Santa Ana River Flood Protection Agency

Executive Director

Herbert I. Nakasone

September 24, 2015

Members

City of Anaheim City of Buena Park City of Cypress City of Fountain Valley

City of Fullerton City of Garden Grove

City of Huntington Beach City of Irvine

City of Irvine
City of Newport Beach
City of Orange
City of Placentia
City of Santa Ana
City of Santa Beach

City of Seal Beach City of Stanton City of Tustin City of Westminster City of Yorba Linda

County of Orange

Costa Mesa Sanitary District O C Sanitation District O C Flood Control District O C Water District

Mailing Address

P.O. Box 4048 Santa Ana, CA 92702-4048

Email Address:

<u>Herb.nakasone@ocpw.ocgov.com</u> Hnakasone22@yahoo.com

Phone

(714) 647-3938 (949) 922-1852

Location

300 N. Flower, Room 720 Santa Ana CA 92702-5000

Website

www.ocflood.com/ SARFPA.aspx Honorable Glenda Sanders

Presiding Judge of the Superior Court of California

700 Civic Center Drive West

Santa Ana, CA 92707

Subject: Orange County Grand Jury Report, *Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency.*

Dear Judge Sanders:

The Grand Jury released the subject report on June 29, 2015 to selected cities and Joint Powers Agencies with its findings and recommendations. The Report identified Findings F.4 and F.5 and Recommendation R.3 as applicable to the Santa Ana River Flood Protection Agency (SARFPA). Our responses to the Grand Jury Findings and Recommendations are listed below.

FINDING AND RESPONSE:

Finding F.4 Vertical Joint Powers Authorities with single controlling entity, such as a city council have the potential to use organization structure as a shell company to avoid other legal constraints on the controlling entity and to obfuscate taxpayer visibility.

Response: Disagree wholly with the finding.

The Santa Ana River Flood Protection Agency (SARFPA) disagrees wholly with the Grand Jury Findings. SARFPA has been incorrectly characterized as a Vertical Joint Powers Agency in the Report. It is, in fact, a Horizontal Joint Powers Authority between the County of Orange, the Orange County Flood Control District, the Orange County Sanitation District, the Orange County Water District, the Costa Mesa Sanitary District, and the cities of Anaheim, Buena Park, Cypress, Fountain Valley, Fullerton, Garden Grove, Huntington Beach, Irvine, Newport Beach, Orange, Placentia, Santa Ana, Seal Beach, Stanton, Tustin, Westminster, and Yorba Linda. The Agreement providing for the establishment of the Santa Ana River Flood Protection Agency dated December 18, 1974 is attached.

Finding F.5 Vertical Joint Powers Authority in which the controlling entity transfers assets from itself to a Joint Powers Authority for the purpose of obtaining

Santa Ana River Flood Protection Agency

additional funding, or signs a long term lease to a Joint Powers authority to obtain assets, are avoiding transparency and are not acting in the best financial interest of the taxpayers.

Response: Disagree wholly with the finding.

As stated in response to Finding F.4 above, SAFRPA has been incorrectly characterized as a Vertical Joint Powers Agency in the Report and is, in fact, a Horizontal Joint Powers Agency with twenty-two members whose officers are elected from among its members with each member having one vote. No Single members controls the actions of the agency.

Recommendation R3:

All Joint Powers Authorities should take the following actions to insure transparency to the taxpayers: (1) Have an annual outside audit. (2) Post the complete audit on their city website as a separate Joint Powers Authority entity. (3) Send the audit to the County Controller and the State Auditor, and (4) ensure the required reports are filed annually to the County and the State. (F.4, F.5)

Response: The recommendation has not yet been implemented, but will be in the future.

SARFPA is currently working with the Auditor-Controller to procure an audit firm so that it can comply with the annual audit requirement. Due to budget constraints, SARFPA proposes to replace the annual audit with an audit covering a two-year period. Per Government Code 6505.5 (f) all agencies or entities may, by unanimous request of the governing body thereof, replace the annual special audit with an audit covering a two-year period. It is estimated that an audit of FY 14/15 and FY 15/16 can be completed by December 2016.

Sincerely,

Cathy Green, Chairman

Attachment: Agreement dated December 18, 1974

Cc: Orange County Grand Jury

Jessica O'Hare, Assistant to the COO, County Executive Office

SARFPA Executive Committee

AN AGREEMENT PROVIDING FOR THE ESTABLISHMENT OF THE SANTA ANA RIVER FLOOD PROTECTION AGENCY (As Amended 12/18/74)

This is an Agreement between the County of Orange, the Orange County
Flood Control District, and those cities and other public agencies within Orange
County which subscribe to it. The parties are all public agencies having some
jurisdiction or interest in the mitigation of deficiencies in the flood storage capacity of Prado Dam and Reservoir and the concomitant flood hazard to the citizens
of Orange County. This Agreement is made pursuant to Title 1, Division 7, Chapter
5, of the Government Code of the State of California.

RECITALS

WHEREAS, the United States Army Corps of Engineers in the studies leading to a survey report on the Santa Ana River Basin for Orange, Riverside and San Bernardino Counties has advised in public meetings of the need for the correction of flood protection deficiencies along the Santa Ana River; and,

WHEREAS, the Corps of Engineers has studied and presented in public several alternative plans for works of improvement while preparing to present to the United States Congress for project authorization a feasible plan which best represents expressed public interest; and

WHEREAS, the parties to this Agreement recognize the necessity and effectiveness of presenting a position of unanimity in seeking Congressional authorization for Santa Ana River flood protection project; and

WHEREAS, the parties to this Agreement have the authority and power to contract among themselves in constituting a joint powers agency representing their mutual interests.

COVENANTS

NOW, THEREFORE, the parties subscribing hereto in consideration of the mutal covenants herein contained, agree together as follows:

SECTION 1. - PURPOSE. The purpose of this agreement is for the joint exercise of the powers for flood protection, conservation and control of storm and flood waters, protection of the health, safety, welfare, and property of the residents residing within the parties' boundaries and the exercise of the common powers of the parties, and particularly to do the following:

A. To disseminate information on the flood hazard potential of the Santa

Ana River and feasible plans for mitigating the flood threat;

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- To seek a position of unanimity in the statement of mutual interest of the citizens of Orange, Riverside and San Bernardino Counties in support of the 3 most feasible alternative plan for flood protection along the Santa Ana River;
 - To solicit Congressional authorization and appropriations for works of improvement.

SECTION 2. - CREATION OF AGENCY.

- There is hereby created a public entity entitled, "The Santa Ana River Flood Protection Agency", hereinafter called "AGENCY" and said AGENCY pursuant to the provisions of government code section 6507, shall be a public agency separate from the parties hereto. Pursuant to government code section 6508.1 the debts, liabilities, and obligations of the AGENCY shall not be the debts, liabilities, and obligations of the parties hereto.
- Membership in the AGENCY shall be voluntary and shall include but not be limited to; the County of Orange, the Orange County Flood Control District, the incorporated cities of Orange County, and any public agency having authority under the Government Code of the State of California to contract for the joint exer-The effective date of this agreement shall be the date of execution cise of powers. by the Chairman of the Board of Supervisors for the County of Orange and Orange County Flood Control District following execution of the agreement by three or more of the incorporated cities of Orange County. Eligible agencies executing this Agreement prior to or within sixty calendar days of the effective date of this Agreement shall constitute the initial membership. Thereafter, any eligible agency desiring to gain membership may do so by subscribing to this Agreement pursuant to a duly adopted resolution of its governing board or council and upon ratification of subscription by a majority of the then members of the AGENCY.
- The governing body of the AGENCY shall consist of a commission comprised of one elected representative duly appointed from the governing board or council of each of the parties to this Agreement each Commissioner holding one vote. Commissioners shall represent, serve and be subject to removal and replacement at the pleasure of the appointing body. On the resignation, removal or incapacity of any commissioner, the contracting party hereto shall within thirty days appoint a replacement commissioner. Each commissioner shall file with the AGENCY a

certified copy of the resolution of appointment. The AGENCY shall annually elect one of its commissioners as chairman who shall preside at all meetings and shall also appoint a secretary. In the event a vacancy occurs in the office of chairman, the AGENCY shall, at its next meeting, elect a new chairman.

D. A quorum for the transaction of business of the AGENCY shall require affirmative approval by a majority of the members present at the meeting at which time such action is taken. The AGENCY shall adopt from time to time such rules and regulations consistent herewith for the holding of meetings and the conduct of its affairs. All meetings shall be open to the public. The AGENCY shall cause its secretary to keep full minutes of all meetings which shall be public documents and available for inspection at the office of the secretary by any interested person.

SECTION 3. - POWERS. The common powers to be exercised pursuant to this Agreement are the powers of each party to do any and all of the following:

- A. To develop, provide and disseminate public information on the flood hazard potential of the Santa Ana River, alternative plans for the flood protective improvementrs and to solicit, communicate and support actions to secure Congressional authorization and appropriations for works of improvement.
- B. To make and enter into contracts, to employ a part-time officer for the exercise of the powers described herein, and to contract with one or more of the parties to this agreement for the employment of the services and personnel needed for the exercise of the powers of the AGENCY.
- C. To incur debts, liabilities or obligations necessary to carry out the purposes and powers of the AGENCY. However, there shall be no expense, liability or obligation incurred in excess of the budget without the approval or ratification of the participating member agencies.
- D. To exercise jointly the common powers of the members necessary or incidental to carrying out the purposes of the AGENCY.

SECTION 4. - ADMINISTRATIVE PROCEDURES.

A. Within sixty days after the first meeting of the Agency Commission, a general budget shall be adopted for the balance of the fiscal year (from formation through June 30, 1975). The first full years (7/1/75 - 6/30/76) budget shall not exceed the sum of \$1500 multiplied by the number of participating agencies. A pre-

liminary budget shall be adopted prior to April 1 of each year with a final budget to be adopted prior to or at the June meeting of the AGENCY. Each of the parties shall deposit with the AGENCY its share of the adopted budget prior to the end of August of each fiscal year. The general budget must be approved by two-thirds of the commissioners of the AGENCY. Copies of each general budget shall be mailed to each of the parties within fifteen days of its adoption. The initial budget and each succeeding budget shall include the following:

- (1) The anticipated general administrative expenses of the AGENCY; and
- (2) The allocation among the contracting parties of equal amounts necessary to cover the expenses.
- B. Orange County Flood Control District agrees to deposit an amount not to exceed \$15,000. for the payment of all administrative costs for the AGENCY detailed in the initial general budget upon its adoption, including the salary of the part-time officer, commissioners' and officers' business expenses, office supplies, and communications costs and incidental accounting in connection therewith for the initial fiscal year from date thereof through June 30, 1975.
- C. Orange County Flood Control District agrees to provide clerical support, office space, furniture and utilities in support of AGENCY operations at no cost to the AGENCY.
- D. The AGENCY shall keep proper books of record and accounts in which complete and correct entries shall be made of all its transactions (including all receipts and disbursements). Said books shall upon written request be subject to inspection by any duly authorized representative of any of the parties. Said books and accounts shall be audited annually by the Auditor-Controller of the County of Orange and a copy of the report of said Auditor-Controller shall be available for inspection at the office of the AGENCY secretary.
- E. The treasurer of Orange County shall be the treasurer of the AGENCY, and all funds of the AGENCY shall be maintained in the county treasury. The duties of the auditor and treasurer shall be as defined in Section 6505 and 6505.5 of the Government Code of the State of California.
 - F. No commissioner shall receive any compensation from the AGENCY for

- G. All of the privileges and immunities from liability; exemptions from laws, ordinances and rules; all pension, relief, disability, workmen's compensation, and other benefits which apply to the activities of officers, agents or employees of any of said contracting public agencies when performing their respective functions within the territorial limits of the respective parties to this agreement, shall apply to the same degree and extent while engaged in the performance of any of their functions and other duties extraterritorially under this Agreement. None of the officers, agents or employees mentioned in this section shall be deemed by reason of their employment by the AGENCY to be employed by any of the contracting parties or by reason of their employment by the AGENCY to be subject to any of the requirements of such contracting parties hereto.
- H. The notice to the Secretary of State as required by Government Code Section 6503.5 shall be made by the Chairman of the Commission.

SECTION 5. - In lieu of circulating a single document among the entities eligible for membership, this Agreement shall be prepared in multiple copies, each of which may be signed by the County of Orange and one or more eligible parties. The signed agreements shall be filed with the Clerk of the Orange County Board of Supervisors who shall notify the initial membership of the effective date of this Agreement.

SECTION 6. This joint powers agreement and the AGENCY shall exist as long as three or more parties are in common agreement to continue the terms of the joint powers agreement. A party to the Agreement may withdraw therefrom upon giving ninety days written notice to the AGENCY Commission and to the other parties to the Agreement and upon deposit of sufficient funds with the AGENCY to cover the withdrawing party's proportionate of the debts, liabilities, obligations and expenses of the AGENCY as determined by the Commission.

It is not contemplated that the AGENCY will acquire real or personal property.

Upon termination and dissolution of the AGENCY any surplus or remaining funds shall be returned to the parties in proportion to the total contributions made by each party.

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3		Chairman of its Board of Supervisors
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13	APPROVED AS TO FORM: Adrian Kuyper, County Counsel	RECOMMENDED FOR APPROVAL:
14	Orange County, California	Original Signed By H. G. Osborne
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16	By Ek. C. B Deputy	Environmental Management Agency
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1		COUNTY OF ORANGE
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Mayor

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Page 6 of 17 COUNTY OF ORANGE 1 Chairman of its Board of Supervisors 2 Date: ATTEST: W. E. St John, County Clerk and Clerk 3 of the Board of Supervisors 4 BY ___ Deputy 5 Date: ORANGE COUNTY FLOOD CONTROL DISTRICT 6 7 Chairman of its Board of Supervisors Date: 8 ATTEST: W. E. St John, County Clerk and 9 ex-officio Clerk of the Board of Supervisors of the Orange County Flood Control District. 10 11 Ву ____ Deputy Date: 12 RECOMMENDED FOR APPROVAL: APPROVED AS TO FORM: 13 Adrian Kuyper, County Counsel Orange County, California 14 H. G. Osborne, Director Environmental Management Agency 15 16 Deputy ATTEST: CITY OF FULLERTON 17 City Clerk 18 Mayor 19 ATTEST: CITY OF 20 City Clerk Mayor 21 ATTEST: CITY OF 22 23 City Clerk Mayor 24 ATTEST: CITY OF 25 26 City Clerk Mayor 27 ATTEST: 28 CITY OF 29

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Mayor

City Clerk

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7		ORANGE COUNTY FLOOD CONTROL DISTRICT
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14	Adrian Kuyper, County Counsel Orange County, California	
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	Page 8 of 17	
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14 15		H. G. Osborne, Director Environmental Management Agency
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	32 ///	DON P. BONYA City Attorney

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Page 12 of 17 COUNTY OF ORANGE 1 By Chairman of its Board of Supervisors 2 Date: ATTEST: W. E. St John, County Clerk and Clerk 3 of the Board of Supervisors 4 Deputy 5 ORANGE COUNTY FLOOD CONTROL DISTRICT 6 7 By Chairman of its Board of Supervisors Date: 8 ATTEST: W. E. St John, County Clerk and ex-officio Clerk of the Board of Supervisors of 9 the Orange County Flood Control District. 10 11 Deputy Date: 12 RECOMMENDED FOR APPROVAL: APPROVED AS TO FORM: 13 Adrian Kuyper, County Counsel Orange County, California 14 H. G. Osborne, Director Environmental Management Agency 15 Deputy 16 17 18 Mayor 19 ATTEST: CITY OF 20 City Clerk Mayor 21 ATTEST: CITY OF 22 City Clerk 23 Mayor 24 ATTEST: CITY OF 25 26 City Clerk Mayor 27 ATTEST: CITY OF 28 29

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City Clerk

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COUNTY OF ORANGE

Page 14 of 17

1		COUNTY OF ORANGE
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14	Adrian Kuyper, County Counsel Orange County, California	
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13 14	APPROVED AS TO FORM: Adrian Kuyper, County Counsel Orange County, California	RECOMMENDED FOR APPROVAL:
15 16	By	H. G. Osborne, Director Environmental Management Agency
17 18 19	CITY OF WESTMINSTER Line L. Cuttery Mayor	ATTEST: Motherne C. Alexer City Clerk
20	CITY OF	ATTEST:
21	Mayor	City Clerk
22	CITY OF	ATTEST:
23		
24	Mayor	City Clerk
	CITY OF	ATTEST:
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26		
27	Mayor	City Clerk
28	CITY OF	ATTEST:
29		
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31	Mayor ///	City Clerk