

May 12, 2017

Via Hand Delivery

South Orange County Wastewater Authority ("SOCWA")
Attention: Betty Burnett, Treasurer
34156 Del Obispo Street
Dana Point, CA 92629

Re: MNWD Payment Under Protest

Ms. Burnett:

This letter and the attached check are being sent to you in your capacity as Treasurer for SOCWA, pursuant to Section 4.11 of the SOCWA Joint Exercise of Powers Agreement. Moulton Niguel Water District ("MNWD") is submitting payment in the amount of \$755,870 to document and solidify our collective commitment to resolving MNWD's proposed divestment from the Project Committee 15 ("PC 15") Agreement for the Coastal Treatment Plant ("CTP"), as discussed at the Laguna Niguel Council meeting on April 18, 2017. Per the Joint Powers Authority agreement Section 8.2, we maintain that MNWD is not obligated to remit these funds because MNWD did not approve the FY16-17 PC 15 capital budget. However, we are submitting payment in this amount as a demonstration of good faith, and without making any admission or waiver, with the understanding that the Participating Agencies of PC 15 will reach a divestment arrangement based on open, agendaized discussions in a reasonable timeframe.

As stated publicly at several council meetings, PC 15 Chair Mike Dunbar and MNWD representatives agreed that a release of MNWD from PC 15 and the Coastal Treatment Plant is appropriate and timely. This payment is to acknowledge the collective intention to divest MNWD from the PC 15 Agreement since its ratepayers receive no benefit from the CTP, and that the \$755,870 would be factored into the negotiated divestment. The payment amount reflects the invoices covering July 1, 2016 to June 30, 2017. We hereby request a detailed accounting of the use of these funds. We have yet to receive the breakdown of on-going capital contracts that have been approved by PC 15 for the CTP prior to June 30, 2016. We also request an accounting of expenditures from MNWD's contributions to the CTP over the last three years.

To ensure timely resolution, we request recurring PC 15 meetings, coordinated among the four agencies, so we can have an open discussion where interested stakeholders, including MNWD representatives, can attend. The proposal that MNWD provided to the PC 15 members on August 29, 2016 would seem to be a good point to begin these discussions. Our goal is to reach a resolution by the end of 2017.

Based on our delivery of this check, and while this payment is made under protest, we are of the understanding that all current claims against MNWD will be withdrawn.

We hope that cooperative discussions will lead to a timely resolution, and believe that all matters associated with PC 15, near and long term, can be worked out. We look forward to working with our regional partners on this matter. Thank you.



Joone K. Lopez
General Manager

Enclosure

- Check No. 93543
- PC 15 Correspondence – MNWD's Letter of August 29, 2016

cc:

- SOCWA Member Agencies
- Hon. Patricia Bates, 36th Senate District
- Hon. Lisa Bartlett, County of Orange Board of Supervisors, 5th District
- Hon. William Brough, 73d Assembly District
- SOCWA Board of Directors
- MNWD Board of Directors
- David Doyle, City of Aliso Viejo
- Bruce Channing, City of Laguna Hills
- Rod Foster, City of Laguna Niguel
- Dennis Wilberg, City of Mission Viejo



INVOICE	PURCHASE ORDER	DESCRIPTION	AMOUNT
CAPITAL15RINVOICES		PC 15 R INV FY16/17	755,870.00

05/12/17	93543		755,870.00
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Moulton Niguel Water District

93543

27500 LA PAZ ROAD • LAGUNA NIGUEL, CALIFORNIA 92677
(949) 831-2500

DATE	WARRANT NUMBER	
05/12/17	93543	103229

CONTROL NUMBER
WELLS FARGO BANK
11-24/1210(8)

PAY EXACTLY SEVEN HUNDRED FIFTY FIVE THOUSAND EIGHT HUNDRED SEVENTY AND 00/100*****

VOID IF NOT CASHED IN 180 DAYS \$ 755,870.00

Pay to the order of:

SOUTH ORANGE COUNTY WASTEWATER AUTHORITY
34156 DEL OBISPO STREET
DANA POINT CA 92629

Joanne Elong
Matt CA

PAYMENT UNDER PROTEST

AUTHORIZED SIGNATURE

⑈093543⑈

⑈121000248⑈

4805042546⑈

August 29, 2016

Members of Project Committee 15
34156 Del Obispo
Dana Point, CA 92629

Re: Moulton Niguel Water District's Prospective Withdrawal and Release from Project Committee 15

Dear Members of the Board:

Thank you for the very open discussion on August 22, 2016, regarding Moulton Niguel Water District's (MNWD) participation in the Project Committee 15 (PC 15) Coastal Treatment Plant (CTP). The purpose of this letter is to present our proposal for MNWD's withdrawal and release from the PC 15 Agreement as MNWD does not receive any benefit nor will we ever receive benefit from the CTP. We know these matters are of paramount importance to your agencies and, as such, we have prepared a proposal that we believe is consistent with, if not in excess of, MNWD's obligations under the SOCWA Joint Exercise of Powers Agreement (JPA) and the PC 15 Agreement. We would welcome an opportunity to further discuss the proposal outlined below and answer any questions that you may have.

BACKGROUND

The PC 15 member agencies approved the PC 15 Agreement on November 9, 1976, which has a term of 50 years. Capacity ownership has fluctuated at the CTP over the years, however, since 1999, MNWD has continued to fund 29.25% of the Capital Improvement Program (CIP) and its obligations associated with operations and maintenance common expenses. MNWD has funded nearly \$9 million into capital expenses for assets that are not required for MNWD to provide wastewater treatment and disposal services to our customers.

DISCUSSION

As MNWD has determined that the CTP is no longer required for service to MNWD, we have no obligation to fund capital expenses that will extend the useful life of the assets at the CTP beyond the term of the Agreement, which is set to expire in November 2026. The terms of Section 8.2 of the JPA specifies that "no project shall be acquired or constructed by the Authority without the unanimous consent of every Member Agency or, if it is a project of less than all of the Member Agencies, unanimous consent of all of the Participating Member Agencies." Further, the JPA specifies that projects include rehabilitation of the facilities. In review of the CIP for the CTP, every project intended to be funded by the Participating Member Agencies will rehabilitate the CTP and extend the useful life of those assets beyond the term of



the PC 15 Agreement. As such, MNWD will not fund the CIP for the CTP and will not approve the CIP budget or any project extending the useful life of the facility beyond the expiration of the PC 15 Agreement. This, of course, does not limit the remaining Participating Agencies from funding the CIP as those agencies make determinations on their needs for the various projects.

Given our position, MNWD has evaluated options that would remove MNWD from PC 15, recognizing that the CTP is not needed to serve our customers. Per the terms of the various agreements, it is our understanding that MNWD will remain a party to the PC 15 Agreement unless one of three potential actions occurs:

1. Another entity desires to acquire the existing treatment capacity owned by MNWD;
2. The Agreement exhausts the 50-year term period in November 2026; or
3. The parties to the PC 15 Agreement reach agreement on terms for MNWD to be removed from the PC 15 Agreement prior to November 2026.

Since it is not likely another party is interested in purchasing capacity in the CTP, we have focused on the last two actions. MNWD is prepared to remain a party to the PC 15 Agreement until November 2026 and continue to fund the Operation and Maintenance (O&M) obligations per the existing allocation formulas for O&M expenses. However, as noted above, MNWD will not contribute to any capital expense, pursuant to Section 8.2 of the JPA.

As this approach would provide concern to our partner agencies in SOCWA and PC 15 specifically, MNWD has prepared a proposal that would provide a negotiated level of financial contribution to the PC 15 CIP in exchange for our withdrawal and release from PC 15. Given the expiration of the PC 15 Agreement in November 2026, MNWD would fund the useful life of a capital project up to Fiscal Year Ending (FYE) 2026. The formula used to calculate the expense to MNWD for a particular capital project would be as follows:

$$\text{MNWD expense} = \frac{(2026) - (\text{FYE Project Completion})}{\text{Useful Life of Capital Asset}} \times \text{Capital Project Cost} \times 29.25\%$$

MNWD would use the existing CIP proposed for PC 15 to identify the capital project expenses and fiscal year to be constructed. Additionally, the useful life of capital assets would be determined based on industry standards. This total cost would be aggregated for all CIP projects identified through FYE 2025.

MNWD would also fund our share of the annual O&M expenses for the CTP through FYE 2026. We would determine this expense by using the Net Present Value of the total anticipated MNWD O&M expenses over the life of the Agreement based on the average of the last three-years of the MNWD O&M budget for the CTP.

CONCLUSION

MNWD believes the methodology identified in the proposal presented herein exceeds the obligations of MNWD per the terms of the JPA. However, we value our relationship with SOCWA, its staff, and its member agencies. We share your concerns about aging wastewater



infrastructure and SOCWA's role in creating a solution. MNWD's proposal provides financial contribution to the CTP CIP despite the limited remaining term of the PC 15 Agreement. We hope this proposal is duly considered by each PC 15 representative and their respective agencies. We believe this would yield a good outcome for all agencies involved, but we are open to suggestions on how to make it better.

As noted above, we offer to meet with you or your governing body to further discuss this proposal and answer any questions that you may have.

Sincerely,



Joone Lopez
MNWD General Manager

Cc: MNWD Board of Directors
Betty Burnett, SOCWA General Manager

