



# ***Agenda Report***

## ***Fullerton City Council***

**MEETING DATE:** MARCH 17, 2020

**TO:** CITY COUNCIL / SUCCESSOR AGENCY

**SUBMITTED BY:** KENNETH A. DOMER, CITY MANAGER

**PREPARED BY:** MEG McWADE, PUBLIC WORKS DIRECTOR

**SUBJECT:** AUTHORIZATION TO EXECUTE NON-DISCLOSURE AGREEMENT WITH ORANGE COUNTY WATER DISTRICT RELATED TO POTENTIAL PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS) LITIGATION

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### **SUMMARY**

Execution of the attached Non-Disclosure Agreement (NDA) with Orange County Water District (OCWD) is necessary to participate in further discussions regarding potential litigation related to Per- and Polyfluoroalkyl Substances future cost recovery.

### **RECOMMENDATION**

Authorize City Manager, or designee, to execute the Non-Disclosure Agreement with Orange County Water District related to potential PFAS litigation.

### **PRIORITY POLICY STATEMENT**

This item matches the following Priority Policy Statements:

- Fiscal and Organizational Stability
- Public Safety
- Infrastructure and City Assets.

### **FISCAL IMPACT**

Costs related to City Attorney participation in these initial discussions will be absorbed within the Adopted FY 19-20 Operational Budget.

### **DISCUSSION**

Orange County Water District is responsible for managing groundwater in the Orange County area. Over the last year, many agencies within Orange County have been testing for per- and polyfluoroalkyl substances as ordered by the Division of Drinking Water (DDW). DDW has recently changed standards for PFAS with these changes resulting in many OCWD wells potentially being removed from service, including City of Fullerton wells. Because of the regional nature of this groundwater contaminant, OCWD has taken a leadership role in developing groundwater treatment solutions.

In addition to pilot testing of treatment systems, performing preliminary evaluations for each agency and being at the forefront of discussions with regulators and congressional representatives, OCWD Board adopted a "Per- and Polyfluoroalkyl Substances (PFAS) Response Program Policy" at its November 2019 Meeting. The policy outlines that the organization will fund treatment plants as well as a portion of operations and maintenance for agencies affected, if an agency chooses to participate in the program. This policy does not fund import water costs while plants are being constructed and permitted. OCWD will fund this program through an increase to the groundwater assessment that will be paid by all agencies.

PFAS is a man-made chemical with specific manufacturers and there is current litigation on the east coast related to this contaminant. There may be a possibility of recovering damages (treatment plant capital, increased operational costs related to treatment and import water costs) through litigation. If Fullerton chooses to utilize OCWD for funding / building the treatment plants and ongoing operational cost reimbursements, there would be an obligation to have some level of involvement in the litigation. In order to participate in the preliminary discussions related to potential litigation, a Non-Disclosure Agreement must be signed. The NDA does not commit the City to join in litigation efforts.

Attachments:

- Attachment 1 – Non-Disclosure Agreement