



**NOTICE OF A  
SPECIAL MEETING OF THE  
BOARD OF DIRECTORS**

SEPTEMBER 9, 2016  
3:30 P.M.  
DISTRICT BOARD ROOM  
REVISED

**AGENDA**

Board of Directors  
Barry M. Jameson  
*President*

David A. Wells  
*Vice President*

Roger Miller  
Gary J. Morris  
Scott Niblett

Harry O. Starkey  
*General Manager*

J.D. Bramlet  
*Director of Operations*

Sanjay "Sunny" Kapoor  
*Director of Finance*

"Pursuant to Government Code section § 54957.5, any materials relating to an open session item on this agenda, distributed to the Board of Directors after the distribution of the agenda packet, will be made available for public inspection at the time of distribution at the following location: West Kern Water District, 800 Kern Street, Taft, CA."

- I. **FLAG SALUTE**
- II. **ROLL CALL/DETERMINATION OF A QUORUM**
- III. **CONFLICT OF INTEREST STATEMENTS**
- IV. **PUBLIC COMMENT**

Public Comment to address any subject of District business which may not be on the Agenda. Comments may be limited to three (3) minutes per person.

V. **ITEMS TO BE ADDRESSED**

**CLOSED SESSION**

1. Discussion and Appropriate Action Regarding:  
Government Code, § 54957  
Discipline/Dismissal/Release
2. Discussion and Appropriate Action Regarding:  
Government Code, § 54956.9(d)(2)  
Conference with Legal Counsel  
Anticipated Litigation: 1 Case

VI. **ISSUES TO BE ADDRESSED AT FUTURE MEETINGS**

Review Items of Discussion for Upcoming Meetings.

VII. **ADJOURNMENT**

AMERICANS WITH DISABILITIES ACT  
(Government Code Section 54953.2)

The Boardroom of West Kern Water District is accessible to persons with disabilities. Disabled individuals who need special assistance to attend or participate in a meeting of the Board of Directors may request assistance by contacting the District at 800 Kern Street, Taft, California or by calling (661) 763-3151. Every effort will be made to reasonably accommodate individuals with disabilities by making meeting material available in alternative formats. Requests for assistance should be made five (5) working days in advance of a meeting whenever possible.

Agendas and any other writings of the Board of Directors in connection with a subject for discussion or consideration at an open meeting of the Board shall be made available for inspection at The District's office located at 800 Kern Street, Taft, California, except those matters exempt from disclosure under the Public Records Act (Government Code 6250, et seq.)

**CONFIDENTIAL MEMORANDUM  
TO DISTRICT COUNSEL & BOARD OF DIRECTORS  
SUPPORTING DATA  
SPECIAL BOARD MEETING  
SEPTEMBER 9, 2016**

**AGENDA ITEM: 1. CLOSED SESSION  
**Discussion and Appropriate Action Regarding:  
Notice of Proposed Disciplinary Action - James Naff****

**BACKGROUND INFORMATION:**

On August 30, 2016, the District received a report from a concerned community member that an employee of West Kern Water District was drinking a beer in a District vehicle while stopped at the stop light at Kern and 10th streets. The General Manager contacted the individual and obtained additional information regarding the report.

After reviewing vehicle GPS locating reports, it was determined that there were four (4) District employees in the area during the reported time of the incident. The General Manager and Director of Operations met with the four (4) employees and explained the report and the District's obligation to inspect their vehicles and drug test/alcohol breath test them in accordance with the Reasonable Suspicion guidelines of the Drug, Alcohol and Contraband Control Policy (Non-DOT). There were no alcohol containers or related items found in any of the vehicles and all four employees had a negative breath test result. Non-DOT urine samples were taken by the District's third party drug program administrators Contraband Control Specialists.

On August 31, 2016 the District was notified by National Toxicology Laboratories that one of the employees, James Naff, had tested positive for two prohibited substances.

The HR Administrator, Tami Sivils, contacted the employee's supervisors and directed them to go to the work site to pick up James and bring him in to the office. Tami, Sunny, Joe Miller, and John Stuntebeck met with James and notified him that he had tested positive for two prohibited substances and that he was being placed on Paid Administrative Leave until a Pre-Disciplinary Review and Proposed Discipline could be scheduled/determined.

Attached for Board review is the Notice of Proposed Disciplinary Action which was hand delivered to James Naff at his residence on September 2, 2016.

Staff will further discuss the proposed discipline and reason/degree of seriousness of multiple violations of policy with the Board at the Special Board Meeting.

**STAFF RECOMMENDATIONS:**

Termination of District Employment effective September 12, 2016.

**JUSTIFICATION:**

On March 28, 2016, James was placed on six weeks suspension without pay or benefits and offered a "Last Chance Agreement" in lieu of termination for a positive DOT Random Drug test performed on March 10, 2016. James signed and agreed to the terms of the Last Chance Agreement.

The positive Non-DOT Reasonable Suspicion test on August 30, 2016 is a direct violation of the policy and the Last Chance Agreement with the District.

**PREVIOUS ACTIONS:**

- August 24, 2016 - During his third DOT follow up test, James blew a positive breath test of .016. Fifteen minutes later, a second breath test was performed with a result of .0099. The HR Administrator and the CCS representative had a discussion with James relative to the breath test result being very close to the threshold limit of .02 for the Non-DOT policy and that would result in him being in violation of the Last Chance Agreement and termination. He explained that the positive breath test was the result of taking Nyquil just prior to coming to work because he had the flu.
  
- March 28, 2016 - A Pre-disciplinary review was conducted with James. He was placed on six weeks suspension without pay or benefits. He signed and agreed to the terms of a "Last Chance Agreement" in lieu of termination. He was required to be evaluated by a Substance Abuse Professional (SAP). He was also required to participate in and successfully complete a "Post Treatment" random and/or unscheduled drug testing program for a period determined by the SAP.
  
- March 10, 2016 - James had a positive DOT Random Drug test. He stated that he had taken one of his wife's pain pills. He could not supply a prescription for himself or his wife.
  
- March 31, 2005- James was subject to a Random DOT Drug test. Following the test, he went to the General Manager (Jerry Pearson) and reported that he had taken one of his wife's pain pills the weekend before and was concerned that his test may come back positive. Negative test results were received from the lab following the conversation with James. Jerry and Dawn, the HR Director, gave James a Verbal Warning that he was in violation of the District's Personnel Policy and the Contraband Control Program relative to use of prescription drugs without a prescription and failure to notify the District of prescribed medication. James said that he understood and it would not happen again.

**COST:**

**BUDGETARY WARRANT:**

**MOTION:**

Direction is requested relative to the Proposed Discipline.

**COMMITTEE STATUS:**

- \_\_\_\_\_ Recommend Board Approval
- \_\_\_\_\_ NO (Rejected)
- \_\_\_\_\_ Full Board to Review
- \_\_\_\_\_ Under Review (No Action Required)

**COMMITTEE RECOMMENDATIONS:**

This item was not reviewed at the Committee level.

**COUNSEL REVIEW AND/OR RECOMMENDATIONS:**

Staff discussed the proposed discipline with Jay Rosenlieb of KDG and Moriah Mendenhall, Drug Specialist at CCS. Both recommended termination as the appropriate action and discussed the Liability of the District if termination did not occur.

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**AGENDA ITEM:**    2.    **CLOSED SESSION**  
   Discussion and Appropriate Action Regarding:  
   Anticipation of Litigation with La Paloma-Take or Pay Agreement

**BACKGROUND INFORMATION:**

Legal Counsel will discuss the options of renegotiating the Take-or-Pay Agreement with La Paloma and/or initiating litigation to settle the terms of the Agreement.

**STAFF RECOMMENDATIONS:**

**JUSTIFICATION:**

**PREVIOUS ACTIONS:**

RBM of August, 2016	The General Manager and Legal Counsel discussed the request with the Full Board in Closed Session.
RBM of July, 2016	The General Manager and Legal Counsel discussed the request with the Full Board in Closed Session.
RBM of June, 2016	Board of Directors directed GM and Staff to revise the IW-1 rate for La Paloma.
June 23, 2016	Meeting with La Paloma to answer questions and discuss a Pricing Proposal.
RBM of May, 2016	GM discussed the request with the Full Board in Closed Session.
RBM of April, 2016	GM discussed the request with the Full Board in Closed Session.

**COST:**

**BUDGETARY WARRANT:**

**MOTION:**

To be determined

**COMMITTEE STATUS:**

_____	Recommend Board Approval
_____	NO (Rejected)
_____X_____	Full Board to Review
_____	Under Review (No Action Required)

**COMMITTEE RECOMMENDATIONS:**

Committee did not meet.

**COUNSEL REVIEW AND/OR RECOMMENDATIONS:**