

**NOTICE OF SPECIAL MEETING  
OF THE  
SOUTH ORANGE COUNTY WASTEWATER AUTHORITY**

**BOARD OF DIRECTORS**

**MANAGERS WORKSHOP RE: JOINT POWERS AUTHORITY (JPA)  
May 13, 2019**

**10:30 a.m. – 12:00 p.m.**

NOTICE IS HEREBY GIVEN that a Special Meeting of the South Orange County Wastewater Authority (SOCWA) JPA Workshop was called by the Chairman to be held on **May 13, 2019** at **10:30 a.m.** at the Double Tree Hotel located at 34402 CA-1, Tempo Room, Dana Point, California.

**This meeting is set as a meeting of the SOCWA Agency General Managers and due to the number of Managers on the SOCWA Board it is required to be posted and held as an open and public special meeting of the Board.**

*THE MEETING ROOM IS WHEELCHAIR ACCESSIBLE. IF YOU REQUIRE ANY SPECIAL DISABILITY RELATED ACCOMMODATIONS (I.E., ACCESS TO AN AMPLIFIED SOUND SYSTEM, ETC.) PLEASE CONTACT THE SOUTH ORANGE COUNTY WASTEWATER AUTHORITY SECRETARY'S OFFICE AT (949) 234-5421 AT LEAST TWENTY-FOUR (24) HOURS PRIOR TO THE SCHEDULED MEETING. THIS AGENDA CAN BE OBTAINED IN ALTERNATE FORMAT UPON WRITTEN REQUEST TO THE SOUTH ORANGE COUNTY WASTEWATER AUTHORITY'S SECRETARY AT LEAST TWENTY-FOUR (24) HOURS PRIOR TO THE SCHEDULED MEETING.*

*AGENDA EXHIBITS AND OTHER WRITINGS THAT ARE DISCLOSABLE PUBLIC RECORDS DISTRIBUTED TO ALL, OR A MAJORITY OF, THE MEMBERS OF THE SOUTH ORANGE COUNTY WASTEWATER AUTHORITY JPA WORKSHOP IN CONNECTION WITH A MATTER SUBJECT TO DISCUSSION OR CONSIDERATION AT AN OPEN MEETING OF THE JPA WORKSHOP ARE AVAILABLE FOR PUBLIC INSPECTION IN THE AUTHORITY OFFICE, 34156 DEL OBISPO STREET, DANA POINT, CA ("AUTHORITY OFFICE"). IF SUCH WRITINGS ARE DISTRIBUTED TO MEMBERS OF THE JPA WORKSHOP LESS THAN TWENTY-FOUR (24) HOURS PRIOR TO THE MEETING, THEY WILL BE AVAILABLE IN THE RECEPTION AREA OF THE AUTHORITY OFFICE AT THE SAME TIME AS THEY ARE DISTRIBUTED TO THE JPA WORKSHOP MEMBERS, EXCEPT THAT, IF SUCH WRITINGS ARE DISTRIBUTED IMMEDIATELY PRIOR TO, OR DURING, THE MEETING, THEY WILL BE AVAILABLE IN THE JPA WORKSHOP MEETING ROOM.*

**AGENDA**

- 1. Call Meeting to Order**
- 2. Public Comments**

*THOSE WISHING TO ADDRESS THE JPA WORKSHOP ON ANY ITEM LISTED ON THE AGENDA SHOULD SUBMIT A "REQUEST TO BE HEARD" FORM TO THE PRESIDING OFFICER OF THE BOARD BEFORE THE AGENDA ITEM IS ANNOUNCED. YOUR NAME WILL BE CALLED TO SPEAK AT THAT TIME.*

## Notice of Special Meeting – Managers JPA Workshop

May 13, 2019

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### 3. Agenda

**10:00 AM**      **LIGHT REFRESHMENTS MANAGERS AND STAFF**

**10:30 AM**      **WORKSHOP MEETING BEGINS**

**Call to Order**

**Welcome – Opening Remarks – Meeting Overview – Introductions**

**Public Comment: 10:35 AM – 10:45 AM**

*Public Comment will be limited to three minutes per person and only during this timeframe*

**General Counsel Report: 10:45 AM – 11:45 AM**

*Discussion briefing of the Agency General Counsel's meeting of February 14, 2019 and summary legal recommendations to improve the JPA. Two areas of recommendation attached.*

Manager's Roundtable Discussion:      Questions – Comments – Feedback

**Meeting Purpose:** The South Orange County Wastewater Authority Managers will be meeting with Staff and Facilitator Michelle Murphy to discuss the revisions to the SOCWA Joint Powers Agreement and provide feedback.

### 4. Adjournment

I hereby certify that the foregoing Notice was personally emailed or mailed to each member of the SOCWA Agency Managers at least 24 hours prior to the scheduled time of the Special Meeting referred to above.

I hereby certify that the foregoing Notice was posted at least 24 hours prior to the time of the above-referenced JPA Workshop at the usual agenda posting location of the South Orange County Wastewater Authority and at [www.socwa.com](http://www.socwa.com) and at the Double Tree Hotel meeting location identified herein.

Dated this 9<sup>th</sup> day of May 2019.



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Betty C. Burnett, General Manager/Secretary  
SOUTH ORANGE COUNTY WASTEWATER AUTHORITY

# Agenda Item

**Legal Counsel Review:** N/A

**Meeting Date:** May 13, 2019

**TO:** SOCWA Agency Managers

**FROM:** Betty Burnett, General Manager

**SUBJECT:** General Counsel Briefing of JPA Language Revisions Addressing Liability

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**Summary:**

The agency general counsels were invited to attend a meeting with Greg Moser, SOCWA General Counsel on February 14, 2019. As a result of that meeting, several opportunities for amending the SOCWA JPA were discussed and drafted language (attached) has been sent out to the attorneys group for input. Other areas suggested by the attorneys group for potential policy discussion will also be reviewed at the upcoming meeting.

The attached drafted provisions address liability provisions of the JPA Agreement will presented by Greg Moser.

**Recommendation:**

Comments and feedback.

## Markup of Liability Provisions of SOCWA Joint Powers Agreement

11.3 Liabilities. (a) Authority Liabilities. The parties to this Agreement do not intend hereby to be obligated either jointly or severally for the debts, liabilities or obligations of the Authority, except as may be specifically provided for in California Government Code Section 895.2, as amended or supplemented, and as required by Government Code Section 6508.1 and set forth in this section. Except as provided herein, the debts, liabilities, and obligations of the Authority shall be the debts, liabilities or obligations of the Authority alone and not of the Member Agencies.

(b) Member Agency Liabilities under Government Code Section 895.2. The parties further agree as follows: (i) pursuant to California Government Code Section 895 .4, in the event the parties, under applicable law, are held liable for the acts or omissions of the Authority caused by a negligent or wrongful act or omission occurring in the performance of this Agreement; or (ii) in the case of any other liability incurred by the Authority during the course of its existence, other than the public pension liabilities addressed in subsection 11.3(c); then, with respect to (i) and (ii) the parties shall discharge any such liability from payments to be made to the Authority by each of the parties in proportion to each party's<sup>'sies'</sup> contribution or approved participation in Project facilities of the Authority to which the liability is or is alleged to be attributable, unless otherwise agreed; provided subject to the following: (A); the foregoing contribution from the Member Agencies shall be required only to the extent the Authority does not have insurance coverage for such liability; (B) whether or not such insurance coverage is available, the Authority shall be responsible, in the first instance, for responding to any claims or actions brought against it, and/or against one or more of the Member Agencies, on behalf of itself, and the Member Agencies involved, which shall fully cooperate with the Authority in its defense of such claims or actions ; (C) where such insurance coverage is not available, or it becomes reasonably foreseeable that the applicable limit of liability coverage may be exceeded, the parties who participate in or contribute to the Project facilities of the Authority to which the liability is or is alleged to be attributable, shall, in addition to cooperating with the Authority in the defense of such claims or actions, and shall indemnify, defend and hold harmless the

remaining parties (i.e., those who do not participate in or contribute to the Project facilities of the Authority to which the asserted claims or actions are attributed) prior to the final disposition of any claim or action to which this subparagraph applies. The cooperation of the parties involved shall include, upon the request of the Authority, providing financial support to the Authority during its defense of any claim or action under this subparagraph. Upon the final disposition of any claim or action to which this subparagraph applies, eEach Member Agency shall indemnify, defend and hold harmless the other Member Agencies from any such liability in excess of ~~their~~its proportionate shares. ~~Except as provided herein, the debts, liabilities, and obligations of the Authority shall be the debts, liabilities or obligations of the Authority alone and not of the Member Agencies.~~ In no event shall this subparagraph be construed to apply to any dispute arising between or among the Authority and the Member Agencies arising out of this Agreement. For the parties providing indemnification to non-involved Member Agencies for the claim and resultant liability, expense, cost or obligation (“cost”), the cost shall be shared pursuant to Section 6.3.1 of this Agreement, pursuant to which claims costs arising from or related to use of the facility shall be shared based on percentages of annual use in the period or periods during which the claim arose or continued, and where claims arise that are unrelated to use of the facility the same shall be shared based on percentages of capacity ownership of the facility. To the extent claims arise from or relate to use within an identifiable area of treatment at a facility (such as liquids or solids or common area) the shared percentage shall relate to the percentage of use within liquids, solids or common as determine in the period or periods during which the claim arose or continued by reference to the Use Audit or Audits. To the extent claims arise from or relate to circumstances unrelated to use and are allocable based on capacity ownership the differential ownership of liquids, solid or common capacity shall, to the extent possible, be utilized to determine the appropriate allocation and payment of the indemnity obligation.

c. Liability for Public Retirement System Costs (increased PERS, Unfunded “UAL” liability and OPEB (retiree) costs). In the event of withdrawal of any Member Agency from the Authority, or the dissolution, cessation of operations, or termination of participation in a public retirement system of or by the Authority, each Member Agency shall assume responsibility for its share of any unfunded public retirement system liability incurred by the Authority at the time of the Member Agency’s withdrawal, or the Authority’s dissolution, cessation, or termination of participation in a public retirement system. Each Member Agency’s share shall be calculated by

the Authority, and shall be allocated based upon the Use Audits approved by the Board of the Authority, averaged for the five fiscal years prior to the effective date of such withdrawal, dissolution, cessation, or termination, to adequately fund 100 percent of the legally-required final public retirement benefits and compensation for the employees of the Authority. Each Member Agency shall negotiate in good faith to enter into a contract with the Authority, the remaining Member Agencies, or the board of the public retirement system, to fully fund its share of the accrued obligations to fund the public retirement benefits by: (i) making annual contributions on an agreed-upon basis sufficient to retire the outstanding liability; or (ii) making a lump-sum payment; or (iii) providing for payment by any other actuarially sound payment method. If a Member Agency's lump-sum payment is later deemed insufficient to cover its share of the unfunded public retirement system liability, the Member Agency (or former Member Agency) shall pay or provide for payment of the amount equal to the actuarially determined deficit in funding. Each Member Agency agrees to defend and indemnify the others, and Authority, against any claim that it has not timely met its legally required notice or funding obligations in the manner agreed upon herein, including the cost of any arbitration resulting from a dispute arising under Government Code §§ 6508.2 or 20575.

Section 11.3.1 Notice to public retirement system. Prior to filing any notice of termination to a public retirement system or a decision to dissolve the Authority or cease its operations, the Authority shall provide a copy of this agreement to the public retirement system or systems in which the Authority participates, as required by Government Code section 6508.2. In addition, upon approval of this amendment, the Authority shall provide a copy to the public retirement system or systems in which the Authority participates, as required by Government Code section 6508.2