

# Transition Ad Hoc Committee

*May 9, 2018*

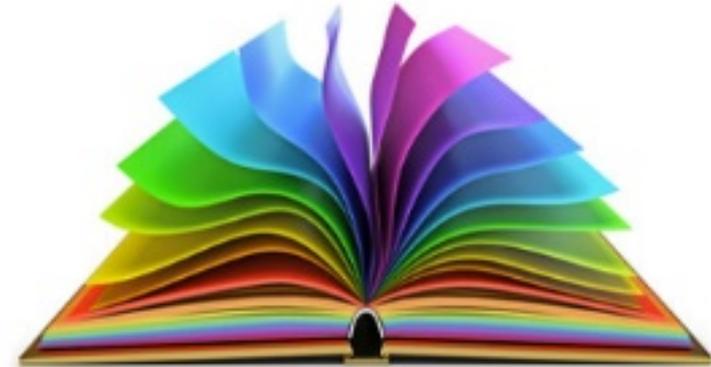
*Steve Endsley, Assistant Executive Officer  
Sheri Damon, Prevailing Wage/Risk Coordinator*

- Schedule/Work-plan
- Administration
  - History
  - Key Issues
  - Analysis
  - Comparison
  - Side by Side
  - Reference Material
- Water/Wastewater
  - History
  - Key Issues
  - Analysis
  - Comparison
  - Side by Side
  - Reference Material



**Future Meeting(s):** May 16, 2018 1:00 – 4:00  
May 23, 2018 12:00 – 2:00  
May 30, 2018 12:30 – 2:30  
June 8, 2018 Board Study Session

- **Executive Summary**
- **Chapters**
  - Administrative
  - Water/Wastewater
  - Transportation
  - Habitat
  - Financial Assets
  - Environmental Services/Clean Up
  - Miscellaneous Contracts
  - Transition Staffing
  - CEQA
- **Conclusion**

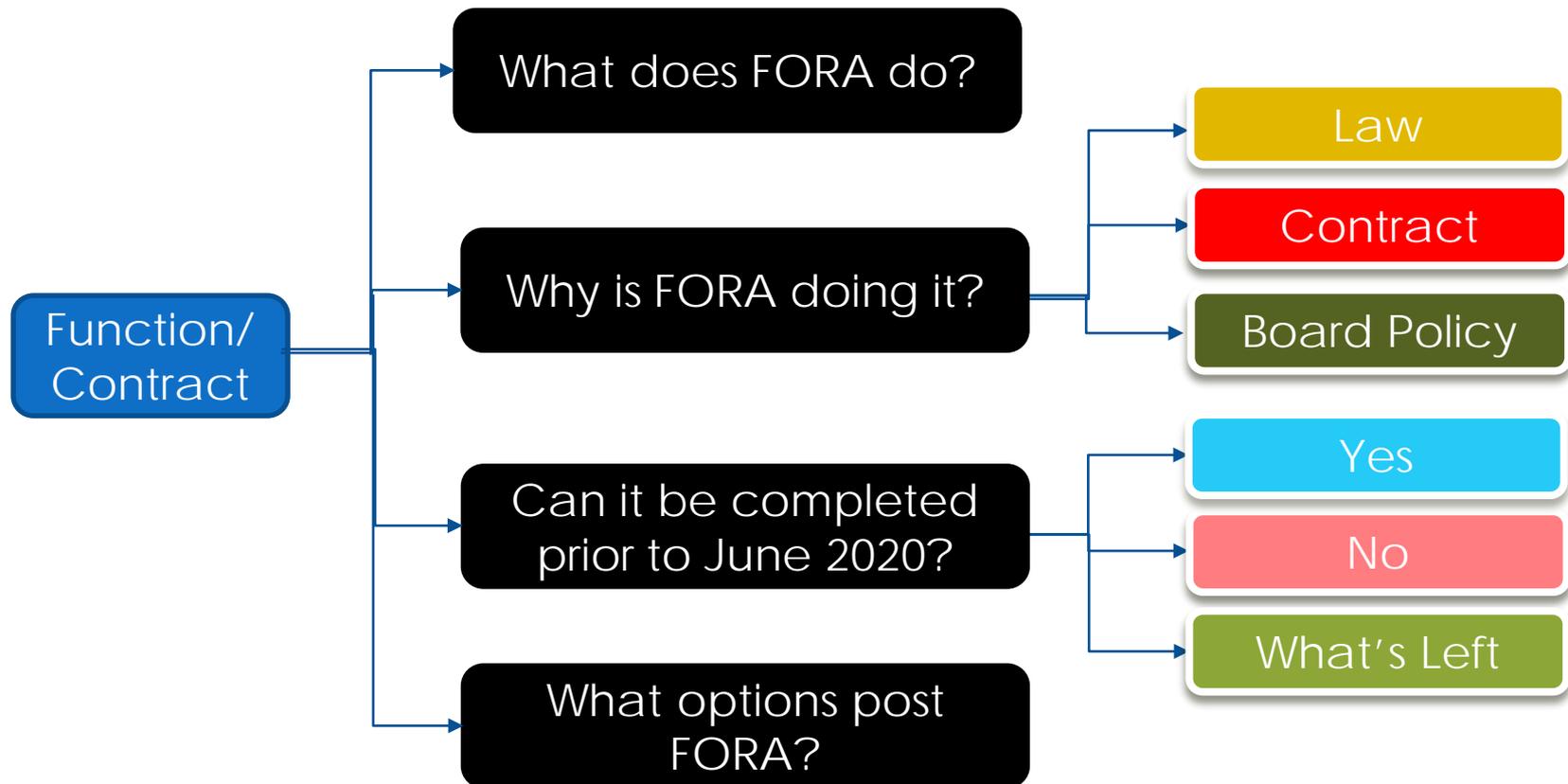


# FORA ADMINISTRATION



- **1995** Board approves FORA participation in CalPERS; negotiations ensue
- **1996** FORA establishes an alternative retirement program 401(a) qualified pension plan through ICMA
- **1997** CalPERS contract signed (2% at 60)
- **1999** CalPERS amendment (2% at 55)
- **2003** CalPERS amendment (One-Year Final Compensation; Sick Leave Credit)
- **2018** LAFCO advises requirement of Indemnification Agreement for Transition Plan

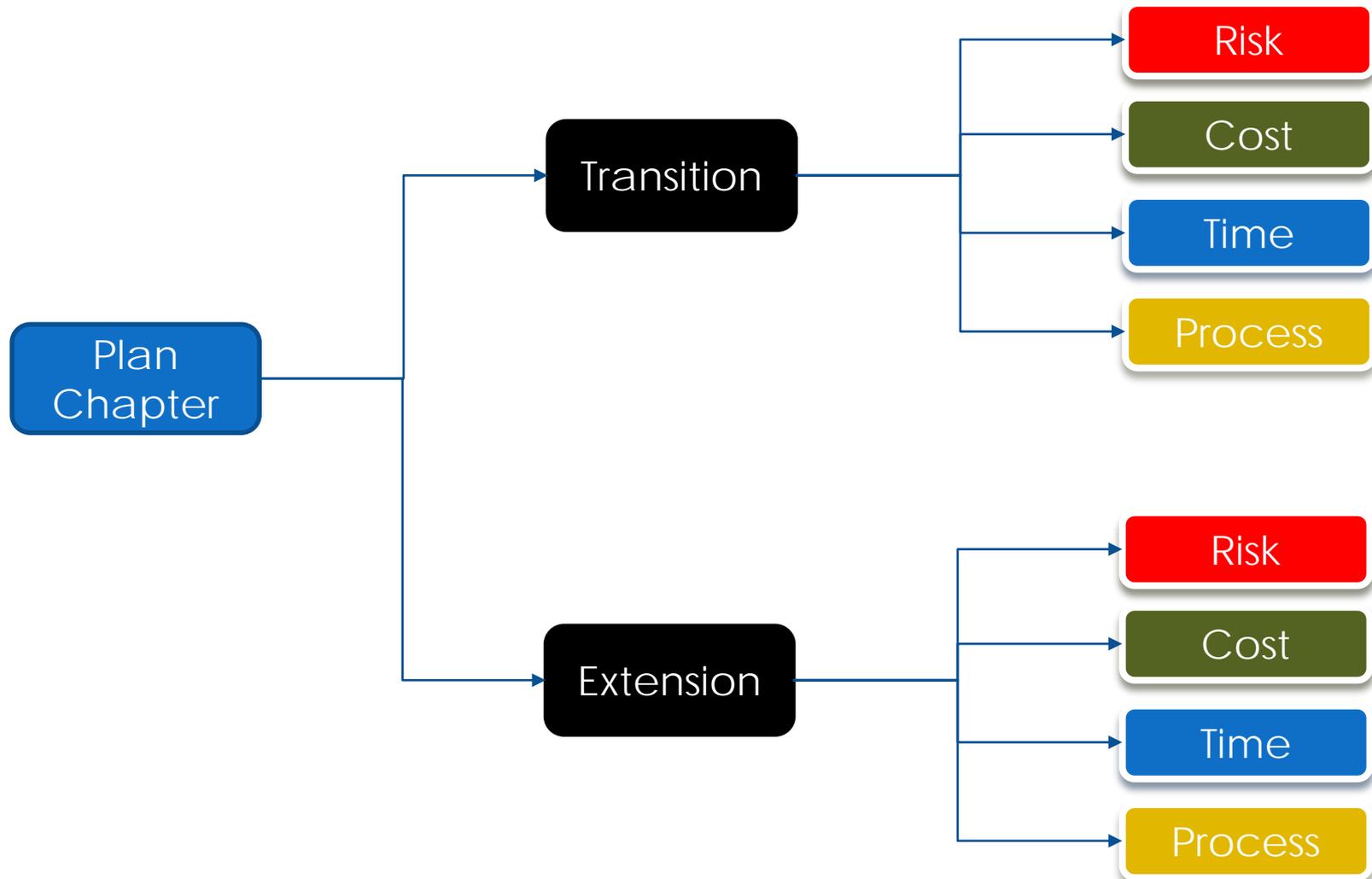
1. What is potential CalPERS liability for successor(s) to FORA?
2. Who manages LAFCO/real party in interest litigation on Transition Plan if it extends beyond 2020?
3. Who assumes responsibilities under potential settlement agreements or court judgments?
4. Can/Should FORA seek extension of various insurance policies to provide gap/statute of limitation coverage? Eg. Workers' comp/Director coverage?
5. Who receives/maintains FORA records repository/website?



# Administration: Function Analysis

<b>Analysis</b>	<b>What?</b>	FORA provides CalPERS to employees; FORA required to sign indemnification agreement for LAFCO
	<b>Why?</b>	CalPERS: Contract, Board Policy and Govt. Code 67700 Indemnification: Govt. Code 67700; LAFCO requirement and Contract
	<b>Timing?</b>	CalPERS: Cannot be completed prior to 2020. Unfunded liability estimated by CalPERS : 6.6-8.8M. Final Actuarial 2019-2020. Some set aside to cover. Indemnification: Most likely cannot be completed prior to 2020. Uncertain liability: legal liability estimated at \$300,000 per year.
	<b>Options</b>	CalPERS: Assign any terminated liability to all jurisdictions; assign to only land holding jurisdictions; assign to a single successor Indemnification: Same as above options for CalPERS.

# Administration: Plan Analysis



# Administration: Plan Comparison

<b>Transition</b>	<b>Risk</b>	Members would have PERS, legal and other liabilities.
	<b>Cost</b>	Uncertain. Increased member workload; Potential increased litigation costs.
	<b>Time</b>	Indemnification requires litigation monitoring and process to resolve litigation-may be time intensive.
	<b>Process</b>	CalPERS provides terminated agency unfunded liability: FORA pays its 115 trust funds to either retire or reduce: successor(s) cover remaining deficit.

<b>Extension</b>	<b>Risk</b>	Potential increased CalPERS liability
	<b>Cost</b>	Uncertain. Potential decreases in CalPERS costs due to reduced workload – may be offset by compounded interest in 115 Trust.
	<b>Time</b>	Known time frame.
	<b>Process</b>	Requires Legislative extension.

## Transition

1. Jurisdictions control own destiny
2. Jurisdictions choose litigation strategy
3. Potential opportunity to consolidate FORA & City's unfunded liability to pay over 30 years

1. Increased CalPERS risk due to new staffing
2. Uncertain CalPERS assumptions increases liabilities
3. Uncertain legal liability
4. Increased Administrative Activity
5. Cost of LAFCo Indemnification
6. Increased Administrative Load (per Jurisdiction)

## Extension

1. FORA administers and funds CalPERS obligations & other administrative functions
2. Liability risk to jurisdictions minimized
3. 115 Trust may be used for any retirement funding purpose-terminated agency unfunded liability or current liability.
4. Shared administrative costs
5. No LAFCo Indemnifications

1. Potential increase in future CalPERS obligations for continuing or new staff

# Administrative Contracts – Reference Material

Contract	Year	AGREEMENT LINK	Asset/Liability Pledge/Obligation	Multi-Agency	Multi-Agency Notes
CalPERS Contract	1997	<a href="http://b77.402.myftpupload.com/wp-content/uploads/1-CalPERS-Contract.pdf">http://b77.402.myftpupload.com/wp-content/uploads/1-CalPERS-Contract.pdf</a>	Liability	All voting members	*FORA has set aside approximately \$7M in assets to address terminated agency unfunded Liability
CalPERS Contract Amendment 1	1999	<a href="http://b77.402.myftpupload.com/wp-content/uploads/2-CalPERS-Contract-Amendment-1.pdf">http://b77.402.myftpupload.com/wp-content/uploads/2-CalPERS-Contract-Amendment-1.pdf</a>	Liability	All voting members	*FORA has set aside approximately \$7M in assets to address terminated agency unfunded Liability
CalPERS Contract Amendment 2	2003	<a href="http://b77.402.myftpupload.com/wp-content/uploads/3-Cal-PERS-Contract-Amendment-2.pdf">http://b77.402.myftpupload.com/wp-content/uploads/3-Cal-PERS-Contract-Amendment-2.pdf</a>	Liability	All voting members	*FORA has set aside approximately \$7M in assets to address terminated agency unfunded Liability
LAFCO Indemnification Agreement	2018	<a href="http://b77.402.myftpupload.com/wp-content/uploads/4-Indemnification-Agreement-LAFCO-and-FORA-DRAFT-02-28-18.pdf">http://b77.402.myftpupload.com/wp-content/uploads/4-Indemnification-Agreement-LAFCO-and-FORA-DRAFT-02-28-18.pdf</a>	Liability	All voting members	May require a substantial contribution should LAFCO be sued on transition plan
General Umbrella Policy	Annual		Liability/Asset	All Members*	May want to extend policy to provide coverage during any possible Statute of limitations time period
Commercial Property/Premises Liability	Annual	<a href="http://b77.402.myftpupload.com/wp-content/uploads/6-Commercial-Property-Premises-Liability.pdf">http://b77.402.myftpupload.com/wp-content/uploads/6-Commercial-Property-Premises-Liability.pdf</a>	Liability/Asset	All Members*	May want to extend policy to provide coverage during any possible Statute of limitation time period
Worker's Compensation Policy	Annual	<a href="http://b77.402.myftpupload.com/wp-content/uploads/7-Workers-Compensation-Policy.pdf">http://b77.402.myftpupload.com/wp-content/uploads/7-Workers-Compensation-Policy.pdf</a>	Liability/Asset	All Members*	May want to extend policy to provide coverage during any possible Statute of limitation time period
Director's Liability Policy	Annual	<a href="http://b77.402.myftpupload.com/wp-content/uploads/8-Directors-Liability-Policy.pdf">http://b77.402.myftpupload.com/wp-content/uploads/8-Directors-Liability-Policy.pdf</a>	Liability/Asset	All Members*	May want to extend policy to provide coverage during any possible Statute of limitation time period
Crime Bond Policy	2006	<a href="http://b77.402.myftpupload.com/wp-content/uploads/9-Crime-bond-Policy.pdf">http://b77.402.myftpupload.com/wp-content/uploads/9-Crime-bond-Policy.pdf</a>	Liability/Asset	All Members*	May want to extend policy to provide coverage during any possible Statute of limitation time period

# FORA WATER/WASTEWATER



# Water/Wastewater: History

- **1993** – U.S. Army purchases 6,600 AFY of water rights from MCWRA
- **1996** – U.S. Army buys into Zone 2 and Zone 2A
- **1996** – Ord Community water purveyor selected through competitive process
- **1997** – BRP adopted w/ Public Facilities Improvement Plan (PFIP); DRMP adopted setting CEQA mitigation and initial water allocations
- **1998** – FORA Board set as Ord Community governing body until MCWD annexation
- **2000** – U.S. Army/FORA MOA requires fair and equitable share of water to all transferees and provides for first right of refusal for excess Army water/wastewater
- **2001** – Implementation Agreements with all jurisdictions requiring compliance with water allocations.
- **2001 - 2006** – Army to FORA: FORA to MCWD transfers water/wastewater rights & infrastructure
- **2005** – FORA, MRWPCA, & MCWD delineate wastewater rights & obligations
- **2007** – FORA amends potable and recycled water to jurisdictions
- **2016** – FORA/MCWD/MRWPCA RUWAP Pipeline agreement (\$6M)

1. How do you provide public representation of the Ord Community without the 1998 Facilities Agreement if no MCWD annexation prior to 2020?
2. How do adjustments to water allocation occur in order to ensure a fair and equitable allocation of water?
3. How do you define, approve, and pay for the Augmented Water project (a required CEQA mitigation in the BRP) currently in planning?
4. How do you ensure future water service and annexation of the entire Ord Community?

# Water/Wastewater: Analysis

Analysis	<b>What?</b>	<b>Public Representation Ord Community (5 jurisdictions)</b>	<b>Allocation of water/wastewater rights; Future water/wastewater rights</b>	<b>Financial contribution to CEQA mitigation  (Water Augmentation)</b>
	Why?	Contract: Facilities Agreement	Govt. Code section 67675; 67677  Contract: Army MOA requires fair and equitable allocation to property and provides for a First right of refusal	BRP CEQA Requires augmented water supply.  Govt. 67675; 14 CCR 15370
	Timing?	Full annexation not likely to be completed prior to 2020.	IA currently in effect and Army MOA after 2020	Augmented Water Supply Not complete by 2020
	Options	<ol style="list-style-type: none"> <li>1. Annexation</li> <li>2. Create Interim Representative Body for unannexed areas</li> </ol>	<ol style="list-style-type: none"> <li>1. Allocations set as of 2020: modifications by contract</li> <li>2. Future first right of refusal assigned to successor(s)</li> <li>3. Assign right to allocate/modify to MCWD</li> </ol>	<ol style="list-style-type: none"> <li>1. MCWD to include in new rate/capacity structure.</li> <li>2. Jurisdictions to raise funds and pay to MCWD to complete augmentation project. (IAs)</li> <li>3. Extend FORA CFD</li> </ol>

# Water/Wastewater: Risk Comparison

<b>Transition</b>	<b>Risk</b>	<ol style="list-style-type: none"> <li>1. Lawsuit - Ord Community Fee Collection without Representation</li> <li>2. Allocations could hinder jurisdictions' ability to develop property</li> <li>3. BRP program continuity lost w/o Water Augmentation</li> </ol>
	<b>Cost</b>	<ol style="list-style-type: none"> <li>1. If Lawsuit, litigation costs are high and further cost to resolve Representation</li> <li>2. Lawsuits over water allocations could be costly and take up political capital</li> <li>3. CEQA Lawsuit (\$1M+) No water for Economic Development</li> </ol>
	<b>Time</b>	Unclear solution – Timeline Unknown
	<b>Process</b>	<ol style="list-style-type: none"> <li>1. Multiple litigation challenges</li> <li>2. Jurisdiction &amp; MCWD CIP's must be coordinated annually</li> <li>3. Create new method to fund, select supply projects, and pay</li> </ol>

<b>Extension</b>	<b>Risk</b>	<ol style="list-style-type: none"> <li>1. No new risk of litigation until Annexation Complete</li> <li>2. Water Allocations Secure</li> <li>3. No new method for funding, selecting projects, or paying</li> </ol>
	<b>Cost</b>	Costs are covered by CFD fees
	<b>Time</b>	Known. No new risk.
	<b>Process</b>	<ol style="list-style-type: none"> <li>1. Representation in place – and allocations in place</li> <li>2. 3-party agreement in place, framework to complete future needs in place-including EDC first right of refusal.</li> </ol>

## Transition

1. MCWD manages Water/wastewater system
2. MCWD capacity charges can replace existing finance streams
3. Existing coordination between MCWD / M1W
4. If MCWD annexation is successful, Ord Community representation is assured

1. If no annexation, potential loss of Representation for the Ord Community
2. Potential litigation risk over water allocations
3. Loss of ability to leverage base wide revenue
4. Increased development capacity fees needed
5. 8 Agencies – CIP Coordination Required

## Extension

1. Elected Officials represent Ord Community
2. FORA Board Oversees Allocations
3. WWOC coordinates jurisdiction CIP's
4. FORA CFD Fee reduces water and capacity fees for all jurisdictions
5. FORA Selects Water Augmentation Projects
6. No additional legal risk to jurisdictions

1. Potential MCWD Annexation Litigation
2. If MCWD annexation is successful, FORA representation functions are no longer needed.
3. If MCWD annexation is successful, WWOC's function is diminished.

# Water/Wastewater – Reference Material

Contract	Year	AGREEMENT LINK		Multi-Agency	Multi-Agency Notes	Notes
US-MCWRA Agreement	1993	<a href="http://fora.org/Reports/1993-Agrmt-US_MCWRA.pdf">http://fora.org/Reports/1993-Agrmt-US_MCWRA.pdf</a>	Asset	County of Monterey/City of Monterey/City of Seaside/City of Del Rey Oaks/CSUMB/MPC/UC/MCWD		1
FORA-MCWD Water/Waste Water Facilities Agreement	1998	<a href="http://fora.org/Reports/CIP/031398%20_Water_Wastewater_Facilities_Agreement.pdf">http://fora.org/Reports/CIP/031398%20_Water_Wastewater_Facilities_Agreement.pdf</a>		MCWD	A. Agreement Terminates. MCWD/unserved areas on Fort Ord only served by new contracts; subsequent annexation by MCWD/LAFCO issues	1
FORA-MCWD Water/Waste Water Facilities Agreement-Amendment 1	2001			MCWD		
FORA-MCWD Water/Waste Water Facilities Agreement - Amendment 2	2007			MCWD		
Army-FORA MOA for Sale of Portions of the Former Fort Ord	2000	<a href="http://fora.org/Reports/TTF/062000_MOA_Army-FORA_EDC-Agreement.PDF">http://fora.org/Reports/TTF/062000_MOA_Army-FORA_EDC-Agreement.PDF</a>	Asset/Liability/Obligation	City of Seaside/City of Del Rey Oaks/County of Monterey/MPC/CSUMB/City of Monterey/County of Monterey/MCWD?	B. Each entity must be designated as a Local Reuse Authority by OEA in Federal Govt. and State Government to receive water/wastewater rights; Issue as to prioritization and access;	2, 3
FORA, MCWD Quitclaim Deed Ord infrastructure	2001	<a href="http://fora.org/Reports/TTF/110701_FORA-MCWD_Quitclaim_Deed_Ord_Infrastructure.pdf">http://fora.org/Reports/TTF/110701_FORA-MCWD_Quitclaim_Deed_Ord_Infrastructure.pdf</a>	Obligation	City of DRO/City of Monterey/City of Seaside/County of Monterey/MPC/CSUMB (as to Enforcement of Provisions only) NOTHING TO ASSIGN TO MCWD: TRANSFER COMPLETE	Enforcement of obligations contained in Quitclaim as to water/wastewater service obligations	4
Army-FORA MOA for Sale of Portions of the Former Fort Ord: Amendment 1	2002	<a href="http://fora.org/Reports/TTF/102301_MOA_Army-FORA_Amend_1.PDF">http://fora.org/Reports/TTF/102301_MOA_Army-FORA_Amend_1.PDF</a>				5
MCWD-FORA Quitclaim deed L35.1 & L35.2	2004	<a href="http://fora.org/Reports/TTF/MCWD_FORA_Quitclaim_Deed090304.pdf">http://fora.org/Reports/TTF/MCWD_FORA_Quitclaim_Deed090304.pdf</a>				
Army- FORA, MRWPCA, and MCWD MOA	2005	<a href="http://fora.org/Reports/110205_MOA_Army_MRWPCA-FORA-MCWD.pdf">http://fora.org/Reports/110205_MOA_Army_MRWPCA-FORA-MCWD.pdf</a>	Asset	Seaside/DRO/City of Monterey City of Seaside/City of Del Rey Oaks/County of Monterey/MPC/CSUMB/City of Monterey/County of Monterey/MCWD		
MCWD-FORA Quitclaim deed L35.5	2006	<a href="http://fora.org/Reports/TTF/MCWD_FORA_Quitclaim_Deed020806.pdf">http://fora.org/Reports/TTF/MCWD_FORA_Quitclaim_Deed020806.pdf</a>	Enforcement	Monterey/MPC/CSUMB/City of Monterey/County of Monterey/MCWD		

# Water/Wastewater – Reference Material

Contract	Year	AGREEMENT LINK	Asset/Liability Pledge/Obligation	Multi-Agency	Multi-Agency Notes	Notes
FORA Recycled Water allocations to jurisdictions	2007	<a href="http://fora.org/Reports/TTF/RecycledWater_allocation_to_Jurisdictions--051107.PDF">http://fora.org/Reports/TTF/RecycledWater_allocation_to_Jurisdictions--051107.PDF</a>		City of Seaside/City of Del Rey Oaks/County of Monterey/MPC/CSUMB/City of Monterey/County of Monterey/MCWD	Captured in Implementation Agreements (See Section 3)	6
FORA Potable Water allocation to jurisdictions	2007	<a href="http://fora.org/Reports/TTF/PotableWater_allocation_to_Jurisdictions-011207.pdf">http://fora.org/Reports/TTF/PotableWater_allocation_to_Jurisdictions-011207.pdf</a>		City of Seaside/City of Del Rey Oaks/County of Monterey/MPC/CSUMB/City of Monterey/County of Monterey/MCWD	Captured in Implementation Agreements (Section 3)	7
Army-Seaside AYH Water Deed	2008	<a href="http://fora.org/Reports/TTF/082808_AYH_Water_Deed.pdf">http://fora.org/Reports/TTF/082808_AYH_Water_Deed.pdf</a>		Seaside		8
MOU Water Augmentation and 3 Party Agreement	2015	<a href="http://fora.org/Reports/2015-MOU-Three-Party_Final.pdf">http://fora.org/Reports/2015-MOU-Three-Party_Final.pdf</a>	Liability/Obligation	City of Seaside/City of Del Rey Oaks/County of Monterey/City of Monterey/County of Monterey		9
FORA-MCWD Pipeline Reimbursement Agreement	2016	<a href="http://fora.org/Reports/2016-Rmbrs_Agrmt_FORA-MCWD_Pipeline_Executed_08-25-16.pdf">http://fora.org/Reports/2016-Rmbrs_Agrmt_FORA-MCWD_Pipeline_Executed_08-25-16.pdf</a>	Liability	City of Seaside/City of Del Rey Oaks/County of Monterey/City of Monterey/County of Monterey		10
Notes:						
1. This Agreement was quitclaimed to MCWD. However, replacement supplies are to the benefit of all properties on Fort Ord.						
1. Agreement terminates on FORA sunset. Annexation does not automatically terminate agreement. Oversight continues until agreement terminates.						
2. Article 5, provides FORA first right of refusal to excess water and waste water Rights. Successor must be consented to by Army and designated as Local Reuse Authority (Federal and State Law)						
3. Article 5 requires fair and equitable water allocation to enable the effective base reuse.						
4. Quitclaim Deed requires compliance with underlying obligations including but not limited to a fair and equitable allocation of water to the jurisdictions; JPA/Successor to enforce						
5. Changes MCWD Public Benefit Conveyance to an EDC conveyance						
6. Allocates 1427 afy reclaimed water to jurisdictions (fair and Equitable share); MCWD/JPA/Successor to enforce						
7. Potable water allocations to jurisdictions (Fair and Equitable share); MCWD/JPA/Successor to enforce						
8. 109 AFY water to Seaside (Stillwell Kidney)						
9. Planning agreement to analyze alternatives for augmented water supply options						
10. Six Million dollar liability to build infrastructure pipeline for delivery of reclaimed/augmented water supply to Ord Community						

# Future Meeting(s)

- May 16, 2018 1:00 – 4:00
- May 23, 2018 12:00 – 2:00
- May 30, 2018 12:30 – 2:30
- June 8, 2018 Study Session

# Questions?

