steve Tuttle, Joshua Tree, suggested that the BoD doesn't need to concern itself with permits and assigning addresses because we have entities that already do this such as code enforcement. Julian Gonzales, N. Joshua Tree, asked what the definition of an inactive meter is. Is it property with a meter already or a property that is paying but doesn't have a meter on site?

PUBLIC COMMENT CLOSED

General Manager Sauer responded that it is actually all three. It is water service that has been installed but the meter is not taking water, the meter that was put in but has been pulled and is not taking water or it is rental properties that are at a transitional stage with no current renter.

BOARD COMMENTS

Director Unger asked if they understood that the County had different interpretations. General Manager Sauer stated that he did understand that various people in the County have various interpretations of their own rules and regulations but we will continue to try and improve this. Director Unger asked if this was an action item or for information only. General Manager Sauer asked if the BoD could recommend action to take in the future, if any. Director Johnson asked for clarification on what they are asking for.

General Manager Sauer stated that he would like to remove the requirement for a permit. President Fuller stated that going forward if you don't have a County assigned address you need to go to the County and apply for one and not ask the JBWD for an address. Today we are recommending that General Manager Sauer go back and remove the permit process because the County does not have clarification on it.

Director Reynolds asked General Counsel for what the law states.

Vice President Luckman commented that everyone should have a County address and the permit can be removed.

MSC/Fuller/Reynolds 5-0 to Recommend to direct the General Manager to research and set up the information to remove the current permit requirement for inactive meters.

Fuller	Aye
Luckman	Aye
Johnson	Aye
Reynolds	Aye
Unger	Aye

8. UPDATE ON NEXTERA SOLAR 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.

General Manager Sauer's report is attached.

PUBLIC COMMENT

Steve Tuttle, N. Joshua Tree, stated that there are other options to replenish the aquifer; however, the water is for Joshua Tee residents not a big corporation.

David Fick, Joshua Tree, stated that we are currently in the appeal duration stage and after May 3, 2016 we will know the outcome. The deadline for the PPA (Power Purchase Agreement) is at the end of the year. Mr. Fick highly recommends that this be tabled until after the appeal.

Jett Tucker, Joshua Tree, stated that the future needs of Joshua Tree existing customers should take precedent over new business. Recommended that the BoD decision be tabled till next month.

Al Marquez, Sun Fair, Joshua Tree, commented that the water would be drawn from Copper Mountain subbasin and there would be no way to recharge it. NextEra stated that it would purchase water through JBWD through the State Water Project. The water that will be purchased will be poured into the JBWD not Copper Mountain. Main concern is the community and 90% do not want this project.

Julian Gonzales, Joshua Tree asked when did the District start selecting what people we issue water to. There have been several commercial non-residential developments, why did we not do the same to them? Mr. Gonzales does not approve of the NextEra project.

Tom O'Key, Joshua Tree, commented that the State Water Mandates and Water Usage guidelines, is where the original concern came from and JBWD would not be able to give water until these were lifted, which was part of the last vote. 99% of the Joshua Tree residents do not want this project to move forward.

PUBLIC COMMENT CLOSED

General Manager Sauer clarified that this meeting is not a Special BoD meeting for NextEra. Per the Administrative Code the BoD meeting is a "Special" meeting when it is held on any other week other than the first or third week of the month. General Manager Sauer commented that he brought the NextEra project before the BoD and the community in order to get ahead of any potential decision on the part of NextEra to proceed with a well and to protect our aquifer.

BOARD COMMENTS

Director Reynolds commented that there is an Appeal in process and it is too soon to act upon this now. Director Reynolds stated his intent to make a motion to table this until the BoD receives the results from the Appeal process.

Vice President Luckman stated that to have someone, outside of Joshua Tree, be able to drill a well in our District and have water rights is a very dangerous thing.

Director Unger stated that we are not a land agency we are a water agency and water is not considered in a time when there is a draught. Director Unger agrees with Director Reynolds to table this until the next BoD meeting.

Director Johnson asked if the Motion goes forward and the Will Serve Letter is approved today will it be effective as of today or can it be on completion of the appeal?

Gerry Eagans, Redwine & Sherrill stated that even if the Will Serve Letter is approved it is contingent on the approval from San Bernardino County, which will be after the appeal process.

President Fuller thanked everyone for attending the meeting and the importance of the issue at hand.

The biggest thing is we do not want to see a production well.

MSC/Reynolds/Johnson 3-2 to Recommend that the BoD postpone their decision until the May 18, 2016 Regular Board Meeting.

Fuller	No
Luckman	No
Johnson	Aye
Reynolds	Aye
Unger	Aye

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 – No Report

11. GENERAL MANAGER REPORT

- Susan Greer, Assistant General Manager – Informed the BoD that as an alternative for property owners with inactive meters (who don't need their water meters or want to pay the basic monthly fee), the property owners can agree, in writing, to terminate their connection to the water system and agree to pay all costs to provide a new water meter in the future and are exempt from basic the basic monthly fee. Property owners have until June 1, 2016 to opt out in order to not incur any basic monthly fee. If property owners choose to opt out and paperwork is received by June 1, 2016 charges will be reversed back to the February inception date.
- General Manager Curt Sauer stated that we will not be purchasing any new generators at this time or in the near future. The existing technology to update our generators to the State requirements does not exist. The State is rethinking the emissions requirements which may extend us out to 2020. GM Sauer reviewed the 2015 Urban Water Management Plan Schedule (attached). Plan will be submitted to the Department of Water Resources between June 8th and June 30th.

Since Flint, Michigan's lead issues have caused several customers to inquire about our lead levels, GM Sauer asked Director of Operations Zielke to report on lead. Director Zielke reported that lead is at a non-detectable level and we will continue to monitor, as requested, by State regulations.

May 18th a request will be brought to the BoD to update the Analog phone system to a digital system.

GM Sauer met with Zach Mullenix, County Fire Department, Office of the Emergency Service Liaison. With is support and that of Yucca Valley Emergency Support Coordinator Jessica Rice, there will be an Incident Command System training in July for all four water districts, to include two table top exercises in the fall, in order to prepare for a large scale emergency (earthquake).

GM Sauer commended Seth Zielke, Director of Operations and Water Resources and Susan Greer, Assistant General Manager, along with their staffs, for working with consultants, customers and going beyond their normal duties to provide excellent customer service.

12. 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

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

- Vice President Luckman attended the High Desert Water Summit and commented that GM Sauer was able to include JBWD's Chromium 6 funding requirements in the Integrated Regional Water Management Plan, Mojave Water Agency.
- Director Reynolds attended the Special Districts Meeting at the E.Valley Water District, Highland, CA. Director Reynolds requested to add "YouTube" to the next meeting Agenda.
- Director Johnson – No meetings attended
- Director Unger – Attended the Mojave Water Agency meeting and requested that the San Bernardino County Planner come and meet with the BoD and add it to the next agenda.
- President Fuller commented that the State Water Resources Control Board is considering adding drinking water fees to all agencies and all comments need to be in by June 22, 2016.

14. ADJOURNMENT

MSC Unger/Reynolds, 5/0 to adjourn the Special Meeting of the Board of Directors of April 27, 2016 at 8:12 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

May 18, 2016

Report to: President and Members of the Board

Prepared by: Curt Sauer

TOPIC: Placing Board meetings on youtube.com

RECOMMENDATION: Receive for information only.

ANALYSIS: Various members of the Public have requested that Board Meetings be placed on youube.com. At the April 27 Board meeting there was consensus that this action be taken. Staff has researched the process and finds that this can be done for no more than \$600-\$800 per year.

- BWD Board Meetings are presently made available via a DVD format for customers to pick-up either at the Customer Service Desk, Monday through Friday or at the JBWD Booth at the Farmer's Market on Saturdays
- The meetings have been aired on Time Warner Cable TV for the past years; however, this free service will possibly no longer be made available as of January 1, 2017. Time Warner is in transition being purchased by Charter
- The customers have requested that recordings of our Board Meetings be made available via our own You Tube internet channel for the purpose of transparency, and informational archiving allowing for community support on important issues facing the District
- Other local Water Districts are providing this informational venue with success
- Many JBWD customers do not have TV, but they do have internet access

OPTIONS:

- Implement this on-going service in-house, using existing equipment and staff time
- Implement this on-going service using the JBWD's PIO's equipment and time
- Task Bob Stevenson, our current videographer to reformat and render the recorded video for internet/You Tube compatibility

CONCERNS:

- Current staff computer software was tested and found to be incompatible to reformat and render the recorded DVD of the Board Meetings
- If a new computer and software were purchased and dedicated for this process, rendering would require staff to monitor for 4-6 hours per "rendering," as it would need to be monitored during that time frame for "glitches" during the process
- The PIO does not have compatible software to render these DVDs, and does not have a dedicated computer to use for the 4-6 hour rendering time frame
- Bob Stevenson has the software and equipment (and time) to provide this service however, he would charge \$50 per meeting to do this

We will proceed with implementing the public information capability.

**JOSHUA BASIN WATER DISTRICT
MEETING AGENDA REPORT**

Meeting of the Board of Directors

May 18, 2016

Report to: President and Members of the Board

Prepared by: Curt Sauer *5/12/16*

TOPIC: Governor Brown's May 9 Executive Order: Making Water Conservation A California Way of Life

RECOMMENDATION: Receive for information only. The draft conservation regulations proposed by State Water Resource Control Board staff will be reviewed by SWRCB Board of Directors on May 18.

ANALYSIS: The Governor issued the latest water conservation executive order on May 9. Draft regulations, prepared by SWRCB staff are available for public comment until May 16 on the SWRCB webpage. It is expected these regulations will be passed, with minor modifications, if any, at the May 18 SWRCB Board meeting.

JBWD staff are reviewing the draft regulations and calculating our "self certified conservation standards". Staff will report on the draft regulations at the May 18 Board meeting.

A 3 page Fact Sheet, prepared by SWRCB is included for background information.

Executive Department

State of California

EXECUTIVE ORDER B-37-16 MAKING WATER CONSERVATION A CALIFORNIA WAY OF LIFE

WHEREAS California has suffered through a severe multi-year drought that has threatened the water supplies of communities and residents, devastated agricultural production in many areas, and harmed fish, animals and their environmental habitats; and

WHEREAS Californians responded to the drought by conserving water at unprecedented levels, reducing water use in communities by 23.9% between June 2015 and March 2016 and saving enough water during this period to provide 6.5 million Californians with water for one year; and

WHEREAS severe drought conditions persist in many areas of the state despite recent winter precipitation, with limited drinking water supplies in some communities, diminished water for agricultural production and environmental habitat, and severely-depleted groundwater basins; and

WHEREAS drought conditions may persist in some parts of the state into 2017 and beyond, as warmer winter temperatures driven by climate change reduce water supply held in mountain snowpack and result in drier soil conditions; and

WHEREAS these ongoing drought conditions and our changing climate require California to move beyond temporary emergency drought measures and adopt permanent changes to use water more wisely and to prepare for more frequent and persistent periods of limited water supply; and

WHEREAS increasing long-term water conservation among Californians, improving water use efficiency within the state's communities and agricultural production, and strengthening local and regional drought planning are critical to California's resilience to drought and climate change; and

WHEREAS these activities are prioritized in the California Water Action Plan, which calls for concrete, measurable actions that "Make Conservation a California Way of Life" and "Manage and Prepare for Dry Periods" in order to improve use of water in our state.

3. The Department and the Water Board shall permanently require urban water suppliers to issue a monthly report on their water usage, amount of conservation achieved, and any enforcement efforts.

ELIMINATE WATER WASTE

4. The Water Board shall permanently prohibit practices that waste potable water, such as:
 - Hosing off sidewalks, driveways and other hardscapes;
 - Washing automobiles with hoses not equipped with a shut-off nozzle;
 - Using non-recirculated water in a fountain or other decorative water feature;
 - Watering lawns in a manner that causes runoff, or within 48 hours after measurable precipitation; and
 - Irrigating ornamental turf on public street medians.
5. The Water Board and the Department shall direct actions to minimize water system leaks that waste large amounts of water. The Water Board, after funding projects to address health and safety, shall use loans from the Drinking Water State Revolving Fund to prioritize local projects that reduce leaks and other water system losses.
6. The Water Board and the Department shall direct urban and agricultural water suppliers to accelerate their data collection, improve water system management, and prioritize capital projects to reduce water waste. The California Public Utilities Commission shall order investor-owned water utilities to accelerate work to minimize leaks.
7. The California Energy Commission shall certify innovative water conservation and water loss detection and control technologies that also increase energy efficiency.

STRENGTHEN LOCAL DROUGHT RESILIENCE

8. The Department shall strengthen requirements for urban Water Shortage Contingency Plans, which urban water agencies are required to maintain. These updated requirements shall include adequate actions to respond to droughts lasting at least five years, as well as more frequent and severe periods of drought. While remaining customized according to local conditions, the updated requirements shall also create common statewide standards so that these plans can be quickly utilized during this and any future droughts.
9. The Department shall consult with urban water suppliers, local governments, environmental groups, and other partners to update requirements for Water Shortage Contingency Plans. The updated draft requirements shall be publicly released by January 10, 2017.



Fact Sheet

Staff Proposal for Extended Emergency Regulation for Urban Water Conservation

Summary

A staff statewide water conservation proposal was released for public comment today that would amend the Feb. 2 emergency water conservation regulations, due to improved water supply conditions around most of the state.

Significant proposed changes include replacing the state developed standards with locally developed conservation standards based upon each agency's specific circumstances. The proposed regulation would require individual urban water suppliers to self-certify the level of available water supplies they have assuming three additional dry years, and the level of conservation necessary to assure adequate supply over that time.

This self-certification would include information provided by regional water distribution agencies (wholesale suppliers) about how regional supplies would fare during three additional dry years. Both urban water suppliers and wholesale suppliers would be required to report the underlying basis for their assertions, and urban water suppliers would be required to continue reporting their conservation levels.

Per the proposal, urban water suppliers will be required to reduce potable water use in a percentage equal to their projected shortfall in the event of three more dry years. In other words, if an individual water district projects it would, under the specified assumptions, have a 10 percent shortfall after the next three years at the current rate of use, their mandatory conservation standard would be 10 percent.

The staff recommendation keeps in place the monthly reporting requirements and specific prohibitions against certain water uses. Those prohibitions include watering down a sidewalk with a hose instead of using a broom or a brush, or overwatering a landscape to where water is running off the lawn, over a sidewalk and into the gutter. As directed by Governor Brown's Executive Order B-36-15, these requirements and prohibitions will also become permanent. Prohibitions against home owners associations taking action against homeowners during a declared drought remain as well.

The proposed regulatory package and technical fact sheet are the result of review of many meetings, written and oral comments from a public workshop on April 20 to receive input on conservation needs through the summer and fall, and lessons learned since the Water Board first adopted drought emergency water conservation regulations.

The workshop was conducted to solicit ideas for adjustments to the current emergency regulations given changes in water supply, storage, and snowpack as compared to last

C A L I F O R N I A E N V I R O N M E N T A L P R O T E C T I O N A G E N C Y



STATE WATER RESOURCES CONTROL BOARD

1001 I Street, Sacramento, CA 95814 • Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 • www.waterboards.ca.gov





Fact Sheet

In May 2015, the State Water Board adopted an emergency regulation requiring a cumulative 25 percent reduction in overall potable urban water use over the following 9 months. The May 2015 Emergency Regulation uses a sliding scale for setting conservation standards, so that communities that have already reduced their residential gallons per capita per day (R-GPCD) through past conservation had lower mandates than those that had not made such gains since the last major drought. Conservation tiers for urban water suppliers were set between eight percent and 36 percent, based on residential per capita water use for the months of July - September 2014.

During this time, statewide water conservation was unprecedented. In the last 10 months alone, the state realized nearly a 24 percent savings in water use as compared to same period 2013, resulting in some 1.30 million acre-feet of water conserved throughout California, enough to supply 6.5 million people with water for an entire year.

On Feb. 2, 2016, based on Governor Brown's November 2015 Executive Order, the State Water Board approved an updated and extended emergency regulation that continued mandatory reductions through October.

The February 2016 Emergency Regulation responded to calls for continuing the conservation structure that has spurred savings, while providing greater consideration of some localized factors that influence water needs around the state: climate differences, population growth and significant investments in new local, drought-resilient water supplies such as potable wastewater reuse and desalination. Under the extended regulation, many water suppliers have somewhat lower water conservation standards, although statewide water conservation is expected to continue at high levels.

On May 9, Governor Brown issued a new Executive Order directing actions aimed at using water wisely, reducing water waste, and improving water use efficiency. The Executive Order, in part, directs the State Water Board to extend the emergency regulations for urban water conservation through the end of January 2017. These revised regulations are set for consideration May 18.

(This fact sheet was last updated May 9, 2016)

**JOSHUA BASIN WATER DISTRICT
MEETING AGENDA REPORT**

Meeting of the Board of Directors

May 18, 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:

At our April 27 meeting the Board voted to table this topic until May 18 because there was an appeal of the Planning Commission approval of the project.

In October of 2015 the Board approved a Will Serve letter for the project. It included the stipulation that water would be made available once the drought regulations imposed by the state were lifted. It also included the requirement that NextEra provide funding to replace the water needed for the project over the life of the project.

The Board approved the will serve letter, with the instruction that the fees for recharge water be withdrawn. I have reviewed the DVD and minutes of the meeting, and it was clear that the Board wished to revisit the recharge fees separately from issuing the will serve letter.

NextEra, in February of 2016, when it was apparent that the drought restrictions were not going to be lifted, asked that we issue a new will serve letter. That is the time when Gil and I, working with staff and NextEra, formulated the proposed Will Serve letter and Water Supply Agreement.

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, 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. It is my understanding; from the May 9 MAC meeting that at least three appeals have been received by the County.

On May 11, I spoke with John Oquendo, the County planner handling this project. He informed me that the County has received a well permit application for the airport parcel. I confirmed this with Jessica Ballesteros, of County EHS.

The proposed Will Serve Letter, and the Water Supply Agreement, are entirely dependent upon final approval of the project by the County. As noted in the draft Will Serve letter, page 1:

(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.

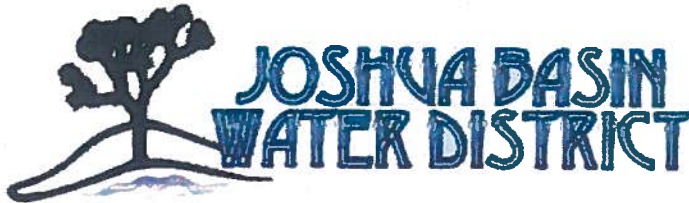
(2) The Commitment shall expire sixty (60) days after the Project Approval unless JT Solar executes the Water Supply Agreement in the same form and content as attached hereto as Exhibit "A" and by this reference incorporated herein.

If the project is approved, and water service commences, 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.

This recommendation places the District in the best possible position should the NextEra project be approved by the County. If the project is not approved, this Will Serve Letter and Water Supply Agreement will be null and void.

FISCAL IMPACT: \$70,000 estimated in revenue for the construction phase. An additional \$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 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

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.