



BOARD OF DIRECTORS

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Agenda Report

File #: 2022-2092

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Agenda Item No: 7.

FROM: James D. Herberg, General Manager
Originator: Lan C. Wiborg, Director of Environmental Services

SUBJECT:

SAWPA CONFIDENTIALITY AND COMMON INTEREST AGREEMENT FOR DEVELOPING A REGIONAL APPROACH TO ADDRESS PFAS CONTAMINATION

GENERAL MANAGER'S RECOMMENDATION

RECOMMENDATION:

Approve and authorize the General Manager to execute the Confidentiality and Common Interest Agreement by and among Orange County Sanitation District and the Santa Ana Watershed Project Authority (SAWPA); the Eastern Municipal Water District; the Inland Empire Utilities Agency, the Orange County Water District (OCWD), the San Bernardino Valley Municipal Water District, and the Western Municipal Water District (collectively referred to as the "Parties") to develop a regional approach to treating or otherwise remediating the surface and ground waters and reclaimable wastewaters in the Santa Ana River Basin that have been, or are threatened to be, contaminated by per- and polyfluoroalkyl substances (collectively, "PFAS").

BACKGROUND

In order to advance and promote their Common Interests in addressing and resolving the problems posed by PFAS contamination in the Santa Ana River Basin (Basin), including, but not limited to, investigating and pursuing pending and potential claims relating to PFAS contamination, the Parties desire to collaborate with each other by, among other things, having their respective staff persons and attorneys undertake a wide range of pre-decisional, investigatory, and information-gathering actions and activities intended to investigate and address the ubiquitous problems posed by PFAS contamination.

RELEVANT STANDARDS

- Protect OC San assets
- Sustain 1, 5, 20-year planning horizons
- Listen to and seriously consider community input on environmental concerns
- Build brand, trust, and support with policy makers and community leaders
- Maintain collaborative and cooperative relationships with regulators, stakeholders, and neighboring communities

- Meet volume and water quality needs for the GWRS
- Use all practical and effective means for resource recovery

PROBLEM

The Parties believe that their mutual interests will be best served by participating in common interest meetings, conferences, and communications in which to share confidential, proprietary work product or privileged documents, factual material, mental impressions, investigative information, memoranda, interview reports, expert reports, and other oral or written information generated in connection with the wide range of pre-decisional, investigatory, and information-gathering actions and activities intended to investigate and address the ubiquitous problems posed by PFAS contamination. However, a Confidentiality and Common Interest Agreement is not yet in place.

PROPOSED SOLUTION

Staff recommends that the Board of Directors approve the Confidentiality and Common Interest Agreement.

TIMING CONCERNS

OCWD is currently one of the plaintiffs in a cost recovery action pending against various defendants entitled, Orange County Water District, et al., v. 3M Company, et al., Orange County Superior Court Civil Action No. 30-2020-01172419-CU-PL-CXC (the "3M Action"). Likewise, in evaluating the feasibility of asserting potential claims against the same defendants in the 3M Action and possibly other responsible third parties, relating to PFAS contamination in the Basin, the other Parties desire to enter into this Agreement to obtain similar information to share with their respective attorneys in seeking legal advice and counsel relating to such claims. Thus, time is of the essence.

RAMIFICATIONS OF NOT TAKING ACTION

OC San will not be able to obtain similar information to share with their respective attorneys in seeking legal advice and counsel relating to such claims against the same defendants in the 3M Action and possibly other responsible third parties, relating to PFAS contamination in the Basin.

PRIOR COMMITTEE/BOARD ACTIONS

N/A

FINANCIAL CONSIDERATIONS

N/A

ATTACHMENT

The following attachment(s) may be viewed on-line at the OC San website (www.ocsan.gov) with the complete agenda package:

- Confidentiality and Common Interest Agreement