

Santa Margarita/Dana Point Authority

P.O. Box 7005
Mission Viejo, CA 92690
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September 11, 2015

Honorable Glenda Sanders, Presiding Judge of the Superior Court
Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

Re: Response of Santa Margarita/Dana Point Authority to Orange County Grand Jury
Report *Joint Powers Authorities: Issues of Viability, Control, Transparency, and
Solvency*

Dear Honorable Glenda Sanders:

In response to the Orange County Grand Jury Report *Joint Powers Authorities: Issues of
Viability, Control, Transparency, and Solvency* ("Report"), pursuant to Penal Code section 933.05
and the instructions contained in the Report, the Santa Margarita/Dana Point Authority ("SMDPA")
adopted the attached resolution:

RESOLUTION NO. 2015-09-01; RESOLUTION OF THE BOARD OF
DIRECTORS OF SANTA MARGARITA/DANA POINT AUTHORITY
REGARDING RESPONSE TO JUNE 29, 2015 GRAND JURY REPORT

Please let me know if you have any questions or comments.

Very Truly Yours,
Santa Margarita/Dana Point Authority



Daniel R. Ferons
Secretary to the Board of Directors
Santa Margarita/Dana Point Authority

RESOLUTION NO. 2015-09-01

RESOLUTION OF THE BOARD OF DIRECTORS OF
SANTA MARGARITA/DANA POINT AUTHORITY
REGARDING RESPONSE TO JUNE 29, 2015 GRAND
JURY REPORT

WHEREAS, on June 29, 2015 the Orange County Grand Jury (“Grand Jury”) issued a report entitled “*Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency*” (the “Report”), which report included the following findings/conclusions applicable to the Santa Margarita/Dana Point Authority (“SMDPA”):

F4. Vertical Joint Powers Authorities with a single controlling entity, such as a city council, have the potential to use this organizational structure as a shell company to avoid other legal constraints on the controlling entity and obfuscate taxpayer visibility.

F5. Vertical Joint Powers Authorities in which the controlling entity transfers assets from itself to a Joint Powers Authority for the purpose of obtaining 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.

WHEREAS, the Report included the following Recommendation applicable to SMDPA:

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.

WHEREAS, Penal Code section 933.05 requires SMDPA to respond to each Finding and Recommendation set forth in the Report as applicable to SMDPA; and

WHEREAS, the Board of Directors of the SMDPA desires to respond to each Finding and Recommendation by the Grand Jury;

NOW, THEREFORE, the Board of Directors of the SMDPA does hereby resolve, determine and order as follows:

1. The foregoing recitals are true and are incorporated herein by reference.
2. SMDPA disagrees with Grand Jury Finding F4:

F4. Vertical Joint Powers Authorities with a single controlling entity, such as a city council, have the potential to use this organizational structure as a shell company to avoid other legal constraints on the controlling entity and obfuscate taxpayer visibility.

SMDPA is not a “Vertical Joint Powers Authority.” The Report states that, “JPAs were determined to be vertical if their members were not similar entities but rather the same entity with a different organizational structure. That is, all of the members of the JPA were controlled by a single authority.” (Report, Pg. 10.) The current member agencies of the SMDPA are Santa Margarita Water District and South Coast Water District. Each member agency is responsible for providing water service to the customers within its jurisdiction and is controlled by its own Board of Directors.

3. SMDPA disagrees with Grand Jury Finding F5:

F5. Vertical Joint Powers Authorities in which the controlling entity transfers assets from itself to a Joint Powers Authority for the purpose of obtaining 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.

SMDPA is not a “Vertical Joint Powers Authority.” The Report states that, “JPAs were determined to be vertical if their members were not similar entities but rather the same entity with a different organizational structure. That is, all of the members of the JPA were controlled by a single authority.” (Report, Pg. 10.) The current member agencies of the SMDPA are Santa Margarita Water District and South Coast Water District. Each member agency is responsible for providing water service to the customers within its jurisdiction and is controlled by its own Board of Directors.

4. The recommendation has been partially implemented for Grand Jury Recommendation R3.

R3: “All Joint Powers Authorities should take the following actions to insure (sic) 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. (F4. F5.)”

- (1) The SMDPA applauds the effort of the Grand Jury to ensure that joint powers authorities operate transparently, are accountable to the taxpayers and comply with state law. The SMDPA is required to file a State Controller’s Report annually with the State of California. The SMDPA has reviewed its obligations under state law and its annual filings and has complied with those requirements. The SMDPA last filed this report for 2013 on October 16, 2014, prior to the required deadline, and plans to file the most recent 2014 year end information prior to its due date in October.
- (2) The SMDPA has also considered the recommendation’s other transparency measures including having an annual outside audit conducted, posting the complete audit on its website and sending the audit to the County Controller and the State Auditor. The SMDPA takes transparency and accountability to the taxpayers and our member’s ratepayers very seriously.


- (3) The SMDPA encourages public participation and examination of the SMDPA and therefore posts all agendas and associated staff reports for public review, consistent with the Brown Act requirements. Because the SMDPA's purpose is to issue bonds for each member agency for the acquisition of facilities for wastewater and water service, each member of the JPA is required to pay the SMDPA its respective share of the JPA's expenses based on the bond issuances. In addition, the SMDPA does not have staff nor any general budget requirements. Given each member agency's oversight of the SMDPA's bonds and thorough reporting under each member's own financial statements and audits, there is substantial review of the Authority's finances.
- (4) Given the SMDPA's structure, an independent outside audit would only add another expense onto each member agency without the addition of substantially greater transparency and accountability. As a result, the SMDPA financial information and statements have been included in the Santa Margarita Water District audit. Per California Government Code Section 6505, the SMWD has been designated as the agency responsible for financial reporting for the SMDPA and, as such, SMWD has included all pertinent financial information and reporting in its annual audit. However, the SMDPA remains committed to enhancing taxpayer accountability and transparency and will file the 2014 SMWD audit with the County and consider preparation of an independent audit and future filing with both the County and the State.
- (5) SMDPA's Secretary to the Board of Directors is directed to provide a response to the Report that is consistent with this Resolution.

PASSED AND ADOPTED by the Board of Directors of the Santa Margarita/Dana Point

Authority this 11th day of September, 2015.


Wayne Rayfield
Chair to the Board of Directors
Santa Margarita/Dana Point Authority

ATTEST:



Daniel R. Ferons
Secretary to the Board of Directors
Santa Margarita/Dana Point Authority

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, Daniel R. Feron Secretary of the Board of Directors of the Santa Margarita/Dana Point Authority, do hereby certify that the foregoing resolution was duly adopted by the Board of Directors of the Authority at a special meeting held on the 11th day of September, 2015, and that it was so adopted by the following vote:

AYES: 3 DIRECTORS: Rayfield, Gibson, Feron,
NOES: DIRECTORS:
ABSENT: 1 DIRECTORS: Erkeneff
ASTAIN: DIRECTORS:



Daniel R. Feron
Secretary of the Board of Directors
Santa Margarita/Dana Point Authority

I, Daniel R. Feron, Secretary of the Board of Directors of the Santa Margarita/Dana Point Authority, do hereby certify that the above and foregoing is a full, true, and correct copy of Resolution No. 2015-09-01 of said Board, and that the same has not been amended or repealed.

DATED: September 11, 2015



Daniel R. Feron
Secretary of the Board of Directors
Santa Margarita/Dana Point Authority