



# Consider Anew Three Local Resources Program Agreements

Water Planning & Stewardship Committee

Item #7-13

November 8, 2021

# Requested Board Actions

1. Rescind prior Board actions approving 3 LRP Agreements and related CEQA actions
2. Consider anew and approve 3 LRP Agreements and take related CEQA actions
3. Authorize retroactive LRP payments

# Three LRP Agreements

- Las Flores Recycled Water Expansion Project
  - MWDOC and Santa Margarita Water District
  - Approved June 8, 2021
  - Converts 209 AFY of potable demands to recycled water for irrigation
- Lake Mission Viejo Advanced Purification Water Treatment Facilities
  - MWDOC and Santa Margarita Water District
  - Approved December 13, 2016
  - Provides 300 AFY of advanced-treated recycled water to fill Lake Mission Viejo
- El Toro Recycled Water System Expansion Phase II
  - MWDOC and El Toro Water District
  - Approved December 13, 2016
  - Delivers 350 AFY of recycled water to City of Laguna Woods

# Necessity for Board Action

- Potential/Possible violation of Government Code Section 1090
- May impact the legal viability of the LRP Agreements

# Government Code Section 1090

## Conflict of Interest Prohibition

- Prohibits a member of a legislative body from participating in contracts in which they have a financial interest
  - Applies to members of local legislative bodies
  - Applicable to approval of contracts
  - Participation includes discussion and voting on the item
  - Definition of “financial interest”
    - Complex and highly technical – not in legislation
    - Exceptions: “remote interest” or “noninterest”
    - Legislator has interest in income of spouse



# Facts of this Case

- Director Ackerman's spouse has consulting contracts with MWDOC and Santa Margarita Water District
  - From 2009-2013: MWDOC agreement with Nossaman law firm
    - Deemed a "noninterest" allowed Director Ackerman to vote without disclosure
  - From 2013: Current agreements with MWDOC and Santa Margarita Water District with Ackerman Consulting Firm
    - Differing views whether current contracts constitute a "noninterest" or a remote interest
    - If a remote interest, Director is required to disclose the interest on the record and cannot participate in discussion or vote on the item
    - That did not occur with the three contracts from 2021 and 2016

# Facts of this Case (Cont.)

- September 2021: Director Ackerman notifies the General Counsel that she may have inadvertently failed to disclose a financial interest
  - GC gathers facts and works with Ethics Office and Outside Conflicts Counsel to research law and review
  - Reviews all votes on MWD OC LRPs since 2009
    - Identifies two additional agreements voted on by Director Ackerman
  - Further consultation with MWD OC, MWD OC's counsel, and Director's personal counsel and review of FPPC regulations and Advice Letters
  - Research statute of limitations regarding 2016 Agreements

# Conclusions

- There is no law, regulation, opinion, or advice letter on the exact fact pattern
- Can argue either noninterest or remote interest
  - If FPFC rules a remote interest:
    - Prior Board approval is not legally compliant
    - LRP Agreements are legally void
    - LRP Agreements are not protected by statute of limitation
- Recommended best action:
  - Rescind prior Board actions approving the Agreements
  - Consider Agreements anew with disclosure and non-participation by Director
  - Obtain refund of amounts paid and authorize retroactive payment of same amount



# Result of Board Action, If Approved

- Ensure Agreements are adopted in a manner compliant with the law
- Implement the original intent of the Board
- No additional financial exposure to Metropolitan
- No financial risk to Member Agency and sub-agencies

# Next Steps

- Provide training to the Board on Government Code Section 1090 early next year

# Board Options

## ● Option #1

- (1) Rescind the Board's June 8, 2021 action authorizing the General Manager to enter into a Local Resources Program (LRP) agreement with the Municipal Water District of Orange County (MWDOC) and Santa Margarita Water District (SMWD) for the Las Flores Recycled Water Expansion Project (Las Flores Project); review and consider SMWD's approved Final Mitigated Negative Declaration and Addendum for the Las Flores Project and take related CEQA actions; and, after the disclosure of a remote financial interest under Government Code Section 1090 (Section 1090) and director recusal, consider and authorize an LRP agreement with MWDOC and SMWD for the Las Flores Project;
- (2) Rescind the Board's December 13, 2016 actions authorizing the General Manager to enter into LRP agreements with MWDOC and SMWD for the Lake Mission Viejo Advanced Purification Water Treatment Facilities (Lake Mission Viejo Facilities) and with MWDOC and the El Toro Water District (ETWD) for the El Toro Recycled Water System Expansion Phase II Project (El Toro Project); after the disclosure of a remote financial interest under Section 1090 and director recusal, consider and authorize LRP agreements with MWDOC and SMWD for the Lake Mission Viejo Facilities and with MWDOC and ETWD for the El Toro Project; and authorize retroactive LRP payments in the amounts of \$522,000 and \$110,000 for the Lake Mission Viejo Facilities and El Toro Project, respectively, as credit against returned payments in the same amount.

# Board Options

- Option #2
  - Do not rescind the actions authorizing the listed LRP agreements and do not authorize the issuance of new LRP agreements and payment credits.

# Staff Recommendations

- Option #1



