

## MEMORANDUM

To: Jack Foley, Manager  
From: Jim Copeland, General Counsel  
Re: Cash Reserves  
Date: April 21, 2010

At the Board's special meeting on April 12<sup>th</sup>, the Board requested that I review the JPA to determine whether SAM's cash reserves are the property of SAM or is SAM holding the reserves as the property of its member agencies.

In response, pursuant to the authority given to SAM under the JPA, as such authority has been exercised by the Board, the cash reserves are the property of SAM.

The Sewer Authority Mid-Coastside ("SAM") is a joint exercise of powers agency created under an agreement, dated February 3, 1976, by its member agencies (the "JPA"). The JPA was entered into under the California Joint Exercise of Powers Act (the "Act").

Pursuant to the Act, the JPA created SAM as a public entity separate from the parties thereto. It was created for the purpose of acquiring, constructing, maintaining and operating facilities for the collection, transmission, treatment and disposal of wastewater for the benefit of the lands and inhabitants within its boundaries.

In furtherance of its purpose, SAM is authorized to: acquire, construct, maintain, operate and control any buildings, works or improvements; acquire, hold and dispose of property; incur debts, liabilities or obligations; sue and be sued in its own name; establish rates, fees or other charges in connection with the facilities and services it provides; and issue revenue bonds.

The JPA provides that all powers and authority of SAM are exercised by its Board of Directors (the "Board").

Under the JPA, the Board is required to annually prepare a general budget related to the general administrative expenses of SAM as well as the expenses of operating any improvements operated or maintained by SAM. The budget is thereafter submitted to each member agency for approval, following which the Board is authorized to approve the general budget.

The JPA requires that each member agency include, in its annual budget, amounts estimated to be sufficient to pay its allocated share of the approved SAM general budget expenses, such charges to be paid following receipt of a statement for the billing period determined by the Board.

The JPA authorizes SAM to take any and all actions necessary and permitted by law to enforce the collection of such charges, including the collection of such charges from the taxpayers, landowners, or users of any of the SAM facilities.

The JPA establishes a similar procedure pursuant to which a project budget is adopted by the Board.

The JPA provides that the SAM Treasurer (appointed by the Board) is the depositary and has custody of all of the money of SAM from whatever source. The Treasurer is required to receive and receipt of all money of SAM and place it in the treasury to the credit of SAM. He or she is required to pay sums due from SAM from SAM money, and verify and report in writing to SAM and each member agency the amount of money he or she holds for SAM.

The JPA requires a strict accountability of all of SAM's funds. In accordance with the JPA, the Board contracts with an outside certified public accountant to make an annual audit of the accounts and records of SAM, with a report thereof filed with SAM and each member agency.

Lastly, the JPA provides that, upon termination or dissolution of SAM, any funds in possession of SAM at such time will be distributed to the member agencies at the time of termination and in proportion as their interests may appear on SAM's books.

In the exercise of its powers, the Board has adopted an investment policy and guidelines for the purpose of setting forth the objectives, permitted investments, and practices for the investment of SAM funds not required for its day-to-day operations.

In addition, the Board has adopted a reserve funds policy setting forth specific guidelines for accumulating and managing SAM's reserve funds. In this policy, the Board has identified various reserve funds and established levels at which such funds are to be maintained. The policy sets forth restrictions on the use of these reserve funds, and requires an accounting of each member agency's contributions and withdrawals therefrom. The policy also provides that the initial balance of the Capital Replacement/Emergency Reserve is a SAM asset; and that SAM will assess the member agencies to maintain therein the minimum balance that it has established, with such assessments based on approved project budgets and the SAM Long-Term Financial Plan.

The reserve fund policy also has a procedure whereby net operating revenues on expense budgets are refunded to the member agencies and net operating losses on expense budgets are billed to the member agencies.

The policy also provides that the SAM Board may, by resolution, return to the member agencies any reserve funds in excess of those determined necessary to fulfill SAM's purposes.

Finally, the policy provides that all SAM reserve funds are to be invested in accordance with SAM's investment policy.

In conclusion, pursuant to the authority given to SAM under the Act and the JPA, as such authority has been exercised by the Board, SAM's cash reserves are the property of SAM.