DENVER BOARD OF WATER COMMISSIONERS

Meeting Date: June 12, 2013 Board Item: V-A-11

Amendments to the Defined Contribution Plans

☒ Action by Consent ☐ Action ☐ Information

The Board has requested that its Special Counsel prepare proposed amendments to both the 457 Plan and the 401(k) Plan to provide a mechanism whereby additional employer contributions would be used to attract and retain its CEO/Manager. The use of the 457 Plan and the 401(k) Plan for this purpose has the following advantages over other deferred compensation plan options: it provides flexibility for the Board to determine annual contribution amounts; it is easy to understand and administer because contributions are made to the existing 457 and 401(k) plans; the contributions are subject to a vesting schedule that incentivizes the CEO/Manager to continue his employment; and the plans offer the CEO/Manager the favorable tax treatment available to 457 and 401(k) plan accounts.

The Board may decide the amount of its discretionary contributions to the CEO/Manager's accounts annually, based upon annual evaluations of the CEO/Manager's performance, subject to annual contribution limits announced by the IRS. The proposed Amendments provide that the Board's additional contributions vest at the earliest of the following events: the CEO/Manager completes seven years of employment with Denver Water; the CEO/Manager reaches age 65; the CEO/Manager becomes disabled or dies; the Board determines that it is impractical for the CEO/Manager to continue employment due to a health condition of the CEO/Manager's spouse; or the Board terminates the CEO/Manager for reasons other than "serious cause such as fraud or criminal conduct." The CEO/Manager controls the investment of the employer contributions held in the accounts, just as with other accounts under the 457 and 401(k) Plans. The same tax advantages apply to employer contributions to the CEO/Manager's accounts as other accounts under the 457 and 401(k) Plan, with the exception that FICA taxes must be paid on contributions to the 457 Plan when they become vested. If the CEO/Manager leaves Denver Water before the accounts become vested, the unvested accounts may be used to pay plan administrative expenses. If not used for administrative expenses, the unvested 401(k) account may be used to pay for employer matching contributions to the 401(k) plan and the unvested 457 account may be used to provide an employer contribution for participants in the 457 plan.

Recommendation:

It is recommended that the Board approve the attached Amendments to the Denver Water 457(b) Plan and the Supplemental Retirement Savings 401(k) Plan to provide a mechanism for discretionary employer contributions to be made to the CEO/Manager's account on an annual basis based upon the results of the CEO/Manager's annual review, subject to annual contributions as set by the IRS, and to pay the FICA tax on contributions and earnings under the vesting schedule provided for in the Amendments.

Approvals:

Respectfully submitted,

Patricia L. Wells
General Counsel

H. Gregory Austin
Board President

Angela C. Bricmont
Director of Finance

Carla Elam Floyd
Director of Human Resources

June 5, 2013
Revised by CEO's Office 8/19/2011