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MEETING DATE: July 10, 2024

TO: Local Agency Formation Commission
of Orange County

FROM: Executive Officer

SUBJECT: Orange County Grand Jury Report: "Emerging
Opportunities in South County Water/Wastewater
Systems"

BACKGROUND

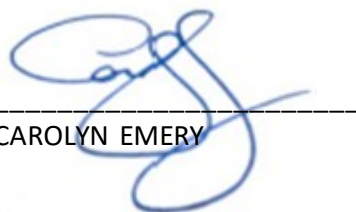
On June 21, 2024, the Orange County Grand Jury (OCGJ) published a report entitled, "Emerging Opportunities in South County Water/Wastewater Systems." In accordance with State law, OC LAFCO is required to respond to each finding and/or recommendation of the report directed to the Commission by the deadline of September 20, 2024. The report is provided as Attachment 1 to this staff report. Below are the recommendations of the OCGJ for which OC LAFCO must provide a response:

- R1.** The OCGJ recommends that by January 1, 2025, LAFCO studies a policy of conducting post-consolidation agency review to be held within 24 months of agency reorganizations to determine their overall impact on the public. (F1, F2)
- R2.** The OCGJ recommends that by January 1, 2025, LAFCO forms a task force comprising representatives of affected water agencies to study the transformation of SOCWA and prepare a report on the future of water/wastewater in South Orange County. (F3, F4)

RECOMMENDED ACTION

This is a discussion item to receive feedback from the Commission. Staff will subsequently prepare a draft response to the OCGJ for Commission consideration at the August 14 Commission meeting.

Respectfully submitted,



CAROLYN EMERY

Attachment:

- 1. OC Grand Jury Report: Emerging Opportunities in South County Water/Wastewater Systems



Emerging Opportunities in South County Water/Wastewater Systems



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Emerging Opportunities in South County Water/Wastewater Systems

SUMMARY

This Orange County Grand Jury (OCGJ) report examines the 2021 consolidation of the City of San Juan Capistrano's (SJC) water and wastewater utilities with the Santa Margarita Water District (SMWD). It sheds light on the challenges encountered and benefits achieved through consolidation. The reorganization revealed unforeseen infrastructure costs. Also, different rate structures between the combined systems resulted in a dramatic fire line service rate increase for non-residential customers that prompted protest from some of the affected ratepayers. Going forward, the lessons learned from the SMWD experience are relevant for future consolidations. Based on the findings presented in this report, the OCGJ recommends that the Orange County Local Agency Formation Commission (LAFCO) develop an ongoing practice of evaluating post-consolidation outcomes and public impacts.

Further, this OCGJ report delves into the interrelationship of water and wastewater in South Orange County. The OCGJ studied the South Orange County Wastewater Authority (SOCWA), one of the largest collaborations of wastewater service providers in the region. Disputes among its member agencies, including litigation, have strained relations causing a bureaucratic entanglement that hinders operational effectiveness. Proposals and negotiations are underway that could ultimately affect the status of its members and the realignment of treatment plants serving South Orange County.

SOCWA is a long-standing joint powers authority (JPA) that shares several wastewater facilities managed through agreements that are due to expire in 2030. Its continuance as a JPA is tenuous yet its regulatory function remains relevant. As such, the OCGJ recommends LAFCO form a task force comprising representatives from affected water agencies to study the transformation of SOCWA and prepare a report identifying the optimal future of water and wastewater systems in South Orange County.

Technologies, innovation, and increased State and federal funding are on the horizon for the water and resource recovery industry. The OCGJ finds an urgent need to unite the South Orange County water and wastewater agencies so that South Orange County is in a better position to seize the opportunities that lie ahead.

BACKGROUND

Providing water and processing wastewater in Orange County has consistently captured the public's attention. Over the past 25 years, Grand Juries have issued 15 reports addressing various water-related challenges. Many of these reports emphasize the importance of consolidating water and wastewater agencies. Orange County is home to numerous governmental entities, including special districts and JPAs that oversee an array of countywide functions, particularly those related to water and wastewater service

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providers. Specifically, there are 29 retail water suppliers¹ in Orange County with their own independent governing boards and associated bureaucracies.

Previous OCGJs have raised concerns about the redundancy, laden costs, and complexity of public agencies for decades. Reports investigated the intricate web of independent special districts. Consolidating the large number of public agencies overseeing water and wastewater systems is a matter of significant concern.²

Over the past six decades, Orange County's history reflects a transformation from an agricultural hub to a thriving residential and commercial community. Rapid growth during this period caused a proliferation of water districts throughout the county. This resulted in an overabundance of water retailers operating within one of the geographically smallest counties in California.

In more recent times, water districts have found it necessary and advantageous to consolidate with other compatible public agencies. The Irvine Ranch Water District (IRWD) successfully acquired 5 water agencies in the last 27 years, with the most recent consolidation occurring in 2008.³ The latest annexation within Orange County occurred in 2021 when the Santa Margarita Water District (SMWD) acquired the water and wastewater systems of the City of San Juan Capistrano (SJC) through annexation.

Additionally, the potential consolidation of Orange County Water District (OCWD) and Municipal Water District of Orange County (MWDOC)—the county's two major water wholesalers—is currently under review by the Orange County LAFCO. This is highlighted in the 2021-2022 OCGJ report titled "Water in Orange County Needs One Voice."⁴

Advancing technology has made wastewater a sought-after commodity essentially adding to the water supply. In the realm of Orange County wastewater, there are two main wastewater service providers: the Orange County Sanitation District (OCSAN) and SOCWA. Both handle regional wastewater collection and treatment within their respective areas. Despite providing similar services, they operate under different governance structures. OCSAN is a special district, while SOCWA operates as a JPA. OCSAN serves 25 agencies covering north and central Orange County, totaling 2.5 million residents, while SOCWA currently represents 7 water and sewer agencies in South Orange County, serving approximately 600,000 residents. (See figures 1 and 2)

¹ Retail water suppliers provide potable municipal water to more than 3,000 end users or supply more than 3,000 acre-feet of potable water annually at retail for municipal purposes. (Cal. Water Code § 10608.12.)

² 2011-2012 Orange County Grand Jury report titled "[Dragging Special Districts from The Shadows](#)"

³ [Consolidations \(irwd.com\)](https://www.irwd.com)

⁴ 2021-2022 Orange County Grand Jury report titled "Water in Orange County Needs One Voice" https://www.ocgrandjury.org/sites/jury/files/2023-06/2022-06-22_Water_in_Orange_County_Needs_One_Voice.pdf

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Orange County Wastewater Agencies

	OCSAN	SOCWA
Services	Regional wastewater collection and treatment	Regional wastewater collection and treatment
Governing Structure	Special District	JPA
Agencies Served	25 agencies covering North and Central Orange County	7 water and wastewater agencies covering South Orange County
Funding	Property taxes, utility bills, grants and loans	Directly from member agencies. (no taxing authority)
# Residents Served	~2.5 million	~600,000

Figure 1-Wastewater Agencies

Emerging Opportunities in South County Water/Wastewater Systems

Water Agencies in South Orange County



Figure 2

Courtesy of SOCWA

Note: Santa Margarita Water District annexed the City of San Juan Capistrano Utilities in 2021. Laguna Beach County Water District serves the City of Laguna Beach and the Emerald Bay Service District.

REASON FOR THE STUDY

The public is generally unaware of the intricate processes and unseen operators who control the flow of their household water and sewage. However, the public has recently become keenly aware of rising utility bills. Media coverage has highlighted various water agencies raising rates to address escalating water costs, aging infrastructure, lack of upgrades, and deferred maintenance. The condition of water and wastewater infrastructure must be regularly assessed for an effective capital improvement program to maintain optimum performance.⁵ A recent example is the proactive April 16, 2024 “Huntington Beach Water/Wastewater Rate Report” proposal needed to ensure reliable water and wastewater systems through 2040.⁶ Over the past few years, several water agencies across Orange County have faced backlash from ratepayers for massive hikes to cover such expenses.

In 2023, public attention was drawn to the aftermath of the SMWD’s 2021 annexation of the SJC water systems. Media reports cited SMWD officials claiming neglect under prior SJC management. News coverage also focused on proposed rate increases so excessive that they generated protests from some of the most severely impacted customers. This being the most recent water systems consolidation, OCGJ was curious about the overall process, pre-existing condition of city’s water systems, and reasons underlying these major rate differences.

Additionally, with an interest in regional water matters, the OCGJ decided to extend its scope and examine the broader network of water and wastewater entities in South Orange County. The OCGJ identified a group of major water/wastewater providers that, through a long-standing JPA, manage and provide regional collection and treatment of wastewater to support their respective service areas. The OCGJ then undertook an investigation to assess the governance structure and operational effectiveness of this collaborative legal network. The OCGJ was particularly interested in the interrelationship of these water and wastewater providers and the prospect of future consolidations in South Orange County.

METHOD OF STUDY

The OCGJ conducted interviews with key personnel, attended tours, observed meetings, and reviewed documents relevant to the topic. Research focused primarily on public agencies serving South Orange County.

⁵ Capital Improvement Program, <https://efc.sog.unc.edu/resource/capital-planning-resources-for-water-and-wastewater-utilities/>

⁶ Huntington Beach Water / Wastewater Rate Report. <https://huntingtonbeach.legistar.com/View.ashx?M=F&ID=12846347&GUID=CF0B144A-8C49-4FFE-BC0F-EADFC70C317C>

Emerging Opportunities in South County Water/Wastewater Systems

Interviews:

- Shea Therapeutic Riding Center
- City of Laguna Beach
- ATS Financial Services
- City of San Clemente
- City of San Juan Capistrano
- South Coast Water District
- Santa Margarita Water District
- Moulton-Niguel Water District
- Irvine Ranch Water District
- Laguna Beach County Water District
- Municipal Water District of Orange County
- Trabuco Canyon Water District
- El Toro Water District
- South Orange County Wastewater Authority
- Orange County Water District
- Orange County LAFCO
- Berkson Associates Consulting
- Emerald Bay Service District

Site Visits:

- Orange County Emergency Operating Center at Loma Ridge
- Orange County Sanitation District
- Santa Margarita Water District
- Irvine Ranch Water District
- San Clemente Public Works Department
- South Coast Water District
- South Orange County Wastewater Authority
- Coastal Treatment Plant
- Municipal Water District of Orange County
- Orange County Water District
- Moulton Niguel Water District
- Laguna Beach County Water District
- JB Latham Treatment Plant
- City of Laguna Beach Public Works
- El Toro Water District
- Robert B. Diemer Treatment Plant

Meetings:

- LAFCO
- Municipal Water District of Southern California
- OCWD Water Summit
- Water Advisory Committee of Orange County (WACO)

Documents and Websites Reviewed:

- Previous Grand Jury reports
- M1 Manual-Association of California Water Agencies the *Manual of Standard Practices* by the American Water Works Association
- Websites, staff reports, agendas, and meeting recordings for water agencies in South Orange County
- Review of applicable State and local laws and regulations
- Local news articles and reports

INVESTIGATION AND ANALYSIS

WATER SYSTEMS – THE CONSOLIDATION PROCESS

Case Study: City of San Juan Capistrano and Santa Margarita Water District

The City of San Juan Capistrano's (SJC) water utilities transfer offers an insightful case study highlighting the challenges and benefits with consolidating its municipal water systems with the Santa Margarita Water District (SMWD). Records dating back to 2000 reveal a decades-long struggle marked by local political tensions, financial strain from ratepayer lawsuits, deferred maintenance, and insufficient capital reinvestment in the water system. These factors, compounded by a reluctance to adjust rates to cover ongoing water costs, culminated in a critical junction where the city eventually found itself seeking a more capable water provider to assume control of its water systems.

In the pivotal year of 2011, the financial hardships plaguing SJC intensified. A series of multimillion dollar lawsuits led to a substantial decrease in the city's bond rating, creating an additional \$7.5 million deficit in the city's budget. Faced with this fiscal crisis, the city resorted to extreme budgetary measures with city-wide cutbacks affecting the utility sector.

This financial rollercoaster persisted through Fiscal Years 2012 to 2014, until 2015 delivered yet another major economic hit. There was an unfavorable Court of Appeal's decision in a lawsuit concerning the City's billing rate system that impacted affluent and high-water users. It mandated an additional \$4.1 million refund, exacerbating the City's already precarious financial state.⁷ It was at this point, in 2015, that the City began to explore divesting its water and wastewater utilities. By August 2016, the City took a decisive step by filing an application with Orange County LAFCO to conduct a focused Municipal Service Review (MSR). The purpose was to explore the potential transfer of its water and wastewater operations and facilities to a public successor agency.

LAFCO's Regulatory Role: Municipal Service Reviews

LAFCOs are independent regulatory commissions throughout California that were created by the legislature in 1959 and are charged with controlling and adjusting the boundaries of cities and most special districts in all 58 counties. (See Cal. Gov. Code §§ 56001, 56325.) Besides regulating local government boundaries, LAFCOs play an important role in evaluating municipal services within their counties and making recommendations for improvements. LAFCOs review and update the designated sphere of influence for each city and special district under their jurisdiction. Prior to establishing or updating a sphere of influence, LAFCO must perform a special MSR. MSRs are comprehensive studies to determine the adequacy of governmental services being provided by the local agencies under LAFCO jurisdiction. MSRs can be conducted

⁷ Meghann M Cuniff, "San Juan Capistrano to pay \$4.1 million to refund customers for illegal water rates" *Orange County Register*, June 18, 2015.

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individually for specific cities or districts, covering all services, or on a county-wide or regional basis focused on specific services.

As the local regulatory agency, Orange County's LAFCO was tasked with reviewing the annexation proposal submitted by SJC and analyzing the financial suitability and operational capability of potential public successor agencies. On October 10, 2018, LAFCO issued its Focused MSR,⁸ which assessed the SJC's utilities and identified potential successor public agencies to assume their operations.⁹ This report held significant weight in the City's search for a solution to off-loading its distressed assets.

The MSR identified three interested special water districts for further consideration: South Coast Water District (SCWD), Santa Margarita Water District (SMWD), and Moulton Niguel Water District (MNWD). Notably, the report underscored that all three potential agencies were generally better positioned than the city to provide water and sewer services to the community,¹⁰ thus marking a turning point in SJC's search for a viable solution to its long-standing water system challenges.

Following presentations from three qualified special districts and input from the public, SJC selected SMWD on February 19, 2019, for further discussion on the transfer of the City's water and sewer utility systems. The City Council's rationale for this decision was based on the potential for an economy of scale, enhanced operations, infrastructure improvements, and stabilized utility rates for its ratepayers.¹¹ Subsequently, on January 21, 2020, the City unanimously approved the annexation agreement with SMWD¹² and in late winter of 2020, SMWD filed an annexation application with LAFCO.¹³ As part of the process, SMWD submitted a Plan of Service proposing enhanced efficiency and cost-effective delivery of services to the affected ratepayers.¹⁴

On August 19, 2021, LAFCO approved the SMWD annexation of SJC's water and wastewater utilities, citing such benefits as stabilization of rates and immediate, long-term improvements of both utilities.¹⁵ SMWD assumed operational control of the City's water systems on November 15, 2021¹⁶, designating the area formerly serviced by the

⁸ FOCUSED MUNICIPAL SERVICE REVIEW (oclafco.org)

⁹ Orange County Local Agency Formation Commission Agenda Report Proposed "Santa Margarita Water District Annexation of the City of San Juan Capistrano Water and Wastewater Utilities" August 19, 2021, p. 1.

¹⁰ *Ibid.* pp. 1-2.

¹¹ *Ibid.*

¹² San Juan Capistrano City Council Meeting Minutes dated January 21, 2020, p. 4.

¹³ Santa Margarita Water District Letter to Local Agency Formation Commission, Orange County Subject: City of San Juan Capistrano Potable Water, Recycled Water, and Wastewater Utilities – Santa Margarita Water District's Plan of Service and Application Form, December 23, 2020, pp. 1-2.

¹⁴ *Ibid.*

¹⁵ Orange County Local Agency Formation Commission Agenda Report Proposed "Santa Margarita Water District Annexation of the City of San Juan Capistrano Water and Wastewater Utilities" August 19, 2021, pp. 21-22.

¹⁶ FAQs • Why does SMWD want to take over San Juan Capistrano's Water and Wastewater service from the City? <https://www.smwd.com/faq.aspx?qid=180>

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SJC as Improvement District 9 (ID 9), distinct from SMWD's Improvement Districts 1 through 8.¹⁷

In May 2023, SMWD issued a Cost of Service and Rate Study concerning ID 9 that focused on determining rates necessary to cover water service costs as required by the California Constitution under Proposition 218.¹⁸ The study found 135 prominent ratepayers, including shopping centers, industrial buildings, schools, churches, and a major non-profit, that would be significantly impacted by the proposed monthly rate increases,¹⁹ specifically for their fire service lines. For instance, businesses faced increases from nearly \$9,700 to over \$14,000 annually for fire service lines, a result of SMWD's new rate methodology based on capacity. In contrast, residential lines saw more modest increases of no more than \$30 a month.²⁰

SMWD responded to the rate increase concerns by sending out required notices to new ID 9 ratepayers and met with those severely impacted. The proposed rate increases were publicized by local media, leading to protests from some affected ratepayers. At a July 12, 2023, public hearing on proposed rates, SMWD staff highlighted the City's deferred maintenance of infrastructure, and the lack of rate increases since July 2018. They argued that the increases were necessary to align ID 9 with the rest of the district. Protesting ratepayers claimed the proposed rate hikes were unjust. One ratepayer hired a consultant to evaluate the SMWD rate study. Thirteen water districts in Orange and Riverside Counties were included in the investigation. The rate methodology employed in the SMWD Cost of Service and Rate Study was not used in any of the 13 districts that were studied.²¹

In response to this feedback, SMWD's Board of Directors voted to continue the meeting to August 2, 2023. On that date, the Board approved ID 9 water rate increases proposed by staff, except for the capital charge component for fire meter owners. Additionally, the Board ordered a new Cost of Service and Rate Study for all districts within SMWD to be completed by June 30, 2024.

¹⁷ <https://www.smwd.com/DocumentCenter/View/4247/SMWD-ID-9-Cost-of-Service-and-Rate-Study> p.3.

¹⁸ *Ibid.*

¹⁹ Santa Margarita Water District Memorandum to: Board of Directors From Daniel Ferons, Erica Castillo Subject: Public Hearing on Proposition 218 Rate Structure; and Consideration and Action on Adoption of Resolution No. 2023-07-01 Adopting Adjustments in its Potable Water, Recycled Water, and Wastewater Service Charges and Water Shortage Contingency Rates for Improvement District No. 9 (San Juan Capistrano) Agenda Packet July 12, 2023, p.7.

²⁰ Brandon Pho, Noah Biesiada, San Juan Capistrano Businesses Shocked over Staggering Proposed Water Bill Hike, Voice of OC, June 22, 2023.

²¹ Findings Report, ATS Financial Services, July 6, 2023 "Analysis of ID 9 (SJC) of the SMWD Cost of Service and Rate Study and Proposed Rate Adjustments."

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SJC/SMWD Consolidation Timeline

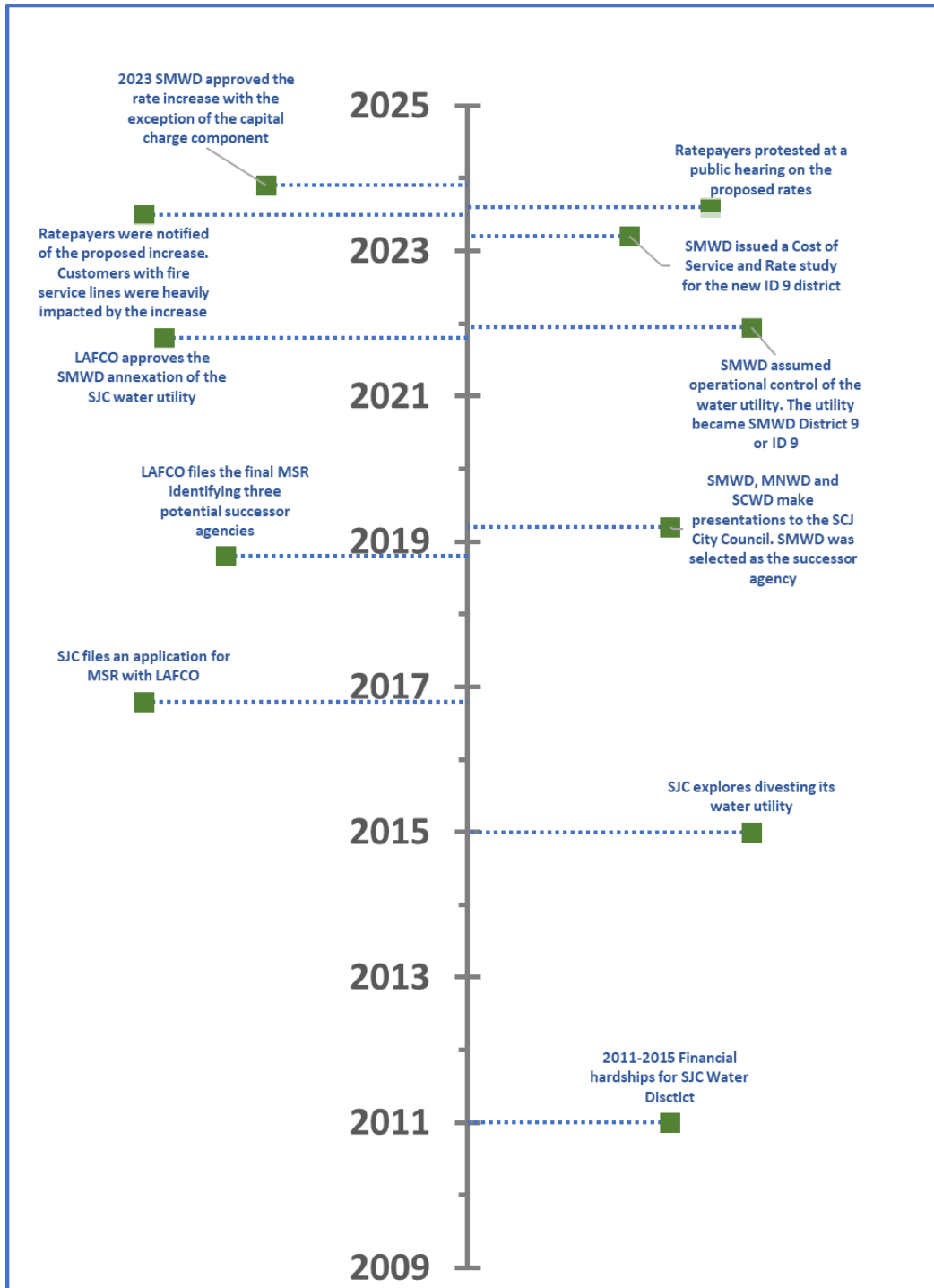


Figure 3

Emerging Opportunities in South County Water/Wastewater Systems

Summation

Although initial rate increases drew some criticism from the community, after the consolidation, the average monthly residential rate went up \$30. Overall, the SMWD consolidation signaled a positive direction for SJC's water future. Since the transfer, new SMWD customers have generally expressed satisfaction with their new provider's service and water quality, as reflected in polls and customer surveys.²² Additionally, SMWD is actively addressing deferred maintenance needs and making necessary infrastructure capital improvements neglected over time. Also, customer rates for ID 9 are on schedule to be consistent with the entire district by 2030.²³

The case of the SJC's water systems having undetected deficiencies underscores the need for an extensive assessment of the utilities in advance of such reorganizations. Transparency and more due diligence would have mitigated some consolidation concerns and helped smooth the transition of service providers. Research also suggests the need for a more extensive analysis of rate increases for non-residential customers.

WASTEWATER SYSTEMS - REGIONAL COLLABORATION

Case Study: South Orange County Wastewater Authority (SOCWA)

SOCWA was formed in 2001 when the South East Regional Reclamation Authority, Aliso Water Management Agency, and South Orange County Reclamation Authority consolidated to meet the wastewater needs of more than 500,000 homes.

The mission of SOCWA is to collect, treat, beneficially reuse, and dispose of wastewater in a manner that protects and respects the environment; maintains the public's health; and meets local, state, and federal regulations.²⁴ (See figure 4)

SOCWA exists to handle the wastewater needs of homes and businesses throughout South Orange County. It oversees the entire process from collection to disposal, ensuring water is treated properly. Additionally, SOCWA plays an important role in producing recycled water for irrigation and commercial purposes, saving a substantial amount of domestic water annually. This translates to preserving around 1.6 billion gallons of water, equivalent to 16,259 acre-feet.

SOCWA operates in collaboration with member agencies, including local water providers and local cities. It manages various programs to fulfill the Clean Water Act and National Pollutant Discharge Elimination System (NPDES)²⁵ permit requirements. It also operates two ocean outfalls and three wastewater treatment plants. The facilities

²² [One Year Later: A Look at Santa Margarita Water District's Acquisition of San Juan Capistrano's Water Utilities | Eye on SJC | picketfencemedia.com.](#)

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ [National Pollutant Discharge Elimination System \(NPDES\) | US EPA](#)

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owned and/or operated by SOCWA include the Coastal Treatment Plant located in the City of Laguna Beach, the JB Latham Treatment Plant located in the City of Dana Point, and the Regional Treatment Plant located in the City of Laguna Niguel. Together these three plants provide regional collection and treatment to approximately one third of the County's population.

Wastewater Purification and Recycling

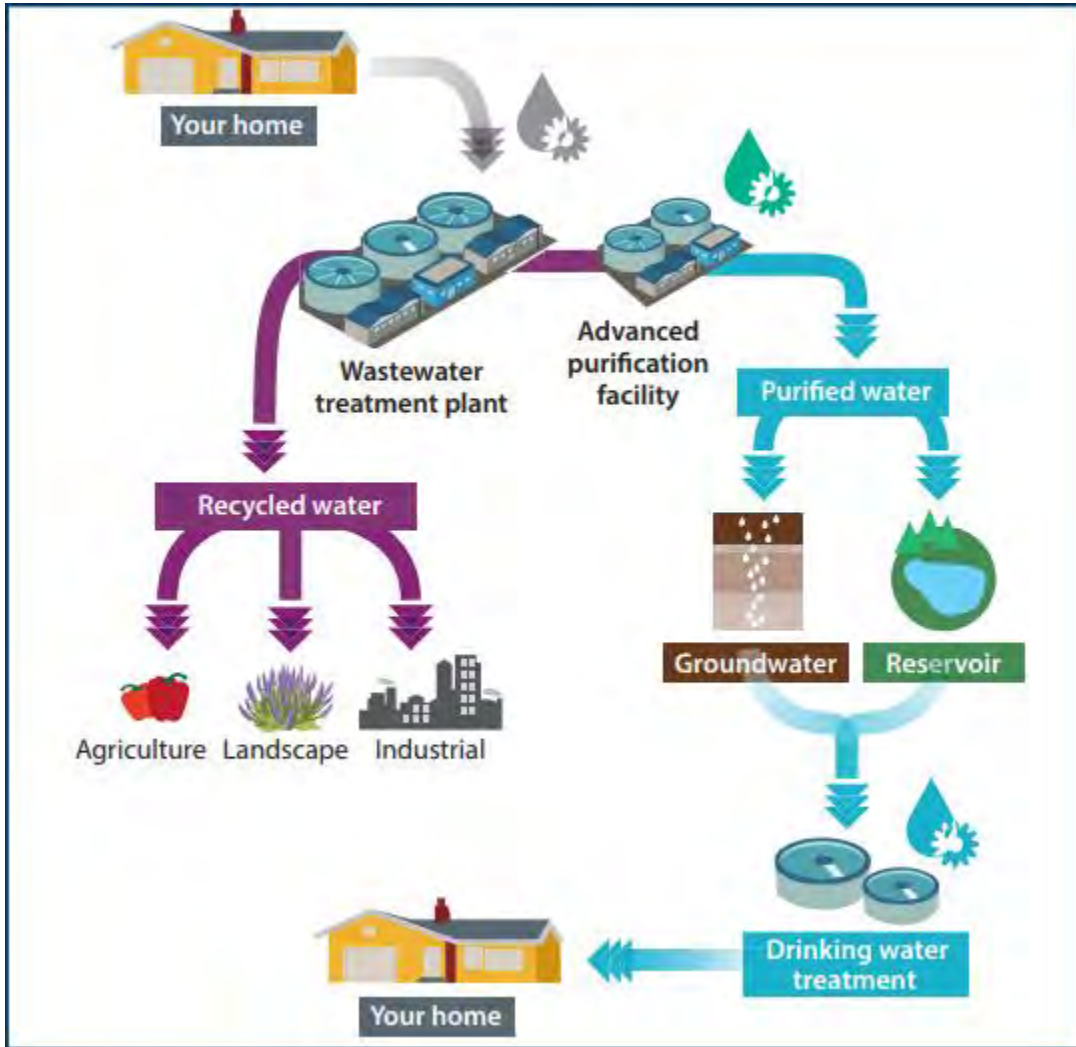


Figure 4

Source: sdwa.org waternewsnetwork.com

Emerging Opportunities in South County Water/Wastewater Systems

Joint Power Authority: Governing Structure

SOCWA is a JPA originally founded by 10 member agencies consisting of local water and service districts and cities. A JPA is a membership between two or more public agencies to jointly exercise common powers.²⁶ SOCWA currently has 7 member agencies which include two cities, four water districts, and a community services district. The four water districts in SOCWA provide sewer and water service to their customers. (See Appendices 1 and 2).

SOCWA's Board of Directors is made up of one representative from each of SOCWA's members. Each director has one vote regardless of their individual levels of contribution to SOCWA's revenues or the size of the population or territory they serve. Among other functions, the Board is responsible for approving SOCWA's budget, appointing its general manager, and taking other administrative actions. While SOCWA's Board governs matters that affect SOCWA as a whole, members enter into agreements with each other to establish project committees to serve their specific needs.²⁷

A project committee forms when members enter into agreements to share the cost of an existing SOCWA wastewater processing facility or to construct a new facility in exchange for their use of the facility for processing their wastewater products or for other purposes. By entering into these agreements, members establish a right to a certain amount of capacity in a SOCWA facility. Capacity here refers to the member's right to use the facility to process wastewater liquids and solids or to perform advanced water treatment. Project committee agreements and budgets express these capacities as a percentage of the total capacity of the facility for its different functions.²⁸

Voting at the project committee level also follows a one-member, one-vote structure. Members of a project committee vote on matters directly related to that project committee, including budgets to maintain or expand the facility. Members of project committees are bound by the terms of their agreements to pay their share of project costs. Members may only be relieved of this obligation by mutual consent of all participating members of the particular project committee.²⁹

SOCWA has no direct taxing authority, and nearly all funding for its operations comes directly from the contribution of members. SOCWA bills project committee members for their share of SOCWA's costs to construct, operate, and maintain the facilities the project committees utilize. Project committee agreements establish each participating

²⁶ <https://www.auditor.ca.gov/reports/2017-113/introduction>.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

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member's share of operation and maintenance costs and capital costs generally based on the member's level of usage or capacity rights.³⁰

SOCWA: Disputes and Succession

In May 2017, SOCWA, along with three of its members, filed a lawsuit alleging that one of its members – Moulton Niguel Water District (MNWD) had failed to pay its contractual share of project costs for the Coastal Treatment Plant (CTP).³¹ MNWD entered into a project committee with the City of Laguna Beach, SCWD, and Emerald Bay Service District (EBSD) in 1999 to use CTP's capacity to process up to 1.96 million gallons per day (MGD) of its wastewater products. In response, MNWD stated it no longer used any of its contractual capacity to CTP and filed an answer and cross-complaint in August 2017 alleging fiscal mismanagement, fiscal improprieties, and poor retention of financial records on the part of SOCWA.³²

In March 2018, the California State Auditor released its audit report (SOCWA State Audit Report)³³ concerning the financial management practices and governance structure of SOCWA. It found that the elements of SOCWA's governance structure were generally similar to that of other wastewater and water JPAs in California. The report found evidence of financial mismanagement and inadequate record keeping but indicated that SOCWA had taken steps to correct its fiscal and record keeping practices. In response to the audit SOCWA agreed to the recommendations contained in the report.³⁴

In February 2019, the Riverside Superior Court issued its tentative ruling holding that MNWD was legally obligated to pay its proportional share of all costs, including capital costs and items necessary to maintain and operate the Coastal Treatment Plant until February 19, 2030 when the CTP project agreement ended.³⁵ In May 2019, SOCWA, MNWD, SCWD, EBSD, and the City of Laguna Beach issued a public statement regarding the litigation on the coastal treatment plant, and that the parties had agreed to resolve their differences on mutually agreeable terms.³⁶

On August 9, 2023, LAFCO issued its MSR Sphere of Influence Reviews covering the Southwest Region (OCLAFCO SW MSR).³⁷ It identified all agencies in the region that receive wastewater services in some capacity from SOCWA. Services provided by SOCWA generally fit into two areas:

³⁰ <https://www.auditor.ca.gov/reports/2017-113/introduction>.

³¹ *Ibid*

³² *Ibid*.

³³ <https://www.auditor.ca.gov/reports/2017-113/summary.html>

³⁴ <https://www.auditor.ca.gov/reports/2017-113/response.html>

³⁵ <https://www.oregister.com/2019/02/27/judge-rules-on-2-million-dispute-over-orange-county-sewage-plant/>

³⁶ <https://www.oregister.com/2019/05/20/moulton-niguel-water-district-agrees-to-pay-4-8-million-in-wastewater-dispute/>

³⁷ https://oclafco.org/wp-content/uploads/2024/01/OCLAFCO_Southwest_MSR_-_Final_8.28.23.pdf

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1. Permitting and regulatory support for the operation of all wastewater treatment plants in south Orange County
2. Operation of three wastewater treatment plants

The MSR also noted the SOCWA's JPA agreement previously included ten agencies but had recently been reduced to seven voting members including the El Toro Water District (ETWD), MNWD, SCWD, EBSD, the City of Laguna Beach, SMWD, and the City of San Clemente. As of July 1, 2023, the following three agencies were no longer members of SOCWA: Irvine Ranch Water District (IRWD), Trabuco Canyon Water District (TCWD), and SJC. San Juan Capistrano's wastewater services and infrastructure were assumed by SMWD through an annexation to the district in 2021 and TCWD and IRWD had arranged for former SOCWA services to be provided through other means.³⁸

The MSR stated SOCWA staff were aware of the evolving issues regarding SOCWA's management, purpose, and structure, and had hired a facilitator at the request of SCWD to assist in moving the discussion forward. Additionally, SOCWA staff noted that the agencies have full authority to make any changes they desire to the JPA agreement, provided they get the appropriate majority.

The MSR further noted within SOCWA there are numerous shared facilities for wastewater collection and treatment. These are managed by SOCWA through separate project agreements or committees among various member agencies. Many of these agreements predate SOCWA and are due to expire in 2030. MNWD had expressed strong interest in assuming the operational responsibility of one of SOCWA's regional facilities, the Regional Treatment Plant. In its justification, MNWD saw a potential benefit if several of SOCWA's assets were operated by each member agency. In their view, which was shared by SMWD, SOCWA is not structured to meet the wastewater service needs of some member agencies and should focus on providing enhanced permitting and regulatory compliance support for the SOCWA member agencies.

The MSR found that SCWD had expressed a strong interest in preserving the existing structure of SOCWA while also expressing openness to evaluating the agreements for efficiency and improvement. The other agencies reviewed in the MSR did not express similar interest in a reexamination of the SOCWA arrangements, nor did they share any complaints or concerns about SOCWA's service level. While they did not express a desire to advance these ideas during the MSR process, they stressed their openness to reevaluating the project agreements as they approach their respective expiration dates. After the MSR, SOCWA members conducted facilitator directed meetings to address member concerns.

At the Board of Directors meeting on March 7, 2024, SOCWA presented a \$20 million buyout proposal to transition the Regional Treatment Plant to MNWD and other

³⁸ *Ibid*

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considerations to facilitate MNWD's withdrawal from SOCWA.³⁹ The proposed agreement will become effective on June 30, 2024, and is contingent on several conditions including the required unanimous vote of all SOCWA members to authorize MNWD's withdrawal from SOCWA.⁴⁰

On May 1, 2024, a special meeting was held to address the March 7, 2024, proposal to transition the Regional Treatment Plant to MNWD and to facilitate MNWD's withdrawal from SOCWA. There was unanimous approval of the proposal in principle with members set to return to their respective boards for official approval by June 1, 2024.

The steps ahead are to continue negotiations and require MNWD to provide its official response. If consensus is reached, then terms and conditions would be laid out to adopt the necessary amendments to various JPA agreements and Project Committee agreements. MNWD would need to develop and adopt an agreement with SCWD, EBSD, City of Laguna Beach, and ETWD for handling solid waste. Treatment, conveyance, and outfall agreements would need to be developed and adopted between SOCWA and MNWD.

Lastly, upon MNWD's withdrawal from SOCWA, and after the buyout payment, the transfer of the Regional Treatment Plant and its operation to MNWD would be complete.

Summation

The history of SOCWA shows the divergent approaches of its member agencies. While some agencies embraced long-range regional collaboration, it could be argued that smaller districts with overweighted voting authority hindered them. Past litigation among JPA members has created a legacy of distrust, and Balkanized decision-making among its governing directors. Water officials interviewed by the OCGJ clearly indicated tension among rival SOCWA members. It appears some members are entrenched in transactional approaches aimed solely at addressing ownership, operation, and modernization of treatment plants within their own boundaries.

Water and wastewater agencies, like SOCWA, have worked together through legal agreements in the past. However, SOCWA's collaborative efforts have not always been successful which may be reflective of its JPA governing structure.⁴¹ Over time, changes in local support, leadership, and financial pressures have led member agencies to reconsider their involvement in the JPA.

³⁹ https://www.socwa.com/event/board-of-directors-meeting-3-7-2024/?instance_id=716

⁴⁰ <https://www.socwa.com/wp-content/uploads/2023/12/7f-2024-03-06-SOCWA-Proposal-to-Transition-RTP-to-MNWD.pdf>

⁴¹ Trish Cypher and Colin Grinnell, "Governments Working Together: Citizen's Guide to JPAs" (California State Legislature, 2007).

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It was evident from the SOCWA special meeting of May 1, 2024, that leaving a JPA can be complicated.⁴² SOCWA started with 10 members but is now down to 7, and negotiations are ongoing for yet another member to leave. Now, SOCWA needs new agreements to govern its operations going forward. This leaves uncertainty about SOCWA's future beyond the expiration of its original contracts in 2030. However, with California's ocean discharge regulations being so extensive, JPA members have expressed support for SOCWA to continue in some form to handle permitting as well as other regulatory support functions within its purview.

THE PATH FORWARD

Water System - Consolidations

Consolidating, restructuring, or merging agencies is a function of assessing the costs and benefits regarding safety, security,⁴³ reliability, financial and operational efficiencies, and economies of scale, versus the attraction of local control. A thorough assessment of this "balancing act" will benefit future generations of Orange County residents.

South Orange County is served by ten water providers in jurisdictions ranging in size from 540 customers in EBSD to 116,000 customers in IRWD (Appendices 1 and 2). To advance consolidations, over the past decade the State of California has developed financial incentives for larger water systems to absorb small systems, introduced new authorities to mandate consolidation under specific circumstances, and invested significantly in technical assistance resulting in over 200 completed projects throughout the State with more underway.⁴⁴ Interviews identified the benefit of having a single entity to discuss the optimal management/structure of water, wastewater, and reuse operations with a common vision for the future of Southern Orange County.

In recent years, water districts have experienced the benefits of consolidation with one another, as evidenced by IRWD. It has successfully acquired five other agencies over the past twenty-seven years, including the Santa Ana Heights Mutual Water Company in 1997, Carpenter Irrigation District in 2000, Los Alisos Water District in 2001, Santiago County Water District in 2006, and the Orange Park Acres Mutual Water Company in 2008.⁴⁵

Irvine Ranch Water District's process involves a selective approach, emphasizing efficiencies and mutual benefits. It begins with a consolidation request to IRWD from the prospective water agency, followed by mutual agreement on terms, and then an application to LAFCO for their evaluation. Irvine Ranch Water District has a proven track

⁴² <https://www.socwa.com/wp-content/uploads/2023/12/7f-2024-03-06-SOCWA-Proposal-to-Transition-RTP-to-MNWD.pdf>

⁴³ [EPA warns of increasing cyberattacks on water systems | AP News](#)

⁴⁴ Luskin Center for Innovation, Trends in California Water Systems Consolidation (December 2023) [Policy-Brief-Trends-in-California-Water-Systems-Consolidation.pdf \(ucla.edu\)](#)

⁴⁵ [Consolidations \(irwd.com\) https://www.irwd.com/about-us/consolidations](#)

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record since 1997 of having successfully unified five providers benefitting 57,000 residents with improved water reliability and standardized rates. With extensive cash reserves, IRWD is poised to maintain and enhance its water systems over the next fifty years.

It is evident that past consolidations among water agencies have yielded positive outcomes by enhancing efficiencies and fostering mutual benefits through shared expertise and resources. With the multitude of water districts and the risk of financial strain comparable to SJC, future consolidations are not just probable but beneficial. Hence, it is imperative to draw lessons from past experiences. By reviewing the issues and concerns encountered by SMWD and by adopting the strategies employed by IRWD, there is an opportunity to improve the process for future consolidations (Appendices 1 and 2).

Wastewater Systems - Collaboration

In South Orange County, collaboration among water and wastewater providers can drive positive changes for the region's future. Despite past challenges posed by differing governing boards and environmental perspectives across separate jurisdictions, officials have shown the willingness to unify and address shared concerns. The future of SOCWA involves reorganizing the structure so that it can resolve the operational issues of treatment plants. This allows major water agencies to focus on maximizing wastewater reuse and to minimize ocean discharge, with the aspirational goal of zero discharge. Collaboration among all agencies operating treatment plants is paramount, to adopt a more integrated management approach.

The Moulton Niguel Water District, one of the leading service providers, has embraced a transformative drive to water management. Since 2019, MNWD has pursued federal funds to strengthen its infrastructure against seismic and severe storm damage. In 2024 the district was awarded \$10.3 million in federal grants to strengthen and improve its wastewater infrastructure. The grant is administered by the California Office of Emergency Services and funded by the Federal Emergency Management Agency (FEMA) to replace sewer lines that move more than half of all district wastewater.⁴⁶ Advocating for funding as a region to address aging infrastructure is vital to ensure the long-term sustainability of water management efforts. By working collectively towards these goals, South Orange County can lead the way in sustainable water management practices for the benefit of current and future generations.

The Moulton Niguel Water District is also working on a reverse osmosis project called OASIS (Optimal, Adaptive, Sustainable, Integrated, Supply) to receive wastewater from homes and businesses, and treat it for potable reuse. The OASIS project emerges as a beacon of innovation and sustainability, offering not only reliable water reuse but also an opportunity for education and public engagement. By demonstrating the safety and effectiveness of direct potable reuse, South Orange County can pave the way for similar

⁴⁶ <https://www.mnwd.com/moulton-niguel-water-district-awarded-federal-grant/>

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projects across California. Building partnerships with neighboring regions, environmental organizations, and governmental bodies will be crucial to securing state, federal, and private funding dedicated to advancing water reuse in South Orange County, with OASIS as the flagship project, being a top priority.

Another transformative advancement is the Doheny Ocean Desalination Project, planned by the South Coast Water District as part of the Joint Regional Water Supply System. This project would create a new, local, drought-proof water supply that would provide emergency water supplies.⁴⁷ Benefits would provide a water source at a reasonable cost, up to 5 million gallons per day of drinking water and the potential for long-term regional benefits. The proposed facility would be located near Doheny State Beach in the City of Dana Point and is planned to be on-line in 2028.

Looking ahead, the integration of treatment plant operations and the advancement of technologies like direct potable use and desalination are key focal points. As such, the OCGJ recommends LAFCO form a task force comprising representatives of affected water districts to study the transformation of SOCWA and prepare a report identifying the optimal future of water and wastewater systems in South Orange County.

In an era of emerging opportunities, a comprehensive regional plan developed in conjunction with all stakeholders is needed for guiding future projects and addressing evolving needs. As the task force facilitator, LAFCO can also play a pivotal role in studying future consolidations and a unified regional approach to water and wastewater management and service delivery. By planning and working together, South Orange County is poised to lead the way in securing a better future for generations to come.

COMMENDATIONS

Irvine Ranch Water District (IRWD) - The Irvine Ranch Water District successfully acquired 5 water providers serving 57,000 residents since 1999. These consolidations provide reliable water supply at equitable rates, which are mutually beneficial to all customers.

City of San Clemente – Based on interviews and a comprehensive site visit, the OCGJ found the City of San Clemente does an excellent job in maintaining and operating its water and wastewater utility systems. This integrated system augments the City's local recycled water sources and is beneficial in reusing urban runoff and reducing biosolids.

⁴⁷ [South Coast Water District, CA \(scwd.org\)](https://www.scwd.org)

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FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2023-2024 Grand Jury requires responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation described here, the 2023-2024 OCGJ has arrived at the following principal findings:

- F1. San Juan Capistrano's deferred maintenance of the water/wastewater utility resulted in the need to transition the facility to a larger water provider to allow more efficient management and maintenance of the infrastructure.
- F2. The SMWD proposed rate increase severely impacted San Juan Capistrano's non-residential customers and led to protests of unfairness and negative attention from the local media.
- F3. SOCWA's member agencies have widely diverse populations, requirements, and revenues. This has led to conflicts over governance, facility operation, and control, affecting the evolving potential for wastewater reuse.
- F4. There is currently no unified strategy for the future of water/wastewater provision in South Orange County

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2023–2024 Grand Jury requires responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “Emerging Opportunities in South County Water/Wastewater Systems,” the 2023-2024 OCGJ makes the following two recommendations:

- R1. The OCGJ recommends that by January 1, 2025, LAFCO studies a policy of conducting a post-consolidation agency review to be held within 24 months of agency reorganizations to determine their overall impact on the public. (F1, F2)
- R2. The OCGJ recommends that by January 1, 2025, LAFCO form a task force comprising representatives of affected water agencies to study the transformation of SOCWA and prepare a report on the future of water/wastewater in South Orange County. (F3, F4)

RESPONSES

California Penal Code Section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected county official shall comment on the findings and recommendations pertaining to the matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section 933.05 specifies the manner in which such comment(s) are to be made as follows:

- (a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding.
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.
- (b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the Grand Jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation, thereof.

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- (c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Responses Required

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code Section 933.05 are required from:

Findings – 90 Day Response Required

City of Laguna Beach	F3, F4
City of San Clemente	F3, F4
City of San Juan Capistrano	F1, F2
El Toro Water District	F3, F4
Emerald Bay Service District	F3, F4
Irvine Ranch Water District	F4
Laguna Beach County Water District	F4
Moulton Niguel Water District	F3, F4
Santa Margarita Water District	F1, F2, F3, F4
SOCWA Board of Directors	F3, F4
South Coast Water District	F3, F4
Trabuco Canyon Water District	F4

Recommendations – 90 Day Response Required

Orange County LAFCO Board of Commissioners	R1, R2
City of Laguna Beach	R2
City of San Clemente	R2

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El Toro Water District	R2
Emerald Bay Service District	R2
Irvine Ranch Water District	R2
Laguna Beach County Water	R2
Moulton Niguel Water District	R2
Santa Margarita Water District	R2
SOCWA Board of Directors	R2
South Coast Water District	R2
Trabuco Canyon Water District	R2

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GLOSSARY

Acre-foot - A unit of measure used to calculate volumes of water. One acre-foot equals the volume of water that would cover an acre of land at a depth of one foot.

AWWA - American Water Works Association is a non-profit organization. Its mission is to improve water quality and supply.

Desalination - A process that removes salt and other minerals from water.

ISDOC - Independent Special Districts of Orange County is an association that advocates for Orange County’s independent special districts.

JPA - Joint Powers Authority is a membership between two or more public agencies to jointly exercise common powers.

LAFCO - Local Agency Formation Commission is a countywide commission, required in each California county. LAFCO’s powers include approving, establishing, expanding, reorganizing, and, in limited circumstances, dissolving cities and special districts.

MSR - Municipal Service Review is a comprehensive analysis conducted by LAFCO to assess the performance of municipal services within a specific geographic area.

NPDES - National Pollutant Discharge Elimination System

OASIS - A initiative for advanced integrated water management started by MNWD. (Optimal, Adaptive, Sustainable, Integrated, Supply)

OCSAN - Orange County Sanitation District provides wastewater collection, treatment, and recycling North and Central Orange County.

Potable Water - Water that is suitable for human consumption.

Recycled Water - Wasterwater that has been treated (filtered and disinfected). It is used as irrigation for golf courses and parks.

Special District - A local government entity that was created to provide a specific public service. Examples are water service, cemeteries and fire protection.

SOCWA - South Orange County Wastewater Authority is a Joint Powers Authority with seven member agencies, consisting of local retail water agencies and cities that provide

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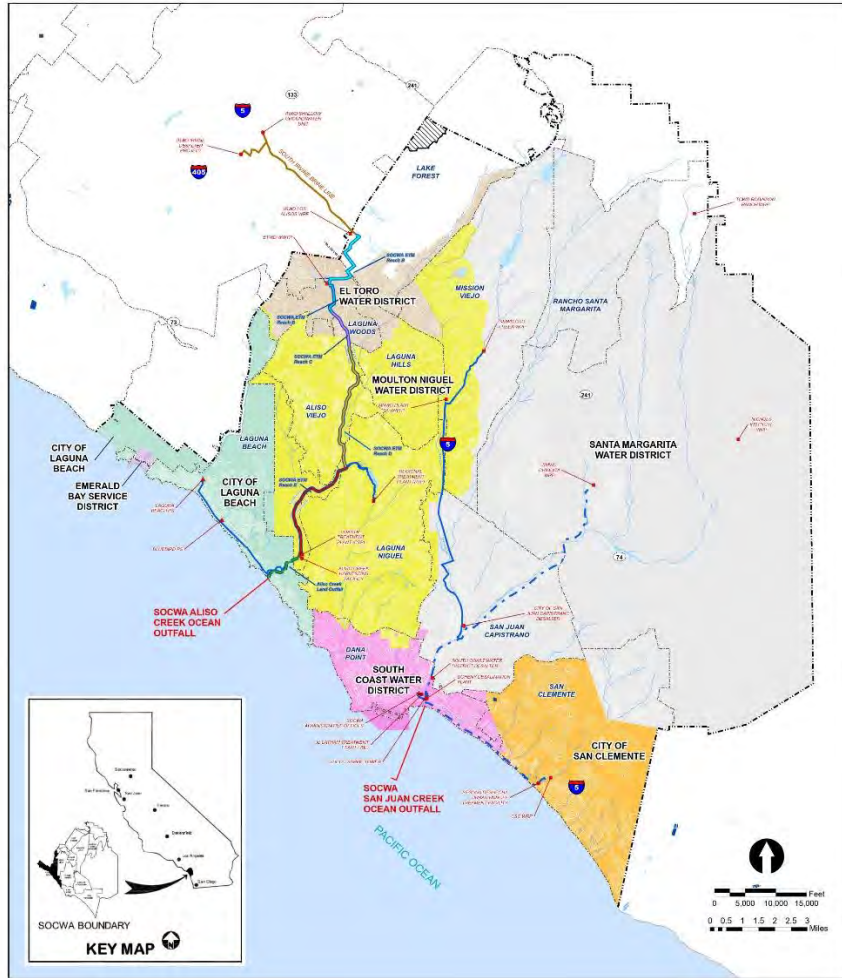
water to their residents. SOCWA manages the collection, transmission, treatment, and disposal of wastewater across South Orange County.

WACO - Water Advisory Committee of Orange County

APPENDICES

APPENDIX 1

South Orange County Water Resource Agencies



- | | | | |
|--|--|---|---|
| <p>Member Agencies</p> <ul style="list-style-type: none"> City of Laguna Beach City of San Clemente El Toro Water District Emerald Bay Service District Moulton Niguel Water District Santa Margarita Water District South Coast Water District OCSD Annexation Area | <p>SOCWA Facilities</p> <ul style="list-style-type: none"> Desalter/Treatment Facility Pump Station Treatment Facility SOCWA Administrative Offices Transmission Line Land Outfall South Irvine Brine Line Ocean Outfall | <p>SOCWA Effluent Transmission Line</p> <ul style="list-style-type: none"> ETL - Reach A ETL - Reach B ETL - Reach C ETL - Reach D ETL - Reach E Aliso Creek Land Outfall | <p>SOCWA Boundary</p> <ul style="list-style-type: none"> SOCWA Boundary City Boundaries Lake/Pond Reservoir Streams |
|--|--|---|---|



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APPENDIX 2

South Orange County Water Resource Agencies Summary Data

Location	Type	Established	Services	SOCWA Member	Water Lines (Miles)	Sewer Lines (Miles)	Sewage Treatment Plants	Residents Served	Service Connections	Area (sq mi)	# Employees	Board / Council Members
Emerald Bay Service District (EBSD) *	Community Services District	1961	Water & Sewer	Yes	6	6	0	2,000	540	1	1	5
Trabuco Canyon Water District (TCWD)	Special District	1961	Water & Sewer	No	66	45	1	14,000	4,200	13	21	5
City of Laguna Beach	Municipal Utility	1927	Sewer	Yes	n/a	95	0	23,000	8,000	9	14	5
Laguna Beach County Water District (LBCWD)	Dependent Special District**	1925	Water	n/a	135	n/a	n/a	25,000	8,450	9	40	5
South Coast Water District (SCWD)	Special District	1932	Water & Sewer	Yes	158	136	0	39,000	12,600	8	85	5
El Toro Water District (ETWD)	Special District	1960	Water & Sewer	Yes	170	158	1	51,000	10,000	9	61	5
City of San Clemente	Municipal Utility	1928	Water & Sewer	Yes	230	162	1	64,000	17,800	19	45	5
Moulton Niguel Water District (MNWD)	Special District	1960	Water & Sewer	Yes	656	500	1	170,000	55,000	37	163	7
Santa Margarita Water District (SMWD)	Special District	1964	Water & Sewer	Yes	1,080	665	3	200,000	65,000	111	200	5
South Orange County Totals				7	2,501	1,767	7	588,000	181,590	216	630	47
Irvine Ranch Water District (IRWD)	Special District	1961	Water & Sewer	No	1,976	1,374	2	465,000	122,000	181	337	5
South Orange County Wastewater Authority	Joint Powers Authority	2001	Sewage Treatment	n/a	n/a	51	3	600,000	n/a	n/a	64	7***

Notes

Data obtained from agency websites and interviews.

South Orange County imports approximately 90% of Water from Metropolitan Water District of Southern California

TCWD operates the only potable water treatment facility in South Orange County

IRWD Listed Separately as Majority of Customers in Central Orange County

SOCWA operates the two ocean outfalls: Aliso Creek and San Juan Creek

* Water system operated and maintained by LBCWD

** LBCWD is a Subsidiary (Dependent) District of the City whose Council serves as the Board.

*** 7 Appointed by Member Agencies

Emerging Opportunities in South County Water/Wastewater Systems

APPENDIX 3**South Orange County Water Districts/Providers**

El Toro Water District (ETWD) - Provides water and wastewater service in the cities of Laguna Hills, Laguna Woods, Lake Forest, Aliso Viejo, and Mission Viejo.

Emerald Bay Service District (EBSD) - Provides fresh water supply under contract with the Laguna Beach County Water District. Collects wastewater and transmits to Laguna Beach.

Irvine Ranch Water District (IRWD) - Serves Central Orange County, including the following cities: Irvine, Newport Beach, Tustin, Orange, Lake Forest, and Costa Mesa.

Laguna Beach County Water District (LBCWD) - Provides water service to portions of the city of Laguna Beach, a portion of Crystal Cove State Park, and the unincorporated community of Emerald Bay.

City of Laguna Beach - Provides wastewater collection and/or transmission services to the city of Laguna Beach, a portion of Crystal Cove State Park, and the unincorporated community of Emerald Bay.

Moulton Niguel Water District (MNWD) - Provides water and wastewater services to customers in Laguna Niguel, Aliso Viejo, Mission Viejo, Laguna Hills, and Dana Point.

Municipal Water District of Orange County (MWDOC) is a wholesale water provider. It purchases imported water through the Metropolitan Water District of Southern California (MET) and delivers this water to its 27 member agencies, who in turn, provide retail water services to the public. It is the only agency with members from all water providers in South Orange County.

Orange County Water District (OCWD) - Manages the ground water supply for Orange County. It is a wholesale agency.

City of San Clemente - Provides water/wastewater services to the residents of San Clemente

Santa Margarita Water District (SMWD) - Serves the cities of Mission Viejo, San Juan Capistrano, Rancho Santa Margarita, and the communities of Coto de Caza, Las Flores, Ladera Ranch, Rancho Mission Viejo, and Talega in San Clemente.

South Coast Water District (SCWD) - Serves the communities of Dana Point, South Laguna Beach, and areas of San Clemente and San Juan Capistrano.

Trabuco Canyon Water District (TCWD) - Serves the Communities of Trabuco Canyon, Robinson Ranch, Trabuco Highlands, Walden, Rancho Cielo, Portola Hills, Santiago Canyon Estates, and Dove Canyon.