

# Water Districts: A New Era In Public Involvement

## Summary

The stated focus of water districts usually emphasizes reliability, responsiveness and reasonable costs. Historically, water agencies have performed in that manner through engineering innovative and creative solutions. Perhaps due to this predictability and ensuing public complacency, water districts and their boards of directors have usually operated in relative obscurity. However, the status quo has changed.

Persistent drought conditions and adverse court rulings have prompted the California governor to declare a state of emergency and some agencies have declared the first stages of mandatory water rationing. This increasingly deteriorating supply will dramatically impact the price of water, which can be expected to double or triple in cost in the foreseeable future. Other important issues may include levying civil fines and sanctions, as well as policing for compliance. Given these circumstances, water will take center stage in the public's awareness. They will choose to become involved, thus reversing years of neglect. With this new attention, the spotlight will be focused on water issues and those involved with administering these assets. The public will expect all water district boards to focus on innovative and cost-effective solutions especially in these economic times.

The public is justified in expecting that their representatives operate in a transparent manner, for the best interests of their customers, as

well as for the benefit of succeeding generations. Through future water board elections, the public will decide if their directors have been responding appropriately in this precarious environment. In deciding who should represent them, voters will examine how board members have originally attained their positions as well as how actively they have participated in the decision-making process.

In some areas voters will be especially sensitive to delayed construction projects, such as reservoirs and pipelines that, when stalled, compromise public safety. They want straightforward responses and insightful explanations on critical issues from their boards of directors, not justifications for prior inaction. They will show little patience for distractions, questionable judgments and unwise decisions. In addition, perceived or actual conflicts of interest or divisive behavior will not be tolerated in this new era.

## Reason for Investigation

In its oversight role, the Grand Jury had the opportunity to inspect water-related operations in Orange County and surrounding areas. Through these activities, the importance that water districts play in the lives of Orange County residents became apparent. At the same time, it also became clear that these districts often operate in relative obscurity. However, circumstances can thrust these organizations and their decisions into the spotlight. An example of this is the alleged water supply failure issues in Yorba Linda and elsewhere during the

County's disastrous Freeway Complex Fire in 2008.

Other attention-generating issues include the state's multi-year drought and court-mandated water supply curtailments that are leading to the implementation of water rationing programs. The costs for producing and delivering this precious resource are projected to dramatically increase. Along with this interest, water customers will expect to see transparency as well as their boards operating with a strong code of ethics. With this in mind, it appeared appropriate to review how effectively water district boards and their directors are functioning to serve the public.

## Method of Investigation

Documents were requested from all retail and wholesale water districts and municipal water agencies in Orange County. Supplemental requests included agendas, requests for proposal, contracts, voting information, policies and procedures. Pertinent government code sections as well as common law doctrines were obtained, and legal perspectives were solicited from the office of the Orange County District Attorney and from the Office of the County Counsel. Research also included documents, reports, and electronic correspondence. Further inquiry led to interviews and meetings with individuals from several water districts and personnel from various County agencies. The Grand Jury also visited water-related operations and water districts' offices.

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### Background and Facts

Water agency directors come from a rich and varied background. This wealth of knowledge, as well as the professional and the technical skills they possess can be an excellent resource. Water districts need such individuals with their diverse professional and educational experiences, as well as their intense focus on service. Their decision-making skills are especially essential in maintaining the confidence and support of their customers. Consequently, these ratepayers can be expected to become more engaged in critiquing how their boards of directors are participating in the process. Also they will expect a high level of competence and compliance with a strong code of conduct. It is also presumed that perceived or actual conflicts of interest would be avoided, and transactions would be conducted with transparency in mind. Some instances were found that raised concern. It is important to note that water districts are required to promulgate their own conflict of interest codes. The Board of Supervisors is the "code reviewing body" for the local agencies (Government Code 82011 (b)). The Boards of Supervisors must review these codes for conformity with the law and approve them before they become effective. (Government Code 87303)

There should be a clear line and a necessary balance between board members' personal work efforts and their participation on water district boards. Numerous issues can surface if it is perceived that members are using their positions to enhance business opportunities for themselves or their companies. The Grand Jury found instances

where staff members were expected to review proposals from directors of agencies for which they are clients. Under these conditions, the objectivity of the evaluations of the proposals becomes questionable. Pressure occurred to accept the work product and, in some instances, portions had to be redone by staff members.

An inappropriate situation that the Grand Jury found involved a board member who received a contract from another water agency that skirted the competitive selection process. It also should be noted that some water districts do not have formal submittal procedures for professional services. Other water district officials stated they are in the process of creating or strengthening their procedures.

The Grand Jury's investigation revealed that there were no agenda items or board minutes with any discussion or even any mention of board members' known working relationships with client agencies. It is reasonable, although not necessarily mandated by statute, to expect that some formal acknowledgement of board members' professional work would occur when it overlaps their elected positions.

Another potential area of financial interest occurs when a public water district is seeking to be privatized. Evidence was found that such a sale may be imminent in Orange County, with a possible conflict of interest of board members. If it occurs, citizens may be impacted by resulting rate changes. Under these circumstances, even the perception of an economic interest in the sale or negotiation of the water district by a board member would be cause for concern.

In California, financial disclosure laws exist to help ensure that

conflicts of interest are precluded. Public officials at all levels of state and local government must disclose their personal financial interests.

California Government Code Section 81002(c) states that: "Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided."

California Government Code Section 87100 states that: "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

Reporting requirements help inform the public and other officials of potential conflicts. The public officials' Statement of Economic Interests reviewed by the Grand Jury appeared to be properly completed. However, these laws cast a loose net, leaving many opportunities for situations that citizens may find questionable.

Each of the water districts in Orange County has its own board of directors whose members are to be elected by the ratepayers in their respective districts. The Grand Jury reviewed over 35 years of information from the Registrar of Voters. The records revealed that 20% to 80% of directors currently serving on any water board were originally appointed by the seated board members. Over 50% of all water district directors were originally appointed, not elected, to their positions. These individuals then ran for that office in the next election

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and usually won. The Registrar of Voters indicated that incumbents are elected approximately 90% of the time. The single exception to this statistic is the Municipal Water District of Orange County, which was reorganized in 2000, and all board members were required to run for election at that time.

It is understandable that water districts may not want to incur the costs of a special election. However, this voting information displays an interesting pattern. The typical example the Grand Jury found shows an individual winning his/her re-election bid. Subsequently, the individual resigns the position for a variety of personal reasons and a replacement is appointed. When this pattern is repeated over and over again, some authorities have viewed this action as a subtle method of "managing" the process. This pattern does not include those few instances when a board member dies in office. It was interesting to observe the phenomenon where a board member voluntarily resigned the position, and later the individual was appointed back to the board. Another situation included a board member who was appointed then lost the next election, appointed later and then lost that second election. It is difficult to see how these types of actions promote the ideal of representative government.

With regard to elections, some individuals have served concurrently in more than one publicly elected position. This is not necessarily a problem. However in some instances, an elected officer can vote to make decisions, regulate functions, and determine rates or fees that directly impact the second board. Common law doctrine that has been codified in Government Code 1099(a) states that a public

officer may not hold two incompatible offices at the same time. The statute describes when offices are deemed incompatible. With this in mind, water districts may wish to consult their legal counsel to advise them as to whether there exists an incompatibility of offices when a board member holds more than one office at the same time. It would be essential to determine whether the objectivity of the decision-making process would be inherently compromised.

Another issue of importance concerns the length of time some individuals have served as board members. It is wise to have directors with a history of participation, because their knowledge and experience is an important resource. However, it is appropriate to balance the tenure of long-serving members with a planned term limitation program. Some board members have been involved with the same water district and re-elected for decades, thereby precluding individuals with new ideas from the opportunity to serve.

To serve their customers, boards of directors hold regularly scheduled meetings. Soliciting public input is essential, not only after a crisis, but throughout the year. Many districts hold meetings at 8 or 9 in the morning, which prevents most individuals who are working at those times, from attending. Consequently, it is imperative that board meetings be scheduled at times that logically allow the most members of the public to attend. Also, these meetings should be widely publicized in order to generate the maximum public participation. Many creative solutions could be generated by the ratepayers if their suggestions were actively sought.

## Conclusions

Water district boards are unique and not widely recognized entities. Those who serve on water boards play a pivotal role in the lives of Orange County residents but, at the same time, operate in relative obscurity. Boards must function in a transparent manner, with full disclosure of their directors' water-related professional or business activities and other elected positions they hold. A strong written code of ethics would help prevent conflicts of interest. Also it is imperative that board meetings be scheduled for maximum public participation.

Circumstances and conditions are constantly changing. It is reasonable to expect that the membership on boards should not continue for 20 years or more and that districts would institute some type of term limits for their directors. Also it is essential that the election of directors be the rule and not, as is the practice in most of the districts, the exception.

## Findings

In accordance with California Penal Code Sections 933 and 933.05, each finding will be responded to by the government entity to which it is addressed. The responses are to be submitted to the Presiding Judge of the Superior Court. The 2008-2009 Orange County Grand Jury has arrived at the following findings:

F.1: Water Districts' procedures for the selection of professional consultants' contracts are somewhat lax and in some instances non-existent, thereby creating a perception of bias in the selection of candidates, especially in the selection of



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board members from other member agencies to provide professional services.

F.2: Some board members are conducting their professional practices with member agencies and use their elected positions to promote their competitiveness.

F.3: Codes of ethics among districts are quite varied. Some are very comprehensive and some do not exist other than to reference state laws.

F.4: Water board meetings are frequently scheduled for times that discourage public attendance.

F.5: An unusually high percentage of water board directors were originally appointed, not elected to their position.

F.6: Some board members hold multiple elected positions that under certain circumstances could create an appearance of a conflict of interest unless the person recuses himself on an issue-by-issue basis.

F.7: There are no time limits for how long individuals can serve on any water district board in Orange County.

***Responses to Finding F.1 through F.7 are required from the Boards of Directors of the East Orange County Water District, El Toro Water District, Irvine Ranch Water District, Laguna Beach County Water District, Mesa Consolidated Water District, Moulton Niguel Water District, Santa***

***Margarita Water District, Ser-rano Water District, South Coast Water District, Trabuco Canyon Water District, Yorba Linda Water District, Municipal Water District of Orange County and Orange County Water District.***

### Recommendations

In accordance with California Penal Code Sections 933 and 933.05, each recommendation will be responded to by the government entity to which it is addressed. The responses are to be submitted to the Presiding Judge of the Superior Court. Based on the findings, the 2008-2009 Orange County Grand Jury makes the following recommendations:

R.1: In addition to the laws set forth in the Political Reform Act of 1974 and Government Code section 1090, the water districts should promulgate rules requiring professionals seated on their boards of directors to formally disclose to their organizations any contracts they are pursuing or have attained with member agencies. The water districts should also adopt more encompassing rules regarding the selection of professional consultants. (F.1, F.2)

R.2: Each water district should develop a specific code of ethics, hold training sessions and monitor its enforcement. (F.3)

R.3: Water board meetings need to be scheduled at times that would generate maximum public attendance. (F.4)

R.4: Each water district should choose to hold elections to fill board vacancies. The appointment process should be used only in exceptional circumstances. (F.5)

R.5: Each water district should promulgate rules requiring each director to inform the other board members of any other offices including seats on boards of member agencies that he or she holds. (F.6)

R.5a: Water Districts should consult their legal counsel to advise them whether there exists an incompatibility of offices when a board member holds multiple offices at the same time. (F.6)

R.6: Water districts should adopt self-imposed term limits for their members, not to exceed three terms of service. (F.7)

***Responses to Recommendations R.1 through R.7 are required from the Boards of Directors of the East Orange County Water District, El Toro Water District, Irvine Ranch Water District, Laguna Beach County Water District, Mesa Consolidated Water District, Moulton Niguel Water District, Santa Margarita Water District, Ser-rano Water District, South Coast Water District, Trabuco Canyon Water District, Yorba Linda Water District, Municipal Water District of Orange County and Orange County Water District.***

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### Required Responses

The California Penal Code specifies the required permissible responses to the findings and recommendations contained in the report. The specific sections are as follows:

#### §933.05

1. For purposes of Subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the

finding that is disputed and shall include an explanation of the reasons therefore.

2. For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
- (3) The recommendation requires further analysis,

with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

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