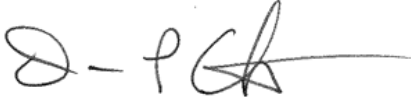


I hereby certify that the following agenda was posted at least 24 hours prior to the time of the meeting so noticed below at 24251 Los Alisos Boulevard, Lake Forest, California.



DENNIS P. CAFFERTY, Secretary  
of the El Toro Water District and  
the Board of Directors thereof



## **AGENDA**

### **EL TORO WATER DISTRICT**

#### **SPECIAL MEETING OF THE BOARD OF DIRECTORS**

**MAY 11, 2022**

**1:30 p.m.**

**President Kathryn Freshley will be attending remotely  
From: 5490 Paseo Del Lago, Unit N, Laguna Woods, CA 92637**

**Vice President Kay Havens will be attending remotely  
From: 5353 Algarrobo, Laguna Woods, CA 92637**

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Members of the public who wish to comment on any item within the jurisdiction of the District, or on any item on the agenda, may attend the meeting in person at the District's office or may observe and address the Meeting by joining at this link: <https://us02web.zoom.us/j/81938885673> (Meeting ID: 819 3888 5673).

Members of the public who wish only to listen to the telephonic meeting may dial in at the following numbers (669) 900-6833 or (346) 248-7799 with the same Meeting ID noted above. Please be advised the Meeting is being recorded.

**CALL TO ORDER – President Freshley**

**PLEDGE OF ALLEGIANCE – Director Vergara**

## ORAL COMMUNICATIONS/PUBLIC COMMENTS

Members of the public may address the Board at this time or they may reserve this opportunity with regard to an item on the agenda until said item is discussed by the Board. Comments on other items will be heard at the times set aside for "COMMENTS REGARDING NON-AGENDA ITEMS". The public may identify themselves when called on and limit their comments to three minutes.

## **ITEMS RECEIVED TOO LATE TO BE AGENDIZED**

Determine need and take action to agendize item(s) which arose subsequent to the posting of the Agenda. (ROLL CALL VOTE: Adoption of this recommendation requires a two-thirds vote of the Board members present, or, if less than two-thirds of the Board members are present, a unanimous vote of those members present.)

## ACTION ITEM

1. **Transmittal of Election Information Special District**  
(Reference Material Included)

The Board will review the Transmittal of Election Information form for Special Districts from the Registrar of Voters Office and discuss: (1) whether the El Toro Water District **will** or **will not** pay for Statements of Qualification by candidates for the November 8, 2022 General Election and (2) the number of words the District authorizes for said Statements (200 or 400). The form must be returned to the Registrar of Voters Office by May 20, 2022.

**Recommended Action:** The Board will consider (1) whether the El Toro Water District will or will not pay for Statements of Qualification by candidates for the November 8, 2022 General Election and (2) the number of words the District authorizes for said Statements (200 or 400).

## INFORMATION ITEMS

2. **SOCWA Update** (Reference Material Included)

Staff will provide an update on the on-going discussions amongst the SOCWA member agencies regarding the Joint Powers Authority Agreement and the proposed withdrawal from SOCWA by the City of San Juan Capistrano and Irvine Ranch Water District.

## **ATTORNEY REPORT**

### **CLOSED SESSION**

At this time the Board will go into Closed Session as follows:

1. At this time the Board will go into Closed Session pursuant to Government Code Section 54956.8 to consult with it's negotiator (General Manager) with respect to the terms and conditions pertaining to the potential acquisition of capacity interest in wastewater transmission pipes and facilities (appurtenant to real property) from the Irvine Ranch Water District, which property is located within the Service Area of the South Orange County Wastewater Authority.
2. Pursuant to Government Code Section 54956.9 (d) (2) to consult with legal counsel and staff – Anticipated Litigation.

### **REGULAR SESSION**

#### **REPORT ON CLOSED SESSION (Legal Counsel)**

Mr. Granito will provide an oral report on the Closed Session.

### **ADJOURNMENT**

*The agenda material for this meeting is available to the public at the District's Administrative Office, which is located at 24251 Los Alisos Blvd., Lake Forest, Ca. 92630. If any additional material related to an open session agenda item is distributed to all or a majority of the board of directors after this agenda is posted, such material will be made available for immediate public inspection at the same location.*

#### **Request for Disability-Related Modifications or Accommodations**

*If you require any disability-related accommodation, including auxiliary aids or services, in order to participate in this public meeting, please telephone the District's Recording Secretary, Polly Welsch at (949) 837-7050, extension 225 at least forty-eight (48) hours prior to said meeting. If you prefer, your request may be submitted in writing to El Toro Water District, P.O. Box 4000, Laguna Hills, California 92654, Attention: Polly Welsch.*



## STAFF REPORT

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**To: Board of Directors**

**Meeting Date: May 11, 2022**

**From: Dennis Cafferty, General Manager**

**Subject: Transmittal of Election Information – Special District**

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Prior to each general election cycle in which the District has elective offices for which an election will be held the District is required to provide certain information to the Registrar of Voters. The Transmittal of Election Information Form, due to the Registrar of Voters' Office by May 20, 2022, requests the following information:

- The names of Directors whose terms expire and whose seats will be scheduled for election on November 8, 2022
- Whether or not the District will pay for a Candidate's Statement of Qualifications
- Whether the District is authorizing either 200 or 400 words to be used in the Candidate's Statement of Qualifications

In the 2020 election the District chose to authorize 200 words for the Candidate's Statement of Qualifications and declined to pay for the Statements.

The Transmittal of Election Information Form is attached for reference.

**Recommended Action:** The Board will consider (1) whether the El Toro Water District will or will not pay for Statements of Qualification by candidates for the November 8, 2022 General Election and (2) the number of words the District authorizes for said Statements (200 or 400).



**REGISTRAR OF VOTERS**  
1300 South Grand Avenue, Bldg. C  
Santa Ana, California 92705  
(714) 567-7600  
FAX (714) 567-7627  
ocvote.gov

**BOB PAGE**  
Registrar of Voters

Mailing Address:  
P.O. Box 11298  
Santa Ana, California 92711

April 28, 2022

**TO: General Manager/Director**

**FM: Marcia Nielsen, Candidate & Voter Services Manager**

**RE: Election Information for the November 8, 2022 General Election**

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Enclosed is a Transmittal of Election Information form to be completed and returned to the Registrar of Voters' office by **May 20, 2022**.

On the Transmittal of Election Information form, please **list the name(s) of Director(s)** whose term(s) expire and whose seat(s) will be scheduled for election on November 8, 2022. This would include any Director(s) appointed since your last election. Appointed Directors must file for the two-year unexpired term if they were appointed to fill a vacancy which would not have been scheduled for election until 2024.

We also need to know if your District **will** or **will not** pay for a Candidate's Statement of Qualifications and if the **District is authorizing 200 or 400 words** to be used in that statement.

Please send the completed Transmittal of Election Information form to me at Registrar of Voters, 1300 South Grand Avenue, Building C, Santa Ana, CA 92705 or email to **Marcia.Nielsen@ocvote.gov**.

Pursuant to Elections Code § 10522, the District is required to submit a map showing the current district boundary lines, with divisions (if any), regardless if changes have occurred by May 20, 2022. We would prefer to receive the map in **shape file format** by email to Matthew Eimers at **Matthew.Eimers@ocvote.gov**.

Candidate Filing for the November 8, 2022 General Election will be July 18, 2022 through August 12, 2022, 5:00 p.m. The Candidate's Handbook will be on our website before the filing period begins. We ask that you post this information to advise your members of these important dates.

If you have any questions, please contact me at **Marcia.Nielsen@ocvote.gov** or (714) 567-7568. Thanks for your assistance.

Enclosure



**TRANSMITTAL OF ELECTION INFORMATION SPECIAL DISTRICT**  
**(EC §10509, §10522)**

\_\_\_\_\_ DISTRICT  
**DISTRICT BOUNDARIES:**

Choose One:

☐ I will send the Registrar of Voters an electronic shape file of District boundaries and the boundaries of the Divisions of the District, if any, in which a Director is to be elected at the November 8, 2022 General Election.

**(Note: This is the Registrar of Voters' preferred method of transmittal.)**

☐ Attached is a map showing the boundaries of this District and the boundaries of the Divisions of the District, if any, in which a Director is to be elected at the November 8, 2022 General Election.

Choose One:

Voters in the District will be voting: ☐ At-large ☐ By Division

**THE ELECTIVE OFFICES FOR WHICH AN ELECTION WILL BE HELD WITHIN THE SPECIAL DISTRICT ON NOVEMBER 8, 2022 ARE:**

Choose One:

\_\_\_\_\_ Director(s) to be elected at-large  
(# of directors)

**OR**

Director(s) to be elected in the following Divisions:

\_\_\_\_\_ in Division \_\_\_\_\_  
(# of directors) (# of division)

\_\_\_\_\_ in Division \_\_\_\_\_  
(# of directors) (# of division)

\_\_\_\_\_ in Division \_\_\_\_\_  
(# of directors) (# of division)

\_\_\_\_\_ in Division \_\_\_\_\_  
(# of directors) (# of division)

Please list below the names of the Incumbents/Appointed Incumbents for the above-mentioned positions:

(Name) \_\_\_\_\_ ☐ Elected ☐ Appointed (If appointed, the term ends in 20\_\_.)

(Name) \_\_\_\_\_ ☐ Elected ☐ Appointed (If appointed, the term ends in 20\_\_.)

(Name) \_\_\_\_\_ ☐ Elected ☐ Appointed (If appointed, the term ends in 20\_\_.)

(Name) \_\_\_\_\_ ☐ Elected ☐ Appointed (If appointed, the term ends in 20\_\_.)

The District authorizes the Candidate's Statement of Qualifications to contain no more than:

**(Circle one)** (200) or (400) words.

The District (will) or (will not) pay for a Candidate's Statement of Qualifications.

Dated \_\_\_\_\_

\_\_\_\_\_  
(Signature)

(District Seal)

\_\_\_\_\_  
(Print Name)

Phone #: \_\_\_\_\_ Email: \_\_\_\_\_

**NOTE:** Please return the above information no later than **May 20, 2022** to the Registrar of Voters' office, 1300 South Grand Avenue, Building C, Santa Ana, CA 92705, Attn: Marcia Nielsen or email to **Marcia.Nielsen@ocvote.gov**. Send the boundary map to Matthew Eimers at 1300 South Grand Avenue, Building C, Santa Ana, CA 92705 or at **Matthew.Eimers@ocvote.gov**.



## **STAFF REPORT**

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**To: Board of Directors**

**Meeting Date: May 11, 2022**

**From: Dennis Cafferty, General Manager**

**Subject: SOCWA Update**

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There are several on-going discussions regarding the South Orange County Wastewater Authority (SOCWA) Joint Powers Authority Agreement, SOCWA membership and the future of the agency as a JPA.

Staff will provide an update and lead a discussion on the following issues:

- Withdrawal of the City of San Juan Capistrano from SOCWA
  - Attachments
    - Joint letter from the City and SMWD, dated March 18, 2022
    - SMWD letter dated April 20, 2022
- Potential alternative service delivery model
  - Attachment.
    - "Review of Wastewater Operations" presentation slides
- Irvine Ranch Water District proposed withdrawal and contractual relationship with ETWD



***Via FedEx and Email***

March 18, 2022

Ms. Kathryn Freshley, Board President  
Ms. Kay Havens, Board Vice President  
Mr. Dennis Cafferty, General Manager  
El Toro Water District  
24251 Los Alisos Boulevard  
Lake Forest, CA 92630

**Subject: Withdrawal of the City of San Juan Capistrano (“CSJC”) from South Orange County Wastewater Authority (“SOCWA”)**

Dear Managers:

As you are aware, effective November 15, 2021, per order of Orange County Local Agency Formation Commission (“LAFCO”) pursuant to LAFCO Resolution DA 20-21 and pursuant to its authority under Government Code Section 56886 CSJC transferred all assets, obligations, and liabilities of the wastewater utility in, PC No. 2 and No. 5 of SOCWA to the Santa Margarita Water District (“SMWD”). By operation of law SMWD assumed all rights, title, interest, duties, and obligations of CSJC in SOCWA and particularly in PC No. 2 and No. 5.

Per the attached letter (“Notice Letter”) and consistent with section 12.3 of the SOCWA JPA Agreement, notice of SMWD’s annexation of CSJC’s wastewater utility, effective November 15, 2021, was provided to SOCWA. Accordingly, CSJC’s withdrawal as a member of SOCWA shall be effective on June 30, 2022 (the “Withdrawal Date”), the last day of the 2021-22 Fiscal Year.

A copy of the Assignment and Assumption Agreement (“Assignment Agreement”) between CSJC and SMWD, dated September 27, 2021, is attached for reference. Section 5 of the Assignment Agreement addresses SOCWA Membership and Governance matters prior to the Withdrawal Date.



CSJC Withdrawal from SOCWA  
March 18, 2022

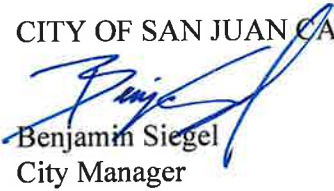
Sincerely,

SANTA MARGARITA WATER DISTRICT



Daniel R. Feron  
General Manager

CITY OF SAN JUAN CAPISTRANO



Benjamin Siegel  
City Manager

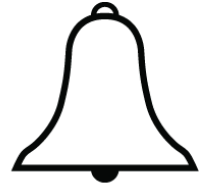
CC: Ms. Betty Burnett, SOCWA General Manager  
Ms. Adrianna Ochoa, SOCWA General Counsel

Attachments: Notice Letter ("Assignment of City of San Juan Capistrano Capacity in SOCWA  
Project Committees")  
Assignment Agreement

**BOARD OF DIRECTORS**

CHARLES T. GIBSON  
SAUNDRA F. JACOBS  
JUSTIN McCUSKER  
BETTY H. OLSON, PH.D  
FRANK URY

DANIEL R. FERONS  
GENERAL MANAGER



**Santa Margarita Water District**

Ms. Betty Burnett  
General Manager  
South Orange County Wastewater Authority  
34156 Del Obispo Street  
Dana Point, CA

Subject: Assignment of City of San Juan Capistrano Capacity in SOCWA Project Committees

Dear Ms. Burnett:

Attached is an executed agreement between the City of San Juan Capistrano (City) and the District assigning all the City's rights, title, interest, duties and obligations under the Project Committee Agreements to the District as the effective date of the Annexation of the City's utilities to the District. The effective date is currently anticipated to be November 15, 2021. The City will initiate withdrawal from SOCWA after the effective date per the Joint Exercise of Powers Agreement.

The District is requesting SOCWA to call appropriate Project Committee meetings to meet any requirements of SOCWA to effect the required changes including but not limited to capacity allocations, cost allocations and ongoing projects.

Please let me know if you have any comments or questions.

Very Truly Yours,  
SANTA MARGARITA WATER DISTRICT

A handwritten signature in blue ink, which appears to read "Daniel R. Ferons".

Daniel R. Ferons  
General Manager

CC  
Adriana Ochoa, General Counsel  
Chairman Collings

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This **Assignment and Assumption Agreement**, dated as of September 27, 2021 (this "**Agreement**"), is entered into by and between **SANTA MARGARITA WATER DISTRICT**, a California Water District duly organized and existing under Division 13 of the Water Code of the State of California (the "**Assignee**" or "**SMWD**"), and the **CITY OF SAN JUAN CAPISTRANO**, a municipality duly organized and existing under and by virtue of the laws of the State of California (the "**Assignor**" or "**City**"). Assignor and Assignee are, together, referred to in this Agreement as the "**Parties**" and, individually, as a "**Party**."

### RECITALS

- A. The Parties entered into an Annexation Agreement dated as of January 21, 2020 (the "**Annexation Agreement**") wherein City agreed to transfer its potable water system and recycled water system and its wastewater system (collectively the "**Utilities System**") to SMWD in accordance with the terms of the Annexation Agreement and after approval of and consistent with any terms and conditions established by the Orange County Local Agency Formation Commission ("**LAFCO**").
- B. City and SMWD are member agencies of the South Orange County Wastewater Authority, a California joint powers authority ("**SOCWA**").
- C. SOCWA was formed pursuant to a Joint Exercise of Powers Agreement entered into as of July 1, 2001, which brought together former joint powers agencies known as South East Regional Reclamation Authority ("**SERRA**") formed March 9, 1970, Aliso Water Management Agency ("**AWMA**") formed March 1, 1972, and South Orange County Reclamation Authority ("**SOCRA**") formed November 29, 1994. The formation of SOCWA terminated the existence of SERRA, AWMA, and SOCRA and the July 1, 2001 Joint Exercise of Powers Agreement provided that certain underlying agreements for the construction and operation of facilities ("**Project Committee Agreements**") continued as to terms, conditions, and obligations of the parties for facilities of SERRA, AWMA and SOCRA that transferred to SOCWA under its July 1, 2001 Joint Exercise of Powers Agreement ("**SOCWA JPA Agreement**").
- D. SOCWA consolidated interests in Project Committee Agreements into one legal entity with ownership of various wastewater treatment and reclamation facilities and responsibility for operations, maintenance, administration and capital improvements for such facilities. Each participating member agency or party in SOCWA was recognized as holding allocated shares of capacity, with attendant rights and obligations under the Project Committee Agreements.
- E. As a member agency of SOCWA, the City is a participant in certain agreements more particularly described in Exhibit "A" to this Agreement (the "**Project Agreements**") which establish capacity rights and obligations for specific wastewater facilities, interests in certain operational permits, and other rights and obligations related to specific projects.
- F. SMWD is also a participant in all of the City Project Agreements, and the City desires to assign all of its rights, title, interests, duties responsibilities and obligation in the Project

Agreements to SMWD and SMWD desires to accept such assignment to effectuate the annexation of the City's Utilities System to SMWD, with such assignment and acceptance to be effective as of the Annexation Effective Date (as defined in the Annexation Agreement).

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS CONTAINED HEREIN, AND OTHER VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:**

**AGREEMENT**

**1. Recitals.**

The recitals above are hereby incorporated in and made a part of this Agreement.

**2. Assignment and Acceptance.**

As of the Annexation Effective Date, the Assignor, does unconditionally assign and transfer to the Assignee without recourse, all of its rights, title, interest, duties and obligations under the Project Agreements and all rights, title, interests, duties and obligations held by Assignor arising from participation in any SOCWA project committees (including but not limited to such rights, title and interests relating to any personal or real property) and the Assignee unconditionally accepts all of the Assignor's rights, title, interest, duties and obligations under the Project Agreements and all rights, title interests, duties and obligations held by Assignor arising from participation in any SOCWA project committees (including but not limited to such rights title and interests relating to any personal or real property).

**3. Representations and Warranties.**

The Parties represent and warrant that the execution, delivery and performance of this Agreement have been duly authorized by their respective governing boards by all necessary action.

The Parties represent and warrant that, as of the date of this Agreement, there is no claim, action or proceeding pending and notice of which has been received by such party, or to the knowledge of such party, threatened against such party before any court, arbitrator or governmental agency or regulatory or administrative agency or commission challenging the validity, enforceability or legality of this Agreement.

**4. Assumption of Post-Transfer Liabilities.**

From and after the Annexation Effective Date, Assignee shall be responsible for all obligations, claims, demands, actions, causes of action, liabilities, losses, costs, damages and expenses (of any nature whatsoever, in law or equity, known or unknown, foreseen or unforeseen, contingent or non-contingent), in any way related to or in any way arising out of or in connection with the Project Agreements, unless such obligations, claims, demands, actions, causes of action, liabilities, losses, costs, and damages or expenses both: (i) arose prior to the Annexation Effective Date, and (ii) are covered under Assignor's risk pool insurance (hereinafter "SOCWA Projects Post-Transfer Liabilities"). Assignee further agrees that from and after the Annexation Effective Date, Assignee

shall pay Assignor's applicable share of costs and expenses associated with Assignor's membership in SOCWA that are not attributable to a particular Project Agreement (including, without limitation, costs and expenses arising from the Assignor's withdrawal of its membership and any costs relating to pension and any other post-retirement benefits), whether such costs or expenses were incurred before, on or after the Annexation Effective Date ("SOCWA Membership Costs").

The intent of the foregoing is for Assignee to assume responsibility for all SOCWA Projects Post-Transfer Liabilities and not expand any liability of Assignee that would not have been the Assignor's liability during its participation in the Project Agreements.

#### **5. SOCWA Membership and Governance.**

Nothing in this Agreement is intended to affect the governance of SOCWA, except upon the Annexation Effective Date the City will cease being a Participating Member Agency, as such term is defined in the SOCWA JPA Agreement, with respect to all SOCWA Projects and related project committees and project agreements. The City shall remain a member of SOCWA until such time as withdrawal of the City occurs in accordance with the SOCWA JPA Agreement or any amendment thereto. The City, while it remains a member of SOCWA, will continue to appoint a director in accordance with the SOCWA JPA Agreement. Pursuant to Section 4 of this Agreement, after the Annexation Effective Date SMWD shall be responsible for all City SOCWA Membership Costs and SOCWA Projects Post-Transfer Liabilities.

#### **6. Indemnification.**

From and after the Annexation Effective Date, Assignee shall defend, with counsel approved by Assignor, indemnify and hold harmless the Assignor from and against (i) all SOCWA Projects Post-Transfer Liabilities; and (ii) all SOCWA Membership Costs. In addition, from and after the dated date of this Agreement, Assignee shall defend, with counsel approved by Assignor, indemnify and hold harmless the Assignor from and against any action or proceeding to attack, review, set aside, enjoin, void or annul this Agreement. Assignee shall also defend, with counsel approved by Assignor, indemnify and hold harmless Assignor's officials, employees and agents for any matter within the scope of the indemnification under this Section 5, to the same extent, and subject to the same limitations, that apply to the Assignor's obligations to defend, indemnify and hold harmless such Assignor officials, employees and agents under California law or applicable Assignor contract with those officials, employees or agents. Assignee shall not seek reimbursement or contribution from the Assignor for any cost, expenses or damages for, or related to, matters within the scope of the indemnification under this Section 5. The protections in favor of Assignor set forth in this Section 5 and in Section 4: (i) shall not be construed in any way to limit the protections in favor of Assignor under the provisions of the Annexation Agreement, and (ii) shall be in addition to the provisions of the Annexation Agreement.

#### **7. Governing Law and Venue.**

The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the laws of the State of California. Venue for any action brought to enforce or interpret this

Agreement shall be brought in the appropriate federal or state court in or nearest to the South Orange County Judicial District, County of Orange.

**8. Cooperation.**

The Parties agree to execute such other and further documents, assignments and instruments and to take such other actions as are or may become necessary or convenient to carry out this Agreement.

**9. Authority.**

Each of the individuals executing this Agreement verifies that each of them has the authority to enter into this Agreement, that the necessary resolutions or approvals of the governing bodies of the City or SMWD, as applicable, have been passed or obtained, and that this Agreement shall be binding on the party for whom each of them is signing.

**10. Partial Invalidity.**

If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of any Party shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof. The Parties hereby declare that they would have executed this Agreement, and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

**11. Counterparts.**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the day and year first written above.

**SANTA MARGARITA WATER DISTRICT,**  
a California Water District

By: \_\_\_\_\_



Its: General Manager

Date: August 23, 2021



ATTEST:

Kelly Kadvansky  
Santa Margarita Water District Secretary

APPROVED AS TO FORM:

Sloan Sakai Yeung & Wong LLP

Sloan Sakai Yeung & Wong LLP,  
Santa Margarita Water District Special Counsel

**CITY OF SAN JUAN CAPISTRANO,**  
a municipality

By: [Signature]

Its: City Manager

Date: 7-27-21

ATTEST:

[Signature]  
City of San Juan Capistrano City Clerk

APPROVED AS TO FORM:

Kevin L. Davis

Richards, Watson & Gershon, A Professional Corporation,  
City of San Juan Capistrano Special Counsel

## EXHIBIT "A"

### PROJECT AGREEMENTS

1. That certain Agreement for Acquisition, Use, Operation, Maintenance and Expansion of Sewage Treatment Plant of City San Juan Capistrano By South East Regional Reclamation Authority for and on Behalf of Project Committee No. 2, dated June 28, 1973, ("PC 2 Agreement"), as amended by that certain Amendment No. 1, dated May 18, 1998, as further amended by that certain Amendment No. 2 dated June 29, 2000, and as supplemented by Addendum 1 to Amendment No. 2 dated October 5, 2006, Addendum 2 to Amendment No. 2 dated May 3, 2007, and Addendum 3 to Amendment No. 2 dated August, 2008.
2. That certain Agreement for Acquisition of Capacity, Construction, Use, Operation, and Maintenance of Outfall Facilities for South East Regional Reclamation Authority for and on Behalf of Project Committee No. 5 dated August 18, 1977, as supplemented by that certain Addendum dated November 10, 1977, and as amended by that certain Amendment No. 1 dated March 10, 1988, as further amended by that certain Amendment No. 2 dated March 14, 1991, as further amended by that certain Amendment No. 3 dated February 7, 2002, as further amended by that certain Amendment No. 4 dated October 5, 2006.
3. That certain Memorandum of Understanding between the South East Regional Reclamation Authority Acting on behalf of Project Committee No. 5 and all Member Agencies relative to the compliance of Capistrano Beach Sanitary District with the Discharge Requirements contained in Amendment No. 1 to Agreement for Acquisition of Capacity, Construction Use, Operation and Maintenance of Outfall Facilities for South East Regional Reclamation Authority dated March 10, 1988, as amended June 13, 1991.
4. That certain Agreement for Application for Waiver of Ocean Discharge Requirements for the South East Regional Reclamation Authority and on Behalf of Project Committee No. 17, dated September 7, 1982.
5. That certain Agreement for Application for Waiver of Ocean Discharge Requirements for the South East Regional Reclamation Authority and on Behalf of Project Committee No. 17, dated October 13, 1983, as amended by that certain Amendment No. 1 dated August 8, 1985, as further amended by that certain Amendment No. 2 dated October 10, 1985.
6. That certain Agreement for Funding of Management of the South East Regional Reclamation Authority Project Committee No. 15, dated November 10, 1982.
7. That certain Agreement for Design, Construction, Use, Operation and Maintenance of Solids Handling and Cogeneration Facilities at the J.B. Latham Regional Wastewater Treatment Plant for and on Behalf of South East Regional Reclamation Authority for and on Behalf of Project Committee No. 16 dated November 10, 1982.



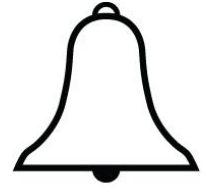
8. That certain Agreement for the Preparation of a Master Plan for the South East Regional Reclamation Authority for and on Behalf of Project Committee No. 12 dated April 14, 1983.
9. That certain Agreement Between South East Regional Reclamation Authority on Behalf of Project Committee No. 19 and Participating Member Agencies of Project Committee No. 19 Relative to Expansion of J.B. Latham Regional Treatment Plant dated November 9, 1983.
10. That certain Agreement regarding Project Committee Nos. 2, 7 and 7-A of the South East Regional Reclamation Authority Relative to Verification of Liquid Treatment and Solids Handling Capacity at the Jay B. Latham Regional Wastewater Treatment Plant dated November 8, 1984, as further amended by that certain Amendment No. 1 dated May 18, 1998, as further amended by that certain Amendment No. 2 dated June 29, 2000, as further supplemented by Addendum 3 to Amendment No. 2 dated August 7, 2008.

**Without limiting the foregoing, "Project Agreements" shall include all agreements, including supplements and amendments thereto, for SOCWA projects for which the City is a participant.**

## BOARD OF DIRECTORS

CHARLES T. GIBSON  
SAUNDRA F. JACOBS  
JUSTIN McCUSKER  
BETTY H. OLSON, PH.D  
FRANK URY

DANIEL R. FERONS  
GENERAL MANAGER



## Santa Margarita Water District

**DATE:** April 20, 2022

**TO:** SOCWA Board of Directors,  
Betty Burnett, SOCWA General Manager  
Member Agencies

**FROM:** Dan Ferons, SMWD General Manager

**SUBJECT: Consideration for Board Action Concerning City of San Juan Notice of Withdraw**

Following substantive discussion at the April 7, 2022, South Orange County Wastewater Authority (SOCWA) Board meeting regarding the City of San Juan Capistrano's (CSJC) withdrawal from SOCWA as a result of Santa Margarita Water District's (SMWD) annexation of CSJC's wastewater utilities, SMWD and CSJC respectfully request the SOCWA Board of Directors call the following question for vote and action at the May 12, 2022, SOCWA Board of Directors meeting:

Did Santa Margarita Water District (SMWD) and the City of San Juan Capistrano (CSJC) provide member agencies with sufficient notice of CSJC's withdrawal to substantially comply with 120-day notice of withdrawal provision of the Section 12.3 of the SOCWA JPA Agreement?

### **Background**

The annexation of CSJC's water and wastewater utilities was completed on November 15, 2021, and all assets, including capacity rights and obligations of CSJC at SOCWA were transferred to SMWD in accordance with applicable law, specifically Government Code Section 56886. Accordingly, all CSJC's rights, title, interests and obligations in SOCWA transferred to SMWD by operation of law. Consequently, CSJC remains a member of SOCWA and a party to the JPA Agreement in name only.

Prior to the completion of the annexation, both SMWD and CSJC had substantive discussions at SOCWA Board Meetings dating back to September 3, 2020. The SOCWA Board and thereby the respective member agencies were informed of the annexation and CSJC's intent to subsequently withdraw from SOCWA following completion of the annexation process with Orange County LAFCO. Further, written correspondence with SOCWA's Executive Director and General Counsel and individual member agencies stated the same. The table below summarizes all communications concerning SMWD's annexation of CSJC and CSJC's withdrawal from SOCWA thereafter.

Additionally, the LAFCO annexation process has been open and transparent. In accordance with state law, LAFCO published notice of the annexation in the Orange County Register, Capistrano Valley News, and Orange County Patch, and held public hearings on the annexation at publicly noticed meetings. (See table below for hearing dates). Furthermore, following completion of the public hearing process LAFCO publicly recorded a Certificate of Completion with the Orange County Clerk-Recorder's office.

### **Implications of Withdrawal**

Acceptance of CSJC's notice of withdrawal will result in CSJC no longer being a member of SOCWA as of June 30, 2022, no further action is required by the member agencies. SOCWA would become a nine-member agency with all outstanding obligations of CSJC being borne by SMWD as CSJC's successor in interest by operation of law.

Currently, by SOCWA practice, General Fund expenses are allocated through a formula based on participation in the various Project Committees. The Board, as part of the annual budget, may consider options that include eliminating CSJC from the formula and spreading costs amongst the remaining nine member agencies or for the upcoming fiscal year, SMWD indicated it would accept the CSJC allocated General Fund costs while the member agencies are continuing the governance discussions. The options and costs will be included as alternate tables in the draft budget.

### **Requested Action**

**SMWD and CSJC request the Board unanimously accept CSJC's notice of withdrawal.** The tables below provide support for finding substantial compliance with Section 12.3 of the JPA Agreement. SOCWA member agencies were fully informed and apprised of the annexation and CSJC's intent to withdraw from SOCWA immediately thereafter. Regular communication with member agencies occurred at SOCWA Board of Director meetings and in Board meeting reports. Additionally, notice of CSJC's withdrawal was provided to SOCWA on October 7, 2021, and individually to all member agencies on March 18, 2022.<sup>1</sup>

#### **SOCWA Board Meetings**

<b>Date of Board Meeting</b>	<b>Reference</b>	<b>Board Agenda Page Number(s)</b>
September 3, 2020	SOCWA Task-Force Report, "Withdrawing from the Joint Powers Agreement (JPA) and assigning capacity ownership obligations to another member agency, i.e. SMWD's proposed annexation of the City of San Juan Capistrano (CSJC)."	151

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<sup>1</sup> Pursuant to Section 12.3 of the JPA Agreement notice was to be provided 120 days prior to the end of the fiscal year, March 2, 2018. Notice as prescribed by the JPA Agreement was provided 104 days prior to the end of the fiscal year and prior to the development and approval of SOCWA's FY22-23 budget.

Consideration for Action on CSJC Notice of Withdrawal from SOCWA

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Date of Board Meeting	Reference	Board Agenda Page Number(s)
March 4, 2021	SMWD Wastewater Master Plan Presentation	18
April 1, 2021	Minutes from March 4, 2021 Meeting: "Director Dan Ferons, General Manager for Santa Margarita Water District gave an updated report on the Annexation of the City of San Juan Capistrano Utilities noting there is a two-step process for Santa Margarita [Water] District annexing the San Juan Capistrano Utilities service are. Director Ferons stated the first step was to assume responsibility of operation costs, administrative costs, capital, and the unfunded liabilities. Step two involved beginning the withdrawal process from SOCWA for the City. . . An open discussion ensued."	6
May 6, 2021	Monthly Pretreatment Report	97, 98
June 3, 2021	Discussion in Minutes from May 10, 2021 Executive Committee Special Meeting; Monthly Pretreatment Report	12; 52
August 5, 2021	Monthly Pretreatment Reports	98; 149
September 2, 2021	Monthly Pretreatment Report	103
November 4, 2021	Monthly Pretreatment Report	116
October 7, 2021	Monthly Pretreatment Report; Evaluation of Wastewater Treatment Operations Services Report	8; 72
December 9, 2021	Monthly Pretreatment Report: "SMWD finalized its annexation of CSJC on November 15, 2021."	120
February 3, 2022	Monthly Pretreatment Report: "SMWD finalized its annexation of CSJC on November 15, 2021. SOCWA staff issued a new permit <u>for discharges from the site</u> reflecting SMWD as the new permittee on December 29, 2021."	160
March 11, 2022	Discussion at all hands meeting	

**SOCWA Communications**

<b>Date</b>	<b>Communication</b>
March 1, 2021	Letter from SOCWA General Manager to LAFCO Executive Officer regarding SMWD's Annexation Application and acknowledging the proposal contemplates CSJC's withdrawal from SOCWA after SMWD assumes the City's wastewater operations.
October 7, 2021	Letter to General Manager and Counsel providing notice of approval of the Annexation by LAFCO and CSJC's withdrawal after the annexation effective date.
March 18, 2022	Letter to all Member Agencies notifying agencies of withdrawal of CSJC.

**Orange County LAFCO Public Hearings, Notices and Communications**

<b>Board Meeting</b>	<b>Action</b>
August 19, 2021	Public Hearing approving SMWD Annexation of CSJC Water and Wastewater Utilities (DA 20-01)
September 23, 2021	Public Protest Period Begins <sup>2</sup>
October 28, 2021	Public Protest Hearing Conducted <sup>3</sup>
November 10, 2021	Update on Protest Hearing Provided to LAFCO Board
November 10, 2021	Certificate of Completion Recorded with Orange County Clerk-Recorder (2021000692847)

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<sup>2</sup> Notice of protest period provided in Orange County Register, Capistrano Valley News, and Orange County Patch, in accordance with State law.

<sup>3</sup> No written protests to LAFCO were filed.

# *Review of Wastewater Operations*

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# Change is INEVITABLE

- Agencies are proposing to exit the JPA
  - Project Committee agreements are expiring
  - Grant opportunities (which warranted the original JPA) have evolved
  - Diversity and complexity of agencies' water reuse objectives
  - Need a holistic approach
  - Consideration of Transitioning Operations will include robust discussions on:
    - Potential advantages
    - Potential disadvantages
- OVERALL: Different world than when SOCWA JPA was formed

# Agencies' Goals

- MNWD
  - Reuse opportunities (e.g. DPR) at the Regional Treatment Plant
  - Reduce costs to member agencies and stabilize financial impacts to ratepayers
  - Utilize available resources to support operations and maintenance, including managing complex capital projects
- SMWD
  - Maximize recycled water opportunities, if any, at J.B. Latham Plant
  - Maintain centralized permitting, regulatory, and laboratory services
  - Maximize member agencies' resources including financial and operational



## Agencies' Goals (cont.)

- SCWD
  - Assess opportunities to enhance overall long-term operational and capital management of treatment, conveyance, and outfall facilities
  - Maximize recycled water opportunities at JB Latham and Coastal TP
  - Seek full understanding of current agency performance and metrics for comprehensive assessment and consideration of transitioning options
- CLB? CSC? CSJC?
- EBSD? ETWD? IRWD? TCWD?

# *Conceptual Operational Framework*

## JPA Agreement

Water  
Reclamation  
Permitting

Pretreatment  
Program

Laboratory  
Services

Regulatory  
Compliance

## Project Agreements

Treatment  
Plants

Ocean Outfalls

Effluent  
Transmission  
Mains

Other SOCWA-  
owned facilities  
(e.g. SC Land  
Outfall, etc.)

## Conceptual Framework (cont.)

- Governance by updated Project Agreements (similar to Baker WTP or JRWSS)
- Transition operation and ownership of assets to operating agencies
- Liability of assets reside within the Project Agreement (not the JPA)
  - Workers Comp responsibility of operating agency
- SOCWA remains as Service-based agency governed by updated JPA
  - Permitting and Regulatory support
  - Pre-treatment and Lab Services – Contract basis
- UAL/OPEB
  - SOCWA portion
  - Operating agency portion

# What are the reasons to do this?

- Reduced costs to member agencies
- Simplified governance and oversight
  - Impacted agencies manage impacted assets
  - Quarterly meetings (or as needed) to support permitting and regulatory needs
- Reduced liabilities for member agencies
- Increased “Bench” of resources for Operations and Maintenance staff
- Simplified financial management
  - Bill to actuals vs. Budget – no use audit or large quantity of cash on hand
  - Operating agencies maintain financial reserves

# Financial Impact

Identified cost drivers:

- Administration and General Fund Budget decreases by \$1.0 million
  - Fringe Rate decrease
  - Reduction of duplicate costs (e.g. licenses, dues and memberships)
- 61 of the 64 positions remain
  - 3 executive level positions duplicative

Operations and Maintenance (Includes GF & Admin)					
	SOCWA FY 21-22 Budget	Draft Proposal (FY 21-22)	Difference	Percent	
CoLB	\$ 2,187,387	\$ 1,987,000	\$ 200,387	9.2%	
CoSC	225,296	200,000	25,296	11.2%	
ETWD	914,848	834,000	80,848	8.8%	
EBS	175,894	141,000	34,894	19.8%	
IRWD	220,944	190,000	30,944	14.0%	
MNWD	8,767,486	8,092,000	675,486	7.7%	
SCWD	3,911,751	3,562,000	349,751	8.9%	
TCWD	23,773	17,000	6,773	28.5%	
SMWD*	2,809,887	2,574,000	235,887	8.4%	
CoSJC*	1,875,393	1,707,000	168,393	9.0%	
	\$ 21,112,658	\$ 19,304,000	\$ 1,808,658	8.6%	
SMWD/CoSJC*	\$ 4,685,280	\$ 4,281,000	\$ 404,280	8.6%	

Collective annual savings of \$1.8M minimum.....

# Potential Concerns

- *What happens to the existing SOCWA employees?*
  - 61 of the 64 (95%) existing staff would remain or be transitioned to operating agencies
  - Existing SOCWA staff are vital to the transition and success
  - Opportunity to explore avenues available within a full-service organization
- *No Regional Platform for collaboration*
  - SOCWA remains as a permitting/regulatory agency
  - Regional purchasing contracts will still be implemented
- *Individual agencies assume liability for operations*
  - Mitigated/clarified with project agreement language

## Potential Concerns (cont.)

- *Are savings guaranteed?*
  - Projections are conservative
  - Project agreements can stipulate guaranteed initial savings and expected future savings
- *Efficiencies of staff that splits time amongst multiple facilities*
  - Additional efficiencies to be gained
  - Refined at future stage when operating agencies are confirmed
- *Individual agency goals regarding SOCWA's UAL/OPEB*
  - Understand goals then work on mechanism to address

# What are the next steps?

- Solicit input/feedback from the SOCWA member agencies
  - Seeking input on the governance, policy, and administrative aspects of proposed structure
  - Propose to use third party to facilitate discussions with individual member agencies
    - Less than \$50K effort reporting to Board Ad-Hoc (bring on by April)
  - Ensure positive outcomes for all agencies
- Consolidate responses and bring back to a future all-hands meeting (May/June)
- Identify gaps or areas of concern to be addressed
- Consider next steps to moving these changing conditions forward
- No action is not an option
  - Holistic action necessary as opposed to a PC-by-PC approach over the next decade