



ACTION ITEM
November 18, 2015

TO: Board of Directors

FROM: **Administration & Finance Committee**
(Directors Thomas, Osborne, Finnegan)

Robert J. Hunter, General Manager

Staff Contact: Cathleen Harris, Administrative Services Manager

SUBJECT: ADOPT RESOLUTION IN ACCORDANCE WITH THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM (CalPERS) FOR THE POST-RETIREMENT EMPLOYMENT OF RICHARD BELL IN ACCORDANCE WITH GOVERNMENT CODE SECTION 7522.56

STAFF RECOMMENDATION

It is recommended that the Board of Directors adopt the proposed Resolution approving an exception to the 180-day waiting period for the post-retirement employment of Richard Bell and appoint Richard Bell to the position of Principal Engineer on an interim basis in accordance with Government Code Sections 7522.56 and 21221(h), as presented.

COMMITTEE RECOMMENDATION

Committee recommends (To be determined at Committee Meeting)

DETAILED REPORT

Principal Engineer Richard Bell, will be retiring effective December 4, 2015, after 12 years and nine months of service to the District. The District is currently recruiting for a permanent replacement to the Principal Engineer position. It is anticipated that the position will be filled in January 2016.

Budgeted (Y/N): NA	Budgeted amount: NA 55401.00010\21273785.4	Core __	Choice __
Action item amount: NA	Line item:		
Fiscal Impact (explain if unbudgeted):			

In an effort to continue the department workflow and to continue to utilize Richard's expertise, it is imperative that continuity in the Planning and Water Resources Department be maintained until the Principal Engineer position is filled and staff has been fully trained and transitioned. Therefore, staff is recommending that the Board consider adoption of the proposed resolution allowing the District to employ Richard Bell on a temporary part-time basis without reinstating from retirement.

Staff has coordinated this effort with Legal Counsel, Isabel Safie of BBK and the Proposed Resolution is attached for consideration.

Staff recommends that the Board of Directors adopt the proposed Resolution approving an exception to the 180-day waiting period for the post-retirement employment of Richard Bell and appoint Richard Bell to the position of Principal Engineer on an interim basis in accordance with Government Code Sections 7522.56 and 21221(h), as presented.

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MUNICIPAL WATER DISTRICT OF ORANGE COUNTY APPROVING AN EXCEPTION TO THE 180-DAY WAITING PERIOD FOR THE POST-RETIREMENT EMPLOYMENT OF RICHARD BELL AND APPROVING THE APPOINTMENT OF RICHARD BELL TO THE POSITION OF INTERIM PRINCIPAL ENGINEER IN ACCORDANCE WITH GOVERNMENT CODE SECTIONS 7522.56 AND 21221(h)

WHEREAS, Government Code Section 7522.56 sets forth specific conditions which must be met in order for a retired person receiving a pension benefit from a public retirement system to serve, be employed by, or be employed through a contract directly by, a public employer in the same public retirement system from which the retiree receives the benefit without reinstatement from retirement; and

WHEREAS, Section 7522.56 provides that a person who retires from a public employer may serve without reinstatement from retirement, or loss or interruption of benefits provided by the retirement system, upon appointment by the appointing power of a public employer because the retired person has skills needed to perform work of limited duration; and

WHEREAS, Section 7522.56 provides that a retired person shall not be eligible to be employed pursuant to Section 7522.56 for a period of 180 days following the date of his or her retirement unless the employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days have passed and the appointment has been approved by the employer's governing body in a public meeting and was not placed on a consent calendar; and

WHEREAS, the Municipal Water District of Orange County contracts with CalPERS for retirement benefits, and pursuant to Government Code Section 7522.56 must provide this certification resolution to CalPERS when hiring a retiree before 180 days have passed since his or her retirement date; and

WHEREAS, Richard Bell, CalPERS ID [REDACTED], will retire from the Municipal Water District of Orange County in the position of Principal Engineer effective December 4, 2015;

WHEREAS, Section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is June 2, 2016, absent this certification resolution; and

WHEREAS, Section 7522.56 provides that the exception to the 180 day waiting period shall not apply if the retiree accepts a retirement incentive; and

WHEREAS, the Board of Directors, Municipal Water District of Orange County and Richard Bell certify that Richard Bell has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, the duties and tasks performed by Richard Bell in the position of Principal Engineer are essential to keep the knowledge of special projects and the workflow of the Municipal Water District of Orange County Water Resources and Planning Department in order and the department operating smoothly; and

WHEREAS, the Municipal Water District of Orange County finds that Richard Bell has the specialized skills and requisite experience needed to perform the functions of the position of Principal Engineer on an interim basis; and

WHEREAS, the Board of Directors desires to appoint Richard Bell as an interim appointment retired annuitant to the soon to be vacant position of Principal Engineer for Municipal Water District of Orange County under Government Code Section 21221(h), effective December 4, 2015; and

WHEREAS, an appointment under Government Code section 21221(h) requires an active, publicly posted recruitment for a permanent replacement; and

WHEREAS, the current status of this recruitment is currently open until filled (applications are being accepted); and

WHEREAS, this Section 21221(h) appointment shall only be made once and therefore will end on the date immediately preceding the date on which the permanent replacement for the vacant position of Principal Engineer for Municipal Water District of Orange County commences his or her employment or, if earlier, the date that this appointment is terminated by Municipal Water District of Orange County; and

WHEREAS, the entire employment agreement, contract or appointment document between Richard Bell and Municipal Water District of Orange County has been reviewed by the Board of Directors and is attached herein; and

WHEREAS, no matters, issues, terms or conditions related to this employment and appointment have been or will be placed on a consent calendar; and

WHEREAS, Richard Bell's employment shall be limited 960 hours per fiscal year; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the maximum monthly base salary for this position is \$12,728 and the hourly equivalent is \$73.43, and the minimum monthly base salary for this position is \$9,429 and the hourly equivalent is \$54.40; and

WHEREAS, the hourly rate paid to Richard Bell will be [REDACTED]; and

WHEREAS, Richard Bell has not and will not receive any other benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to his hourly pay rate as compensation for the services contemplated herein.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Municipal Water District of Orange County hereby certifies the nature of the appointment of Richard Bell as described herein and detailed in the attached employment agreement/contract/appointment document and that his appointment, as described herein, is necessary to fill the critically needed position of Principal Engineer for the Municipal Water District of Orange County effective December 4, 2015 in order to ensure that the workflow of the Municipal Water District of Orange County Water Resources and Planning Department is kept in order and the department operating smoothly.

BE IT FURTHER RESOLVED that Richard Bell is hereby appointed to the soon to be vacant position of Principal Engineer for Municipal Water District of Orange County effective December 4, 2015 in accordance with Government Code Section 7522.56 and all other applicable laws.

Said Resolution was adopted, on roll call, at a public meeting, by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

I hereby certify the foregoing is a full, true, and correct copy of Resolution No. _____ Adopted by the Board of Directors of Municipal Water District of Orange County at its meeting held on November 18, 2015.

_____, District Secretary
Municipal Water District of Orange County

**MUNICIPAL WATER DISTRICT OF ORANGE COUNTY
RETIREE EMPLOYMENT AGREEMENT**

Dear _____:

If accepted by you, this agreement represents the terms of your appointment as interim Principal Engineer with the Municipal Water District of Orange County ("MWDOC"). In light of your impending status as a CalPERS retiree, this is a temporary appointment subject to the requirements set forth in this letter.

This agreement is made because we have determined that your specialized skills in the areas of **[insert skills]** are necessary to perform the duties of Principal Engineer on an interim basis, as more specifically detailed in the **attached job description**.

The terms of this agreement include:

- The term of your appointment will be from **December ____, 2015** until such time as a permanent replacement for the position of Principal Engineer has been selected and has commenced employment or, if earlier, MWDOC terminates this agreement.
- Your rate of pay in the position will be an hourly salary of **██████████**
- You will not receive any further payments or benefits other than the foregoing hourly rate unless required by state or federal law.
- Your hours **cannot to exceed 960 hours** in a fiscal year (inclusive of all hours worked for any CalPERS employer).
- **[Include any other terms agreed to between MWDOC and the retiree such as days and/or hours that the retiree will be expected to be at MWDOC].**

MWDOC and you make this agreement with the mutual understanding that the appointment complies with the requirements applicable to the employment of CalPERS retirees, as codified in Government Code Sections 7522.56 and 21221(h). Specifically, an appointment under Sections 7522.56 and 21221(h) is permissible if all of the following requirements are met:

- (1) The appointment is made by the Board of Directors;
- (2) The appointment is to a vacant position during recruitment for a permanent appointment;
- (3) The appointment is either during an emergency to prevent stoppage of public business or because the retiree has specialized skills needed in performing the work;
- (4) The retiree is appointed to the vacant position no more than once;
- (5) The compensation received by the retiree is not more than the maximum, nor less than minimum, monthly base salary paid to other employees performing comparable duties as listed on MWDOC's publicly available pay schedule, reflected as an hourly rate by dividing the monthly base pay by 173.333;
- (6) The compensation paid to the retiree is limited to the hourly rate and no other benefits may be provided;

- (7) The total hours worked by the retiree in a fiscal year, for all CalPERS employers, cannot exceed 960 hours;
- (8) The retiree cannot have received unemployment insurance payments in the prior 12-month period arising from work performed as a retiree for any public employer; and
- (9) For any retirees with a retirement effective date on or after January 1, 2013, the appointment must occur at least 180 days following the date of retirement unless the employer certifies that the appointment is necessary to fill a critically needed position before 180 days have expired and the governing body approves the appointment in a public meeting.

With respect to the requirement at (1), your appointment to the position of interim Principal Engineer was approved by resolution of the Board of Directors on November 18, 2015.

In addition, MWDOC, in good faith, has determined that your appointment meets (2) – (7) of the foregoing requirements as follows:

- (2) Your appointment is to the vacant Principal Engineer position during MWDOC's recruitment for a permanent appointment;
- (3) This appointment is made because you possess the specialized skills, as identified in the second paragraph of this agreement, necessary for the purpose of the appointment.
- (4) The appointment as interim Principal Engineer is a one-time appointment and will not be renewed.
- (5) The compensation you will receive is no more than the maximum, nor less than minimum, monthly base salary paid to other employees performing comparable duties as listed on MWDOC's publicly available pay schedule divided by 173.333 to determine an hourly rate.
- (6) Your compensation consists of the hourly rate only; no further benefits will be provided.
- (7) Your hours will not exceed 960 hours in a fiscal year.
- (8) Your appointment as interim Principal Engineer will occur immediately after your retirement date and, as such, you have not received unemployment insurance payments within the past 12 months arising from work performed as a retiree for any public employer.
- (9) On November 18, 2015, the Board of Directors approved a resolution certifying that your appointment as interim Principal Engineer is necessary to fill a critically needed position before 180 days following the date of your retirement have expired.

By executing this agreement, you are also, in good faith, confirming that your appointment meets each of the foregoing requirements.

Notwithstanding (7) above, MWDOC has no way of monitoring the hours that you work for another CalPERS employer. As such, it is your responsibility to ensure that the total hours worked for MWDOC and any other CalPERS employer do not exceed 960 hours during the fiscal year.

There is no right to public employment expressed by this agreement. All temporary appointments are subject to the business necessity of MWDOC and are at-will; therefore, the appointment may end with or without cause or advance notice.

Richard, we welcome you to your interim appointment as Principal Engineer with MWDOC and extend our best wishes for your success in this position.

If you have additional questions or comments feel free to contact me directly.

Sincerely,

[Person Authorized to Sign]
[Title]

Acknowledgment:

I, Richard Bell, agree to this Retiree Employment Agreement, and hereby warrant that I understand and agree with all of the terms and conditions of employment as set forth in this agreement.

Signature

Date: _____