



**EAST  
ORANGE  
COUNTY  
WATER  
DISTRICT**

**DIRECTORS**

Richard E. Barrett  
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September 17, 2009

The Honorable Kim Dunning  
Presiding Judge of the Superior Court  
700 Civic Center Drive West  
Santa Ana, CA 92701

**SUBJECT: Response to "Water Districts: A New Era in Public Involvement"**

Dear Judge Dunning:

The Board and staff of the East Orange County Water District (District) wish to thank the Grand Jury for their interest and study of water district governance issues. We appreciate the opportunity to comment on the findings and recommendations contained in the subject report.

There is no industry that cannot do something better, or in the case of government, more openly. What government often fails to do, however, is to operate efficiently. The District is small and operates in a business-like manner, focusing more on maintaining its system and keeping rates low than being concerned about how we appear to others.

We do find it unsettling, however, that in this report the Grand Jury broadly paints all water districts as slightly unsavory, although they find no violations of any conflict of interest or any other law. We fail to understand why the Grand Jury did not specifically list the situations/districts that they found problematic and provide evidence of the specific problem. We have had difficulty answering some of the Findings because we simply don't fully understand what the Grand Jury was alluding to.

Further, under the premise that water districts operate in "relative obscurity" – a term that is undefined in the report and unsupported by facts – the Grand Jury calls for term limits and special elections (for vacant positions), despite the fact that they acknowledge that a "wealth of knowledge" (that represents decades of experience) exists in water district board members' "rich and varied backgrounds," and that the public overwhelmingly dislikes the costs of special elections.

We have approached this response with a willingness to determine if we can make improvements in our procedures and/or the transparency in which we operate; however, in the future, we suggest that the Grand Jury

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be more specific in their findings, and resist the temptation to generalize about water districts when they are troubled by the actions of a few.

It is with this in mind that the District presents its response to the 2009 Grand Jury Findings and Recommendations.

### **Response to 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 board members from other member agencies to provide professional services.*

Response to F1(a): Partially Disagree

We concur that comprehensive procedures for the selection of professional services are important and serve to provide clarity and openness to the selection process.

We find it difficult, however, to understand the second part of the finding and will assume that by the use of the term "other member agencies" that the Grand Jury may be referring to the District and one of its retail member agencies. If so, we disagree with this finding as there is no factual basis for it. This situation has not occurred at the District (we have no current or historical Board Member that provides professional consulting services to water districts).

Further, the District's procedures require soliciting proposals from a selection of prequalified firms. If a sensitive relationship exists, we would expect it to be disclosed, would discuss it with District counsel to determine if a conflict exists and if so, would reject the firm's proposal. If no conflict exists, the firm's proposal would be evaluated and ranked. We can imagine no scenario under which staff would be forced to accept substandard work (as was alluded to in the report), or be forced to redo it. This work is the responsibility of the registered engineer that performed it and any changes to it would not only breach our contract, it would limit their liability – which is one of the important benefits that professional services provide.

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

Response to F2: Disagree.

Since the facts of this situation are not specified, we are again left to speculate. With regards to the District, there is no basis in fact for this finding as again, we have no Board Members providing professional services to our member agencies.

However, in support of the Grand Jury, if a Board Member was using his/her elected position to elicit special consideration for their business, this is clearly not allowed under conflict of interest laws. However, we are not certain that this has actually occurred (i.e., there is a lack of detail in the report), or that the potential for its happening is great enough to limit very qualified individuals from running for and holding office. In fact, holding an elected position would seem to result in the elected official's firm potentially losing work, as they would be precluded from working with the official's own district. It does not seem reasonable to imply that they should not be able to solicit work – under the same rules as any other firm - from any other agency because they sit on the Board of a separate agency.

*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.*

Response to F3: Agree.

The finding is more of a statement of fact rather than a finding of some problem. The District defers to state conflict-of-interest laws for its code of ethics – these laws are very comprehensive and far-reaching – as do most cities, counties and state agencies. District Board members undergo mandatory ethics training every two years as required by law.

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

Response to F4: Wholly Disagree.

With regards to the District, for over 25 years, our Board Meetings have been scheduled for 5:00 p.m. on the third Thursday of the month. Additionally, during our recent rate increase, after publicizing our meeting by sending a notice out with our water bills, we held a specific rate hearing Board Meeting at 6:00 p.m. on June 10, 2009. We had only two members of the public attend.

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

Response to F5: Disagree.

Since the term "unusually high" is undefined, we are unsure as to the basis for the statement. The Grand Jury failed to present evidence that water districts use the appointment process with any greater frequency than does any other sector of government (i.e., cities, school districts or other special districts). It is not unusual that Councils/Boards will use the appointment process rather than incurring the cost of a special election to fill a vacancy. The cost savings can be huge and the district potentially refills its Board/Council quickly, thus preserving the ability to conduct business and have tie breaking votes.

In the absence of evidence that there is a problem with this practice (e.g., incompetence and/or "selling" the seats to the highest bidder) we believe that Boards and Councils should retain the ability to use the appointment process in the event of a Board/Council vacancy.

*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.*

Response to F.6: Wholly Disagree.

While no District Board Member fits this description (i.e., no basis in fact for this finding), and we are unaware of the specific person/situation that is being referred to, we agree that there may be circumstances that arise that can pose a problem if a Board Member were to hold multiple elected positions and should recuse themselves if conflicts arise.

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

Response to F7: Agree.

Again, this is a statement of fact; one that has been and continues to be a benefit to the District. We will enlarge on these benefits in our response to Recommendation 6.

### **Response to 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 formerly 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 (F1, F2).*

Response to R.1: Will not be implemented because it is unwarranted.

The District believes that the existing state regulations cited are more than adequate to provide conflict of interest information without being overly burdensome and bureaucratic.

*R.2: Each water district should develop a specific code of ethics, hold training sessions and monitor its enforcement. (F3)*

Response to R.2: Will not be implemented because it is unwarranted.

As noted previously, the District Board adheres to all required conflict of interest laws and regulations, and will comply with all future laws and regulations developed by state and/or federal officials. Our small district doesn't have the funds or resources to devote to developing an ethics code that would be substantively different than the laws which the State has already spent so much time and effort in developing.

*R.3: Water board meetings need to be scheduled at times that would generate maximum public attendance. (F4)*

Response to R.3: Has already been implemented.

The District has been meeting at 5:00 p.m. for over 25 years.

*R.4: Each water district should choose to hold elections to fill board vacancies. The appointment process should be used only in exceptional circumstances. (F5)*

Response to R.4: Will not be implemented because it is not reasonable.

State regulations permit a Board to appoint a member in lieu of holding a special election. These powers were granted to the District in recognition

of the fact that the District may not want to spend money on a special election, particularly in the event where an election recently occurred or will soon occur. In the circumstance where there has been a recent election, the Board may wish to appoint the second-highest vote receiving candidate. In the circumstance where an election is coming in less than a year, the Board may wish to appoint a qualified candidate. In any event, these powers were specifically given to special districts for several reasons and should continue to be an option for a Board when considering how to fill a vacant position.

*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. (F6)*

*R5a: 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 (F6)*

Response to R.5: Has not been implemented, but will be implemented within six months.

The District agrees that it is in the best interest of everyone to be aware of the elected positions held by each Board Member. To that end, the District will adopt a policy requesting that Board Members inform the District Secretary when they hold seats on the board of a member agency.

Response to R5(a)[ Has not been implemented, but will be implemented within six months.

The District agrees that in the event a Board Member informs the District Secretary that they have been elected to a seat on the board of a member agency, District counsel will advise whether there exists an incompatibility of office.

*R.6: Water districts should adopt self-imposed term limits for their members, not to exceed three terms of service. (F7)*

Response to R.6: Will not be implemented because it is unwarranted.

The District has benefitted from the dedication, experience, knowledge and institutional memory of its long-serving Board Members; therefore, there is no benefit to this proposal. The combined institutional memory of our Board is in excess of 80 years, and has been invaluable to staff as they change throughout the years. Two of our Board Members have seen the District through four permanent and one temporary General Manager(s).

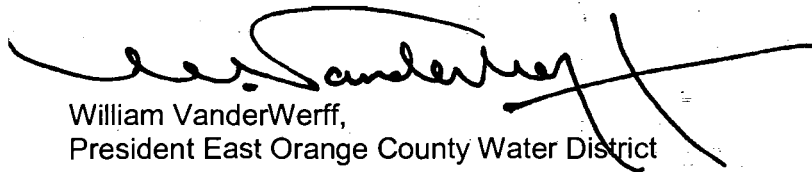
Our Board Members are very familiar with not only the administrative and financial aspects of the District, but the operations and maintenance of it as well. Their engineering and business backgrounds have enabled them to quickly understand complex issues and develop clear policy direction.

The water industry is a complex system of interconnected agencies and interests, physical systems worth millions of dollars, and myriad regulations. It takes time and dedication to learn the information necessary to make accurate and competent public policy decisions. Our Board Members spend several hours reviewing board and committee agenda packages before a meeting and then attend the lengthy meetings. This doesn't include the time that they spend coming to the office to sign checks and meeting with staff to get clarification over agenda items or financial items and direct coordination with other agencies that we serve.

Arguably, voters have supported term limits for some specific offices, however, support for term limits for special purpose agencies, such as water districts, is rare. This is an issue that should be left to the voters to determine whether or not it is a problem – or a benefit.

Again, thank you for the opportunity to comment.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "William VanderWerff", with a large, sweeping flourish extending to the right.

William VanderWerff,  
President East Orange County Water District

cc: Orange County Grand Jury