



IRVINE RANCH WATER DISTRICT

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September 15, 2009

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

Subject: ↗ 1) Irvine Ranch Water District Response to the 2008/2009 Orange County Grand Jury Report, “*Water Districts: A New Era in Public Involvement*”
2) Irvine Ranch Water District Response to the 2008/2009 Orange County Grand Jury Report, “*‘Paper Water’ – Does Orange County Have a Reliable Future?*”

Dear Presiding Judge Dunning:

The following represents the Irvine Ranch Water District’s (IRWD) response to the findings and recommendations contained in the above referenced 2008/2009 Orange County Grand Jury Reports. Section 1) responds to the “Water Districts: A New Era in Public Involvement” report and Section 2) responds to the “Paper Water” – Does Orange County Have a Reliable Future?” report. The responses are specific to the role and responsibilities of IRWD as a retail water supplier formed under the laws applicable to California Water Districts. The format for each section identifies each finding and recommendation followed by a specific response to same.

1) Water Districts: A New Era in Public Involvement

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.

We disagree with this finding, especially as it applies to IRWD. IRWD has adopted and follows very specific and stringent policies for the procurement of professional services. IRWD is not aware of any perception of “bias” in the selection of candidates for its consultant contracts. Furthermore, though we do not monitor the procurement practices of all water districts, IRWD is not aware of a widespread perception of bias in the selection of candidates for professional consultants’ contracts at other water districts. In this finding the Grand Jury has made a very serious allegation and is attempting to apply it to all water districts. If the Grand Jury found specific instances of impropriety during its investigation, then the Grand Jury is obligated to turn the matter over to the District Attorney for further investigation.

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

We disagree with this finding, especially as it applies to IRWD. IRWD is a retail water agency and as such does not have any "member agencies". That being said, IRWD is not aware of any of its board members conducting their professional practices with other water agencies and using their elected positions to promote their competitiveness. In addition, IRWD has adopted and follows a very specific Conflict of Interest Policy. In this finding the Grand Jury has, once again, made a serious allegation and is attempting to apply it to all water districts. If the Grand Jury found specific instances of impropriety during its investigation, then the Grand Jury would be obligated to turn the matter over to the District Attorney for further investigation.

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.

We disagree with this finding. All water districts must comply with a litany of requirements pertaining to codes of ethics including but not limited to the Political Reform Act, Government Code 1090, the Ralph M. Brown Act, and AB 1234. The sum total of these requirements provides very comprehensive guidance for ethical behavior by water district officials. This finding is specifically worded to imply that state laws are somehow inadequate. Without examples of short-comings in state law and in the codes of ethics adopted by water districts, the Grand Jury has not substantiated this statement in any way.

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

We disagree with this finding, as it applies to IRWD. IRWD Board meetings are conducted on the second and fourth Mondays of each month, starting at 5:00 p.m. We are not aware of any complaints from customers in our service area regarding this practice. As a matter of public policy, we certainly agree that water district board meetings should be held at times to encourage public participation; this is precisely why IRWD holds its Board meetings in the evening.

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

We disagree with this finding. IRWD Board members are publicly elected by customers of the District and serve four-year terms. Every two years the public participates in elections conducted by IRWD for alternating board seat terms. For example, three board seats alternate with the other Board seats in standing for election every two years. Any vacated IRWD Board seat that is filled by appointment is subject to the next general election. Filling a vacated Board seat by appointment is not "unusual"; it is an effective method of filling vacancies allowed by the government code.

The finding by the Orange County Grand Jury suggests water agencies are not following the procedures prescribed in California law when they opt to appoint a replacement rather than call for an election. California State Government Code Section 1780 clearly states that "The remaining members of the district board may fill the vacancy either by appointment pursuant to subdivision (d) or by calling an election pursuant to subdivision (e)."

If IRWD receives a notice of resignation from a sitting Board member, be it for personal, professional or other reasons, the District follows the process provided for in California law to fill the vacant Board seat in an expeditious, fair, and legal manner. The appointment process implemented by IRWD has always been a very open process that allows any resident in the IRWD service area to apply for the position and participate in a public hearing – all without paying filing fees or running an expensive campaign. At the same time, IRWD is able to fill the position in an expeditious manner without incurring the expense of a special election. This was the case with the resignation of a sitting IRWD Board member in December 2008, when a fiscally responsible, open and public process was implemented to review and select a member of the public to serve on the Board from a field of over 40 resident applicants. That newly-appointed Board member will be standing for election in 2010.

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.

We disagree with this finding. The question of whether multiple elected positions may be held by a person is governed by the legal doctrine of “incompatible offices.” The common law legal principles of incompatible offices were codified as Government Code Section 1099 effective January 1, 2006, stating a legislative intent to preserve the existing common law precedents. Section 1099 provides that offices are incompatible when (1) one office has supervisory powers over the other, (2) there is a “possibility of a significant clash of duties or loyalties between the offices”, or (3) public policy considerations make holding both offices improper. This analysis is fact-specific to the particular offices, and the California Attorney General has issued a number of opinions addressing various combinations of local offices. Rather than an issue-by-issue recusal, the incompatible offices doctrine results in a deemed forfeiture of the first office on acceptance of the second. Abstention cannot cure the incompatibility of two offices.

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

We agree with this finding. State law does not impose term limits on water district board members. The applicable enabling statute, Government Code Section 53077, requires that any district term limit measure operate prospectively only, and be submitted to the district voters. (Similar statutes apply to cities, counties and school districts.) We have no information that any Orange County water district has invoked this Government provision to submit a term limit proposition to its voters.

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)

This recommendation will not be implemented. IRWD will not be promulgating additional rules requiring professionals seated on the board of directors to formally disclose to IRWD any contracts they are pursuing or have attained with member agencies. Since IRWD is a retail water

agency, we have no member agencies with which a board member could potentially have inappropriate contractual arrangements that would fall outside the jurisdiction of existing state law and IRWD policies.

In addition, IRWD will not be adopting more encompassing rules regarding the selection of professional consultants. The Grand Jury has provided no evidence of inadequacies in IRWD's existing procurement policies or procedures.

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

This recommendation will not be implemented. IRWD has already developed and implemented a strict code of ethics, including a conflict of interest policy and business conduct standards that go above and beyond what is required by state law.

Effective January 1, 2006 California Government Code sections 53234 et seq., required local public officials to complete a minimum of two hours of ethics training every two years in general ethical principles and ethics laws. Local public officials include members of the legislative body of a local public agency, whether elected or appointed, who receive any type of compensation, salary or stipend, or reimbursement of expenses, and those employees designated by the agency to receive the training. Local public agencies whose officials are required to receive the training must keep records of the dates of training and who provided it. IRWD is in full compliance with this requirement.

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

This recommendation will not be implemented, as we believe it is already in place. IRWD Board meetings are conducted on the second and fourth Mondays of each month, starting at 5:00 p.m. We do not intend to change this practice as we believe it generates maximum public attendance while allowing enough time for discussion of the topics on the agenda, which can run in excess of four hours.

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)

This recommendation will not be implemented. From a legal perspective, the California Legislature has long maintained statutory authority for water district boards to use either appointment or election to fill up to one-half of a vacated term of office (an election is required at the midpoint of a four-year term if the vacancy has occurred in the first half of the term and more than 130 days before the next general election). The statute does not require or suggest the need for "exceptional circumstances" to support an appointment. If the IRWD Board adopted an "exceptional circumstances" rule, it would force District ratepayers to pay for a costly election that is not required by law, and would be conducted without the assent of the ratepayers. If the objective is to allow the voters an opportunity to limit the power of incumbency which emanates from voter preferences, the Grand Jury's recommendation suggests an indirect way of doing this

which avoids putting the question to the voters whether they want to bear this extraordinary expense for that objective.

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)

This recommendation will not be implemented. IRWD will not be promulgating 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. Existing disclosure requirements adequately protect against inappropriate conflicts of interest. In addition, existing residency requirements preclude IRWD Board members from serving on Boards of other retail agencies.

R.5.a: 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)

This is already a standard practice for IRWD. The common law legal principles of incompatible offices were codified as Government Code Section 1099 effective January 1, 2006, stating a legislative intent to preserve the existing common law precedents. This analysis is fact-specific to the particular offices, and the California Attorney General has issued a number of opinions addressing various combinations of local offices.

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

This recommendation will not be implemented. The Grand Jury report does not provide a specific rationale for term limits, nor does it identify benefits from term limits. In addition, there is the specific recommendation for three terms of service seems arbitrary. The recommendation is not supported with reasoned factual information and appears to attempt to address a problem that has not been clearly identified. The water industry is quite complex and agencies with tenured Board members benefit from accumulated knowledge on key items such as water rights, state and regional water policies, water supply and system costs of service, and other important parameters. This knowledge base is invaluable to providing strategic policy and business decisions that benefit the ratepayers from both a water supply reliability and cost efficiency standpoint. If Board members are not optimally performing their duties or an agency is not providing quality service to its customers, those Board members' seats are subject to open public election every four years. As such, the imposition of arbitrary term limits is unnecessary.