



Memorandum

To: Interested Parties and Stakeholders

From: Michael P. Dunbar, Chair PC 15 Committee South Orange County Wastewater Authority

RE: **Background Information Regarding South Orange County Wastewater Issues**

The following briefing memorandum outlines an ongoing issue facing South Orange County wastewater, its impacts to the local community and steps the South Orange County Wastewater Authority (SOCWA) is taking to ensure the maximum protection for our local environment, taxpayers and economy. Accompanying this memorandum are several documents, which are described below.

Background

The Coastal Treatment Plant (Plant) was built in the late 1970s and early 1980s to treat wastewater and is funded through agreements specifying financial responsibility between the Moulton Niguel Water District (MNWD), City of Laguna Beach, Emerald Bay Services District and South Coast Water District. For nearly one year, MNWD has refused to pay its contractual obligations that help ensure South Orange County's wastewater is safely treated. This past-due amount now totals \$755,871.

If MNWD's delinquency continues, residents and businesses from the communities of Laguna Beach, Dana Point, South Laguna and some areas of San Clemente and San Juan Capistrano could see financial impacts by having to assume MNWD's contractually obligated share of costs. Importantly, MNWD's failure to pay is also delaying projects that are vital to protecting Aliso and Woods Canyon and Aliso Beach, one of California's most visited beaches.

MNWD's Delinquency Has Caused Urgency

The issue stems from a request by MNWD to prematurely end a contract it voluntarily requested and then entered into in 1999 to partially own and operate the Coastal Treatment Plant – a wastewater plant that treats upwards of 6.5 million gallons of raw sewage per day. The facility also produces about 1.1 million gallons of recycled water each day.

While the other owners of the facility, including the City of Laguna Beach, South Coast Water District and Emerald Bay Service District, are willing to negotiate MNWD's premature exit, each has simply requested that MNWD come current with its delinquent bills. To date, MNWD has refused to do so, despite the other owners agreeing to discuss a possible MNWD exit from the Plant, and scheduling and holding two public meetings to discuss negotiation parameters after receipt of payment.

Though this is fundamentally an inter-agency dispute, MNWD's failure to pay may impact your community and the local environment. You have a right to know the facts of this matter. To this effect, SOCWA has enclosed the following documents for reference:

Frequently Asked Questions Document

Outlines questions about the history, contractual responsibilities, impacts to residents and businesses, and other relevant matters to the public

Timeline of the Coastal Treatment Plant

A brief history of the facility, when and why MNWD asked to enter into a contract to own a percentage of the plant

Relevant Contracts & Documents

Letter from MNWD requesting to purchase capacity at CTP

Next Steps for SOCWA

MNWD has committed at public meetings that it will come current with its \$755,871 in past due payments upon the City of Laguna Beach, South Coast Water District and Emerald Bay Service District holding public meetings to discuss negotiations. Since this commitment, these communities have hosted two public meetings. MNWD has failed to provide payment or attempted to attach unacceptable conditions to contractually owed payments.

SOCWA must now evaluate all options to limit any potential adverse impacts to the environment and to the ratepayers of Laguna Beach, Dana Point, South Laguna and portions of San Juan Capistrano and San Clemente. The owners of the Coastal Treatment Plant will convene to make a determination soon.

NEWS RELEASE



FOR IMMEDIATE RELEASE

Contact: Betty Burnett
SOCWA General Manager
949-234-5400, ext. 420

Moulton Niguel Water District's Delinquent Bill for Wastewater Treatment Plant Reaches \$755,871

City of Laguna Beach, South Coast Water District and Emerald Bay Service District Urge MNWD to Pay Bill to Avoid Financial Harm to Local Taxpayers

Dana Point, Calif. (May 17, 2017) – Dating back nearly one year, Moulton Niguel Water District (MNWD) has refused to meet its financial responsibilities to the Coastal Treatment Plant (CTP), among the largest wastewater facilities in the region, while it attempts to prematurely exit its contract ownership of the plant. MNWD now owes \$755,871 to the South Orange County Wastewater Authority for repair and upkeep of the facility.

Today, following a public meeting on May 12 where MNWD again refused to pay its bills without conditions, leaders representing the other owners of the CTP, including the City of Laguna Beach, South Coast Water District and Emerald Bay Service District, issued the following statements urging the MNWD Board of Directors to pay its bills to avoid harm to their local communities.

"I have been an elected official for nearly 20 years. This is the first time I have seen another governmental agency willfully stop paying its bills as a negotiating tactic. We have demonstrated our willingness to discuss MNWD's reasonable exit from its contract. But refusing to pay \$755,871 in past due bills isn't a reasonable starting point for MNWD. It's time for them to pay their bill." - *Toni Iseman, Mayor, City of Laguna Beach*

"The Coastal Treatment Plant can treat as much as 6.7 million gallons of wastewater each day. It protects South Orange County's treasured canyons and coastlines from sewage spills. It also creates more than 1 million gallons of recycled water each day for our parks, schools and landscaped areas. Having a partner withhold \$755,871 in payments as a negotiating tactic threatens our ability to sustain this critical facility." – *Wayne Rayfield, President, South Coast Water District*

"MNWD has once again failed to live up to its contractual commitments. In April, MNWD's General Manager committed publicly to come current with its past-due bills totaling \$755,871 if we scheduled a public meeting. Since then, we have held two public meetings on this matter. Unfortunately, MNWD has not held up its part of the bargain. This is frustrating our ability to protect our local environment and economy." – *Michael Dunbar, General Manager, Emerald Bay Service District*

Background on MNWD's Non-Payment of Contractual Obligations

The Coastal Treatment Plant (Plant) was built in the late 1970s and early 1980s to treat wastewater and is funded through agreements specifying financial responsibility between the MNWD, Laguna Beach, Emerald Bay Service District and South Coast Water District. MNWD

asked to join the partnership in the late 1990s and paid for all required charges associated with repair and upkeep of the Plant until summarily stopping payment in the summer of 2016. Thus, MNWD is no longer meeting its financial obligations under the existing contract with SOCWA and its partners in the Coastal Treatment Plant. MNWD has asked to negotiate its way out of the existing agreement but its suggested approach would result in increased fees for customers in Laguna Beach, Emerald Bay and Dana Point.

MNWD's delinquency is holding up critical infrastructure projects that help protect Orange County's finest environmental treasures, including Aliso and Woods Canyon and Aliso Beach, which is one of the most popular beaches in Southern California.

About the South Orange County Wastewater Authority

SOCWA treats much of South Orange County's wastewater and creates 2.1 billion gallons of recycled water each year. It is a Joint Powers Authority (JPA) with 10 member agencies, including Santa Margarita Water District, El Toro Water District, Irvine Ranch Water District, Moulton Niguel Water District, South Coast Water District, Trabuco Canyon Water District, Emerald Bay Service District and the cities of Laguna Beach, San Juan Capistrano and San Clemente.

About the Coastal Treatment Plant

The South Orange County Wastewater Authority's Coastal Treatment Plant collects and can treat upwards of 6.7 million gallons of wastewater every day. It also produces about 1.1 million gallons of recycled water each day for the communities of Aliso Viejo, Dana Point, Laguna Beach, Laguna Hills, Laguna Niguel, Mission Viejo and portions of San Clemente and San Juan Capistrano. It is located in Aliso and Woods Canyon within the City of Laguna Beach.

###



Frequently Asked Questions South Orange County Wastewater & The Coastal Treatment Plant

What is the issue among wastewater agencies in South Orange County? This issue stems from \$755,871 in delinquent and contractually owed bills owed by Moulton Niguel Water District (MNWD) for its ownership of the Coastal Treatment Plant (Plant).

The Plant was built in the late 1970s and early 1980s to treat wastewater and is funded through agreements specifying financial responsibility between MNWD, City of Laguna Beach, Emerald Bay Services District and South Coast Water District. MNWD joined the partnership in 1999 but is no longer meeting its financial obligations under the existing contract. MNWD has asked to negotiate its way out of the existing agreement but its initial offer would result in increased fees for customers in Laguna Beach, Emerald Bay and Dana Point. Some of the current agreements regarding MNWD's obligations in the Plant are attached along with documents that provide additional historical context.

How does this issue affect South County communities? Projects to make capital repairs to the Coastal Treatment Plant and prevent sewage spills may be delayed increasing the probability of sewage spills at Aliso Beach affecting ocean water quality and the beaches in Laguna Beach, Emerald Bay and Dana Point. Additionally, if MNWD does not pay, these communities would pay more for the same level of service.

Why is the Coastal Treatment Plant important? The plant treats up to 6.7 million gallons of wastewater (sewage) and produces over one million gallons of recycled water each day for use at South Orange County parks, schools, golf courses and highway medians. Wastewater treatment is essential to public health and the safe recreational enjoyment of the ocean near Laguna Beach, Emerald Bay and Dana Point.

What is the history of the Coastal Treatment Plant?
See timeline below.

Can an agency terminate its obligations under the existing legal agreements? The only way an agency can terminate the agreement prior to the agreement expiring is through the mutual agreement of the other partner agencies.

Are the other partner agencies willing to discuss Moulton Niguel Water District's desire to change its obligations under the current agreements? Yes, if Moulton Niguel Water District pays its outstanding invoices (currently \$755,871) and pays its bills during discussions.

Why won't the other agencies just let the Moulton Niguel Water District out of its current agreement? Because the communities of Laguna Beach, Dana Point and Emerald Bay would have to pay more for the same level of wastewater treatment while Moulton Niguel Water District's customers pay less. To avoid these financial impacts, an equitable, mutually agreeable solution needs to be identified before Moulton Niguel Water District can leave.

Why haven't negotiations between the City Laguna Beach, Emerald Bay and Dana Point Moulton Niguel Water District begun yet? This is a question for MNWD to answer. The other agencies are willing to begin negotiations once MNWD pays its contractually obligated and past due share of the costs for capital repairs and upkeep of the Coastal Treatment Plant.

Have open discussions been held about this matter? Yes. Most recently, we have held two public meetings. MNWD continues to either not pay or attach unacceptable conditions to its contractually owed payment.

Why isn't MNWD paying? We are not certain. But MNWD first elected to state its objection to paying for capital repairs at the Coastal Treatment Plant in June 2016, and at that time the MNWD General Manager stated Moulton Niguel Water District would stop paying for capital repairs as a way to bring the other agencies to the table. In fact, the other agencies who use the Plant have since sent correspondence and held meetings with representatives of MNWD making it clear that holding back needed funding will not cause discussions to move ahead. Discussions have been delayed by Moulton Niguel Water District's non-payment while efforts are diverted to compel the Moulton Niguel Water District to meet its existing legal obligations so the communities of Laguna Beach, Emerald Bay and Dana Point do not get charged more than is legally permissible.

Why should Moulton Niguel Water District customers pay for a facility their District doesn't use? This is a question for MNWD as to why they requested to purchase the additional capacity in 1999 for several millions of dollars. Please refer to the included letter from MNWD requesting to purchase capacity.

What is the \$755,871 currently owed by MNWD planned for? It is for previously approved capital repairs.

What are the options for customers in Laguna Beach, Emerald Bay and Dana Point to require MNWD meet its obligations under the existing legal agreements? The City of Laguna, Emerald Bay Services District, and South Coast Water District are reviewing all their options currently. It is our desire that MNWD pay its past-due bills so we can begin negotiations.

Why did agencies representing Laguna Beach, Emerald Bay and Dana Point reject the initial proposal from MNWD to buy its way out of the existing agreement? The offer was not fair and equitable to the communities of Laguna Beach, Emerald Bay and Dana Point.

Why did the MNWD initially ask to enter into a contract to spend millions of dollars to acquire capacity in the Coastal Treatment Plant? This is a question for MNWD. The attached historical document represents the anticipated need for wastewater treatment capacity associated with projected development.

Did MNWD assume all of the obligations of the other parties when it bought capacity?

Yes. The parties' agreement at the time obligated MNWD, as follows: "...MNWD assumes all obligations of the CITY related to, and in proportion to, the Assigned

Capacity, as such obligations are established in the PC 15 Agreement, the Joint Powers Agreement, and any other documents setting forth terms and conditions with respect to the operations, repairs or maintenance of the Coastal Treatment Plant, inclusive of the export sludge pipeline and the Coastal Treatment Plant access road. MNWD agrees to perform all such obligations after the Effective Date of this Agreement.”

Could fees paid by customers in Laguna Beach, Emerald Bay and Dana Point increase if MNWD doesn't pay its debts? Yes. If MNWD doesn't pay its obligations, other communities will need to pay more than they have budgeted for or planned to pay.

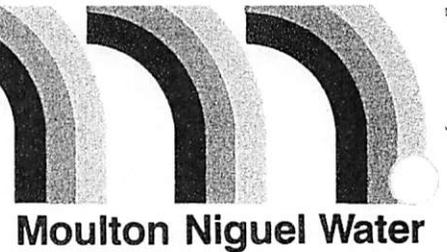
What is the South Orange County Wastewater Authority? SOCWA treats much of South Orange County's wastewater and creates 2.1 billion gallons of recycled water each year. It is a Joint Powers Authority (JPA) with 10 member agencies, including Santa Margarita Water District, El Toro Water District, Irvine Ranch Water District, Moulton Niguel Water District, South Coast Water District, Trabuco Canyon Water District, Emerald Bay Services District and the cities of Laguna Beach, San Juan Capistrano and San Clemente. It also manages the region's two ocean outfalls and all required monitoring and regulatory compliance.

Why is a joint powers authority important to wastewater treatment in South Orange County? It is the most cost-effective way to treat the billions of gallons of wastewater produced by our local communities. Coordinating wastewater treatment among the agencies that share a watershed allows for state and federal funding to build facilities that can stay in compliance with all legal requirements, it combines needs so that facilities can remain cost efficient, it limits the number of treatment plants to just the number needed conserving community funding, and it allows for neighborhoods that have a higher stake in ocean water quality protection to assist in overseeing the actions taken by those who can impact the health of the ocean environment. In the end, all treated wastewater that is not reused as recycled water is discharged to the ocean and it is essential that the ocean is clean for use and enjoyment by our communities and visitors alike.

Timeline of the Coastal Treatment Plant & Project Committee 15

- 1950 –** Initial wastewater collection facility constructed at site of today's Coastal Treatment Plant
- 1972 –** Clean Water Act signed into law by President Richard Nixon, establishing a new standard of wastewater treatment
- 1972 –** Local cities and water districts sign contract to construct wastewater treatment facilities to support the growth and expansion of the cities that would become Mission Viejo, Laguna Niguel, Aliso Viejo, Laguna Hills as well as San Clemente and San Juan Capistrano
- 1976 –** MNWD, SCWD, City of Laguna Beach, Emerald Bay Services District and Irvine Ranch Water District sign contract to design, construct and operate the CTP
- 1976 –** PC15 members agree to allow IRWD to fund only design and construction, but not acquire wastewater capacity (known as Amendment 1)
- 1980 –** MNWD completely divests from PC15 and the CTP by mutual agreement of members (known as Amendment 2)
- 1996 –** IRWD divests from PC15 by mutual agreement of members (known as Amendment 6)
- 1998-99 –** On several occasions, MNWD requests to re-enter PC15 by acquiring nearly 30 percent of the plant capacity to serve planned development; PC15 members, including South Coast Water District, City of Laguna Beach and Emerald Bay Service District agree; MNWD now re-enters as a PC15 member (known as Amendment 7)
- 2016 –** MNWD notifies SOCWA of its desire to divest from PC15 in June; by August, MNWD stops paying its capital costs for PC15
- 2017 –** As of May 2, MNWD is past due on \$755,871 in capital costs, unpaid since August 2016

December 21, 1998



Mr. Ken Frank
City Manager
City of Laguna Beach
505 Forest Avenue
Laguna Beach, California 92651

Regarding: **Proposed Capacity Purchase**
AWMA Coastal Treatment Plant

Dear Ken:

In the District's October 7, 1998 letter to you, the District outlined its need for additional treatment plant capacity, and made an offer to purchase excess capacity owned by the City in the AWMA Coastal Treatment Plant. The value of the offers was \$2,971,150 for 1.5 mgd of capacity, and \$3,466,341 for 1.75 mgd of capacity. These values were determined using the final audited costs for the AWMA project committees that constructed the Coastal Treatment Plant and the sludge force main, and updating them to April 1998. It is our intention to update these costs to the actual transfer date, once that is known.

Subsequent to making this offer, the District has determined that several recent and ongoing capital improvement projects at the Coastal Treatment Plant should also be included in the offer to purchase, since MNWD will benefit from them as a member of Project Committee 15. These capital improvements are the new sludge force main, the foul air system upgrades, reconstruction of the treatment plant access bridge, and retrofit of the secondary clarifiers to a conventional chain and flight mechanism. The total cost of these projects, as well as the cost that MNWD would pay if purchasing either 1.5 or 17.5 mgd of capacity are shown on the attached Table.

When these costs are added, the value of the offer to purchase becomes \$3,832,643 and \$4,471,416 for 1.5 and 1.75 mgd of treatment capacity respectively.

If the City is interested in this proposed capacity transfer, please contact me as soon as possible so that preparation of the required amendments to the AWMA Project Committee Agreements can be commenced.

Sincerely,

MOULTON NIGUEL WATER

John N. Wiper
Assistant General Manager

JNW:LGP

a public agency
27500 La Paz Road, Laguna Niguel
California 92656-3489
714/643-2006