



Update on SOCWA JPA Restatement

Greg Moser, Adriana Ochoa, General Counsel

April 1, 2021

Discussions with Member Agencies Regarding First Amended and Restated Joint Powers Agreement

Who we have talked with:

- Trabuco Canyon Water District
- Irvine Ranch Water District
- Emerald Bay Services District
- City of Laguna Beach

Who we have not talked with:

- Moulton Niguel Water District
- *Santa Margarita Water District
- South Coast Water District
- City of San Clemente
- *City of San Juan Capistrano
- El Toro Water District

* Special Counsel for SMWD/SJC have provided some feedback regarding withdrawal/assignment provisions in proposed first Amended and Restated JPA.

Principal Updates to Joint Powers Agreement

- AB 1912 Unfunded Pension Liability Issue
 - Issue: JPA currently states that “debts and liabilities of the JPA will be its own.” But, AB 1912 requires that member agencies to a JPA allocate 100% of retirement liabilities before withdraw or dissolve. Otherwise, State will apportion liability for you using its own method.
 - Proposed Fix: Provides that a withdrawing member agency shall assume responsibility for unfunded retirement liability, with liabilities to be calculated based on most recently-available actuarial estimates based on approved methodology, or allow for other arrangements with unanimous consent of all member agencies.

Principal Updates to Joint Powers Agreement

- Uninsured Third Party Liability Issue
 - Issue: JPA currently states that “debts and liabilities of the JPA will be its own.” But, law provides that all members of JPAs are jointly and severally liable for tort liabilities, some of which are not covered by insurance.
 - Proposed Fix: Provides that a withdrawing member agency shall assume responsibility for unfunded retirement liability, with liabilities to be calculated based on most recently-available actuarial estimates based on approved methodology, or allow for other arrangements with unanimous consent of all member agencies.

Principal Updates to Joint Powers Agreement

- Expiration of PC Agreements

- Issue: Most PC Agreements expire this decade, but with no provisions in JPA or PC agreements about what happens after expiration.

PC 5 expires Aug 18, 2027	PC 2 expires June 28, 2023	PC 24 expires Sept 24, 2026
PC 15 expires Feb 19, 2030	PC 17 expires Dec 11, 2029	PC 23 expires Nov 4, 2026

- Proposed Fix: Require member agencies to remain liable for obligations through at least PC expiration dates, but otherwise eliminates PC expiration dates, while allowing for more straightforward withdrawal upon satisfaction of withdrawal provisions.

Principal Updates to Joint Powers Agreement

- Budget Approval
 - Issue: For SOCWA, current JPA does not address how to do business if budgets are not approved. For member agencies, current JPA treats refusal to approve budget as withdrawal from Project/SOCWA.
 - Proposed Fix: Provides that if budget not approved by required minimum number of member agencies, O&M budgets roll over from prior year until new budget is adopted. And, provides new withdrawal provisions (next slide).

Principal Updates to Joint Powers Agreement

- Withdrawal
 - Issue: Current JPA requires 120 days notice to withdraw, but no function to withdraw other than by unanimous written agreement.
 - Proposed Fix: Provides right to withdraw if: (1) cease use of project; (2) abandon ownership interest; (3) comply with OPEB funding requirement; (4) remain liable for debts, obligations and liabilities incurred during period of participation. Alternatively, members seeking withdrawal (including moving to participation by contract alone) may propose alternate terms and conditions, including assignment and assumption of interests and liabilities to/by another member agency.

SMWD/SJC Reorganization - Written Consent Issue

Issue: Must SJC/SMWD get written consent from the other Participating Member Agencies in affected PCs in order to accomplish a capacity rights transfer/assignment?

1. Historically, capacity transfers among PC members in various PCs got written consent, and referred to controlling language in JPA about required written consent for capacity transfers (i.e., PC 2 , PC 15, SERRA, AWMA).
2. But, no capacity transfer among Participating Member Agencies in a PC since SOCWA JPA established in 2001.
3. Member Agency Issue. But, withdrawal/assignment provisions in current JPA implicated, so affects JPA amendment process.
4. Matter of first impression, so could affect future practices.

SMWD/SJC Reorganization - Written Consent Issue

SOCWA JPA Section 11.1 states,

“Capacity rights in Project facilities shall be held for the benefit of the Participating Member Agencies in proportion to each such member’s agreed percentage of capacity rights in such Project facility *unless otherwise agreed to by said Participating Member Agencies*. It is the intent of the foregoing provisions that the Authority shall not acquire any unallocated capacity rights in Project facility for disposal or use, except for the benefit of the Participating Member Agencies in proportion to their original percentage of capacity right in said facility. *Capacity rights may not be sold, leased or assigned to parties or entities other than Member Agencies, or between and among Member Agencies without the written consent of all Participating Member Agencies in a Project.*”