

SOCWA

Joint Powers Agreement Amendment

Prepared by: Jeffrey Hoskinson, Partner, AALRR



aalrr

Atkinson, Andelson
Loya, Ruud & Romo

A Professional Law Corporation

TCWD as SOCWA Member

- Financial Participation:
 - 0.17% of SOCWA 2019 Operating Expenses
 - 0.01% of SOCWA OPEB Liability
 - 0.01% of SOCWA Net Pension Liability
- Only member with no capital contributions
- Water reclamation permittee
- Contract with SOCWA for chemicals
- Equal vote on Board

Modifications of Relative Non-Interest

- Most modifications have limited affect TCWD
 - Project Committee (PC) Amendments / Consolidations
 - Provisions governing Unfunded Pension Liabilities
 - Arbitration clause modification (requires non-binding arbitration)

Resolved Modifications

- Quorum Modifications
 - Provision returned to 2/3 present from member agencies for quorum. **Proposed change to 60% was withdrawn.**
- Voting Powers Provisions
 - Equal vote (one agency : one vote) provisions retained. **This has reverted to simple majority voting.**

Emergency Reserve Fund Amendments

- Emergency Reserve Fund

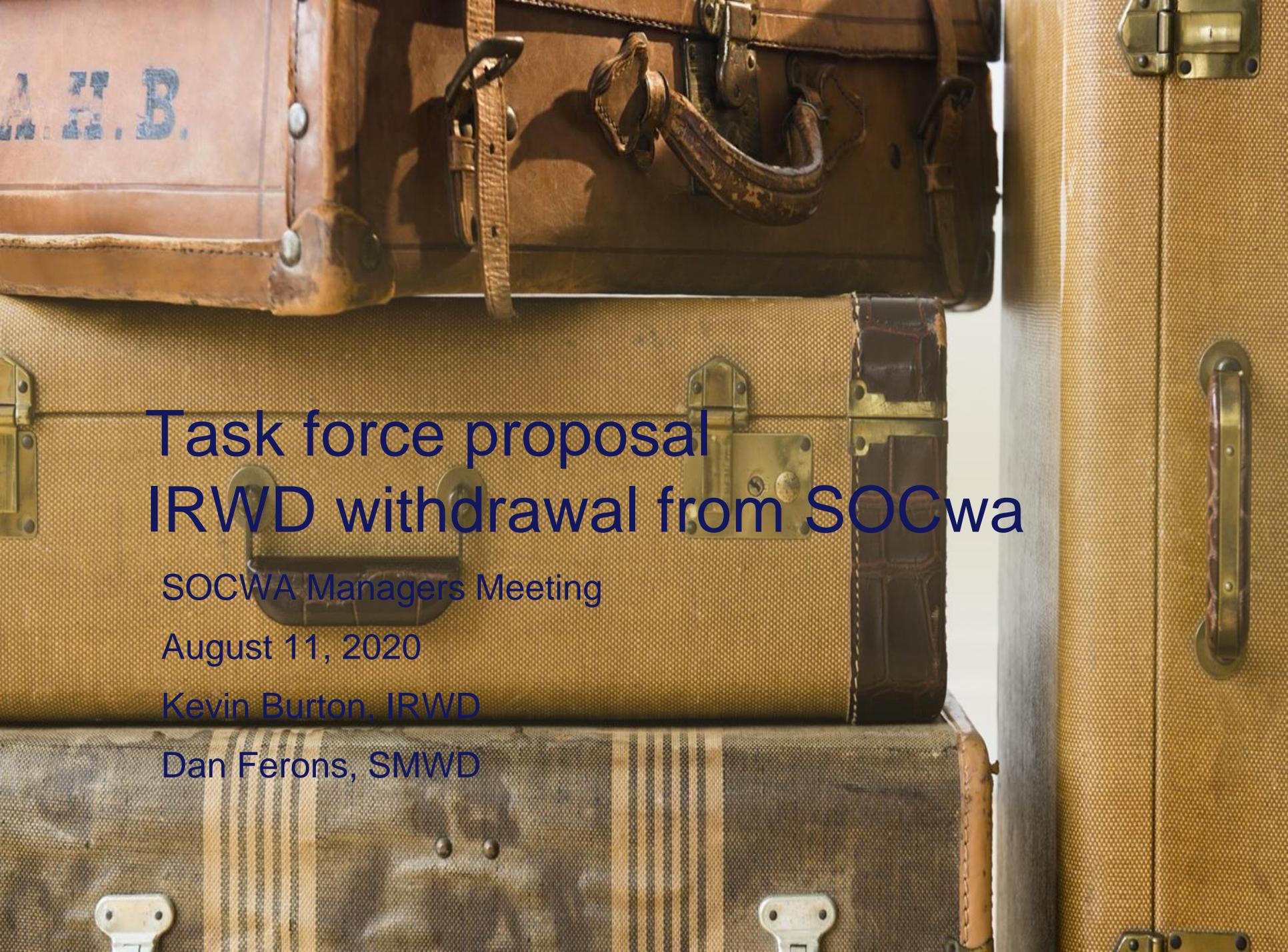
- Emergency Reserve Fund for SOCWA General Manager – Capital Projects
- Original Language: TCWD would have contributed to initial funding
- **Based on our comments, the initial funding now allocated same as SOCWA operating and maintenance costs for the prior three years.**
 - Sections 6.3 through 6.6 provide for how operation and maintenance costs are determined, and it is tied to operation and maintenance costs for each Project Committee an agency participates in. Capital Project based.

Indemnification Revisions

- Clean-up of Indemnification Obligations
 - Section 11.3 – Substantively places liability on those agencies who participate in involved projects
 - Section 11.4 – Similar allocation for unfunded pension liabilities, but now has its own section, with liability tied to proportionate liability of member agency.

Withdrawal

- Provisions of JPA amended to provide for clearer provisions for an Agency withdrawal from SOCWA
 - IRWD language, as proposing to withdraw and contract with SOCWA. (*More on subsequent slides re IRWD Proposal.*)
 - Withdrawing agency would be responsible for:
 - its pension liability;
 - any outstanding debt or uninsured liabilities (subject to Section 11.3) it had with SOCWA when leaving;
 - Obligations for capital projects (this would not impact TCWD).



Task force proposal
IRWD withdrawal from SOCwa

SOCWA Managers Meeting

August 11, 2020

Kevin Burton, IRWD

Dan Ferons, SMWD

Three Primary Paths for Change in Participation in SOCWA

01

Withdrawing from the JPA and assigning capacity ownership and obligations to another agency

02

Withdrawing from the JPA, maintain ownership of capacity and contract for services

03

Withdrawing from a Project Committee through agreement with other PC Members.

Test Case: Irvine Ranch Water District

IRWD sends effluent from its Los Alisos Water Recycling Plant through the Effluent Transmission Main to the Aliso Creek Ocean Outfall (PC 21 and 24)

IRWD currently participates in the SOCWA pretreatment program (PC 8)

Request to Withdraw

- Minor percentage ownership compared to obligations of participating in meetings and governance issues
- Proposing to right-size their participation
 - Annual review of costs and charges
 - Participation in any engineering study on facilities in which they have capacity

Other Agencies that may consider this option include City of San Clemente and Trabuco Canyon Water District

Key Draft Terms

- IRWD will withdraw from the SOCWA JPA and Project Committees
 - Retaining its current use capacity in Reaches B through E of the Effluent Transmission Main and the Aliso Creek Ocean Outfall.
- IRWD will not have a Board seat.
- Cost for IRWD's contract services will be the same as the SOCWA Board approved costs for JPA members of PC 8, 21 and 24, inclusive of general administrative costs.
 - i.e. no change in what they currently pay
- IRWD will fund its portion of the unfunded public pension liability.

Draft Terms Continued

- Contract services continue until a mutually approved termination.
- IRWD will remain
 - Advisory member of the SOCWA Engineering Committee for items covered by Project Committees 21 and 24.
 - Participant in SOCWA contracts for chemicals, solids hauling, etc. that SOCWA negotiates.
- IRWD will only be responsible for permit violations and fines that are directly attributable to IRWD's discharge.
- IRWD will continue to be governed by SOCWA's Pre-Treatment Rules/Regulations until such time as IRWD and SOCWA mutually agree to an alternate agreement.

Next Steps

- Gen Counsel and staff continue to participate in
- Inform TCWD Board of pros and cons of continued SOCWA membership