



July 22, 2019

The Honorable Kirk H. Nakamura  
Presiding Judge of the Superior Court of California  
700 Civic Center Drive West  
Santa Ana, CA 92701

RE: Response to Grand Jury Report, "*Re-Opening Irvine Lake - A Win-Win for Taxpayers and Outdoor Enthusiasts*"

Dear Presiding Judge Nakamura:

On May 13, 2019, the Grand Jury released a report entitled "*Re-Opening Irvine Lake – A Win-Win for Taxpayers and Outdoor Enthusiasts.*" This report requires a response to findings and recommendations from the Irvine Ranch Water District (IRWD). Per the 2018-2019 Orange County Grand Jury's request, and in accordance with Penal Code 933.05, below are the District's responses to Findings F4, F5 and F6, and Recommendations R5 and R5.

Prior to providing its required responses, IRWD has provided some background on Irvine Lake that is key to understanding the District's responses to Findings F4, F5 and F6, and Recommendations R5 and R5. IRWD also offers several clarifications to certain statements contained in the published report.

#### Background on Irvine Lake

Since it was originally constructed in 1933, the primary purpose of Irvine Lake, which is also known as Santiago Creek Reservoir, has been to store water for the benefit of the surrounding communities – initially to provide irrigation water for local farms, and more recently to satisfy water demands for agricultural and urban needs. IRWD utilizes water from Irvine Lake for two purposes: 1) as a source of water for non-drinking purposes, such as irrigation for avocado orchards, and 2) as a source of water for the Baker Water Treatment Plant which creates drinking water for an estimated 85,000 homes in Orange County.

IRWD and Serrano Water District, the co-owners of Irvine Lake, balance the benefits of storing water in Irvine Lake to ensure customers have a reliable supply of water while minimizing the loss of water from the lake due to evaporation or water going over the dam spillway in a year with heavy precipitation. When the water level in Irvine Lake is high, the rate of evaporation increases dramatically with the increase in the surface area of the water. One other key consideration for managing water levels in the lake is preserving the ability to capture rainwater from the surrounding hills that will flow into Irvine Lake. Capturing this fresh water in Irvine Lake at no cost to both agencies can help reduce the cost of providing drinking water to customers, as well as improving local water supply reliability.

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While Irvine Lake remains first and foremost a water resource facility, recreational activities, such as fishing and boating, have been allowed in the past at Irvine Lake. IRWD remains supportive of Irvine Lake being used for public recreational uses that are compatible with its important purpose of serving as a water supply and storage facility.

Control over any recreational activities is the responsibility of the owners of the "Irvine Lake Recreation Rights." The Irvine Lake recreation rights will be owned by the County of Orange, a 75 percent owner of the recreation rights, and Serrano Water District, a 25 percent owner of the recreation rights. (The Irvine Company is in the process of transferring its recreation rights to the County of Orange.) IRWD does not have any ownership of the Irvine Lake Recreation Rights.

#### Factual Clarifications to Statements Contained in the Report:

In addition to the factual clarifications offered by other respondents to the report, IRWD offers the following clarifications to certain statements contained in the published report:

- On page 8 the report states that "OC Parks is not a part to this MOU and therefore lacks any legal standing or bargaining power over this situation." Further down, on the same page, the report states that "In spite of multiple contacts by OC Parks to IRWD over the past few years, it appears to the Grand Jury that OC Parks has not yet received any information from IRWD regarding the terms of any successor agreement nor its expected completion and execution date." From IRWD's perspective, OC Parks does have legal standing and bargaining power to resolve a number of the outstanding issues related to Irvine Lake. This is why IRWD has engaged in numerous conversations with OC Parks over the past few years seeking to resolve outstanding issues, and why the District provided OC Parks, the Irvine Company, and Serrano Water District with a proposed agreement to resolve the outstanding issues from the 2003 MOU on March 27, 2019; and
- On page 12, the report states that "As part of its investigation, the Grand Jury requested from all three local government agencies any planning documents or feasibility assessments conducted for Irvine Lake and found that no planning reports or studies exist." The IRWD personnel contacted by the Grand Jury regarding this report do not recall such a request being made of IRWD.

#### Required Responses

**Finding F4:** *"Minimal effort to engage one another, a lack of creative proposals and slow responsiveness between OC Parks and the water districts have allowed negotiations to stall."*

Response: IRWD wholly disagrees with this finding.

IRWD has actively sought resolution of the issues surrounding Irvine Lake, including settling the easement rights discussed in the 2003 Memorandum of Understanding. In fact, IRWD took the initiative to move the negotiations forward earlier this year and proposed a draft agreement to resolve the outstanding issues related to the 2003 Memorandum of Understanding over the same period of time the Grand Jury wants to portray that negotiations were stalled. While the draft agreement has not resulted in resolution of the outstanding issues, the parties continue to seek resolution to those issues, discussions have been ongoing and negotiations are actively continuing.

**Finding F5:** *“Although not a party to any recreation rights, IRWD does have a right of approval over decisions affecting water use rights and water quality. Therefore, settling easement rights issues in a successor document to the 2003 Memorandum of Understanding (MOU) among SWD, IRWD and TIC is required prior to concluding negotiations on recreation rights. Parties expect to complete this in the first half of 2019.”*

Response: IRWD agrees with finding, though the timing to complete negotiations will continue into the second half of 2019.

**Finding F6:** *“SWD, OC Parks and IRWD acknowledge that to maximize recreational opportunities a more stable Irvine Lake water level is desirable.”*

Response: IRWD wholly disagrees with this finding.

Irvine Lake remains first and foremost a water resource facility, and as a water resource facility water levels in the lake change regularly. Over the lake’s long history, water levels have fluctuated greatly at times being high when Orange County has had a wet winter and at other times lower, as in an extended drought. Despite changes in the lake’s water levels, recreational opportunities have been available at Irvine Lake and, at various times and different water levels, those opportunities have been maximized based on active adaptive management of the recreational rights. From IRWD’s perspective, it is not a more stable water level that is necessary to maximize recreational opportunities, but an adaptive management plan for recreational opportunities at the lake, which recognizes that water levels change, that could maximize the recreational opportunities at Irvine Lake.

Control over recreational activities at Irvine Lake is the responsibility of the owners of the “Irvine Lake Recreation Rights.” The Irvine Lake Recreation Rights will be owned by the County of Orange and the Serrano Water District. As outlined above, IRWD does not have any ownership of the Irvine Lake Recreation Rights.

**Recommendation R4:** *“If by December 31, 2019 resolution has not been reached as to the reopening of Irvine Lake for water recreation, staff for SWD, IRWD, and OC Parks should post on their respective websites and submit to their governing body for discussion in a public meeting their perspective as to the obstacles to reopening the lake and what plan they have to resolve the issue. (F4)”*

Response: The recommendation will not be implemented by IRWD because it is not warranted and it is unreasonable.

IRWD has actively sought resolution to the issues surrounding Irvine Lake. Resolution of the outstanding issues could result in the reopening of Irvine Lake to public recreation. But, as IRWD has communicated consistently to its customers and to the public, conducting recreational activities is the responsibility of the owners of the “Irvine Lake Recreation Rights” and not IRWD. From the District’s perspective, Irvine Lake must remain first and foremost a water resource facility, and any recreational activities, such as fishing and boating, must account for and preserve the lake’s primary purpose of a water resource facility.

Given the long-standing discussions over Irvine Lake, the IRWD Board of Directors has been briefed on the outstanding issues related to Irvine Lake. For many years, IRWD has also posted information on its website regarding Irvine Lake. The outstanding issues related to Irvine Lake are complex given the nearly 100-year history of the lake and the numerous agreements covering the interests held by IRWD, Serrano Water District, and now the County of Orange. IRWD continues to actively work to resolve the remaining issues related to Irvine Lake; resolution of the remaining issues requires further negotiation between the parties.

Posting on IRWD’s website and submitting to the IRWD Board of Directors for discussion in a public meeting the District’s perspective as to the obstacles related to permanently reopening the lake and the plan for resolving the remaining issues would likely undercut the District’s negotiating position. As a result, Recommendation R4 will not be implemented. IRWD has and will continue to post as much information as possible to its website in order to keep its customers and the general public appropriately informed about the status of Irvine Lake.

IRWD would also note that while Irvine Lake remains closed to the public for fishing, it is our understanding that some fishing may be allowed in the near future at Irvine Lake. An agreement to facilitate the potential for fishing at Irvine Lake in the future has been executed by the County, Serrano Water District, and IRWD.

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**Recommendation R5:** *“By December 31, 2019, SWD, IRWD and OC Parks should explore the economic feasibility of establishing and maintaining Irvine Lake at a minimum water level based on expected income and other potential cost offsets. (F5 & F6)”*

Response: The recommendation will not be implemented by IRWD because it is not warranted for IRWD.

As stated above, IRWD and the Serrano Water District balance the benefits of storing water in Irvine Lake to ensure customers have a reliable supply of water while minimizing the potential loss of water from the lake. When the water level in Irvine Lake is high, the rate of evaporation increases dramatically with the increased surface area of water. IRWD also manages the water level in Irvine Lake to preserve the ability to capture rainwater from the surrounding hills, because capturing this fresh water in Irvine Lake at no cost helps reduce the cost of providing reliable drinking water to customers.

If the owners of the Irvine Lake Recreation Rights desire to establish a minimum level of water in Irvine Lake, IRWD is willing to discuss the costs associated with this request to ensure the recreational activities are not subsidized by IRWD customers for no benefit. Because IRWD does not have any ownership of the Irvine Lake Recreation Rights, it is not appropriate for IRWD to explore the economic feasibility of establishing and maintaining Irvine Lake at a minimum water level based on expected income and other potential cost offsets.

Thank you for the opportunity to respond to the May 13, 2019, report on Irvine Lake. If you have any questions or need further information about IRWD or this response, please contact me at (949) 453-5590.

Sincerely,



Paul A. Cook, P.E.  
General Manager

cc: Orange County Grand Jury  
IRWD Board of Directors