



May 1, 2017

Ms. Celeste Cantú
General Manager
Santa Ana Watershed Project Authority
11615 Sterling Avenue
Riverside, CA 92503

Subject: May 2, 2017, Regular Commission Meeting Item 6B - SAWPA Joint Powers Agreement

Dear Ms. Cantú:

We want to express our appreciation to you and Larry McKenney for placing the subject item (Item 6B) on the Commission's May 2, 2017, agenda. The purpose of this letter is to provide comments on the staff report for the item and to make recommendations for completing the essential task of conforming SAWPA's activities to the terms and conditions of its Joint Powers Authority Agreement (JPAA).

The staff report for Item 6B states that staff is going to provide a review of "current and historical administrative practices" and a workshop discussion will be held to "determine what if any problems current SAWPA administrative procedures are causing." To clarify, the concern that both EMWD and OCWD have consistently expressed as recently as our April 5, 2017 letter, is neither an administrative nor procedural one. It is the simple fact that SAWPA is not operating under the contractual requirements of its JPAA.

The JPA agreement is exceedingly clear when it states in Section 18 that: "except for preliminary studies and matters of general administration" all other activities SAWPA undertakes shall be administered as projects, with project agreements and unanimous voting requirements among the participating agencies for budget and operating decisions. Currently, SAWPA does not have project agreements with its member agencies for many critical projects and activities, and is not following proper voting or administrative procedures for these items.

SAWPA's JPAA is a contract between its member agencies. This contract creates duties and obligations amongst its members such as those articulated, above. Like any contract, a failure to adhere to its terms and requirements exposes SAWPA to the potential for claims of breach. While the staff report suggests the Commission needs to determine if there is a problem, we believe the problems of not complying with the JPAA are clear and obvious.

To use the Commission's time wisely in the upcoming workshop, we suggest that we spend the minimum amount of time on the administrative history and review of past practices, and move more directly into identifying a step-by-step process which the Commission and member agencies can undertake to conform SAWPA's future business operations and governance to the contractual requirements of its JPAA.

In this regard, summarized below for the Commission's consideration are a series of steps that we believe could be successfully undertaken to ensure future conformance with the JPAA. This list of steps and other background information has been provided to Larry McKenney as well as other member agency counsel.

1. *Identification of Projects:* The staffs of SAWPA and the member agencies would identify the various activities of which SAWPA is engaged that meet the criteria of not being preliminary studies or matters of general administration, and either directly or indirectly expose the member agencies to costs. This list should be presented to the Commission to clarify what constitutes a "project" for the purposes of the JPAA.
2. *Determining Projects Requiring Project Agreements:* Identify what specific activities for which the Commission has formally identified as "projects" and has executed project agreements and where appropriate, established project committees. Identify the remaining activities that meet the criteria of a "project" but have neither a project agreement nor a project committee, and determine if some of those activities (i.e. round tables) can be logically grouped into a single project. Present the recommended new "projects," consistent with the JPAA requirements, to the Commission for review and consideration.
3. *Identification of Project Committees and Membership:* Based upon the "projects" identified, determine which agencies are participating in the various activities and projects, and if less than all the member agencies are participating in a "project," identify the need for a project committee consistent with the requirements of the JPAA.
4. *Implementation:* Upon the identification of the "projects" and project committees that require formation, prepare all requisite project agreements and seek member agency approval of such agreements and designation of project committee members, where appropriate. Format future Commission meeting agendas to identify and segregate actions for each active "project" and the members voting on an item (the project committee) if the project participants are less than all the member agencies. If there is

May 1, 2017

Page 3

no action to be taken on a “project” or the project committee, the Commission agenda would so reflect. If, however, the full Commission or the project committee needed to consider an item and take action, the items would be considered within the Commission agenda.

We are certainly open to suggestions on this proposed process but believe strongly that it is our collective responsibility as Commissioners to take the steps necessary to ensure compliance with the requirements of the JPAA. Additionally, adhering to the JPAA framework will facilitate better governance and working relationships with SAWPA and its member agencies.

Thank you and we look forward to the discussion of this important item.

Sincerely,



Ronald W. Sullivan
SAWPA Commission Representative
Eastern Municipal Water District



Phillip A. Anthony
SAWPA Commission Representative
Orange County Water District

c: SAWPA Commissioners and Alternates
Larry McKenney, SAWPA Executive Counsel
SAWPA Member Agency General Managers