

September 4, 2009



**Moulton Niguel Water**  
WATER QUALITY AND SERVICE ARE #1

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

Regarding: Response To May 18, 2009, Grand Jury Report: **Water Districts: A New Era In Public Involvement**

Dear Honorable Judge Kim Dunning:

The following is Moulton Niguel Water District's (MNWD) response to the above-captioned report. Our response is structured to correlate with the report's directives:

***Finding 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: MNWD Wholly Disagrees With This Finding.**

In all, but exceptional circumstances, MNWD selects professional consultants using an RFP (Request for Proposal) process. The District then uses some or all of the following criteria in evaluating the Proposals and the selection of the Consultant:

- Experience of the firm and proposed Project Team on similar projects.
- Experience of the proposed Project Manager, particularly on similar projects.
- The proposed approach and methodology to complete the project. Understanding of the requirements of the project.
- Level of effort proposed, including the number of hours by job description.
- Proposed fee to complete the project.
- Proposed schedule for project completion, including an evaluation of District needs.
- Ability to meet District Administrative and Legal requirements, including insurance requirements and exceptions taken to the District's RFP.

We feel that the District's Purchasing Policy is well defined and procedures provide fair and equitable implementation.

a public agency at:  
27500 La Paz Road, Laguna Niguel, CA 92677-3489  
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***Finding F.2: Some board members are conducting their professional practices with member agencies and use their elected positions to promote their competitiveness.***

**Response: MNWD Wholly Disagrees With This Finding.**

This finding is not applicable, as MNWD is a California Water District, and as such, does not have any Member Agencies. See response under Finding F.1.

***Finding 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: MNWD Agrees With This Finding.**

MNWD can only comment on its own Code of Ethics, which is felt to be extremely comprehensive. The District Board has an adopted Ethics Policy that covers the Board of Directors and all District employees. The purpose of this Policy is to assure that both the Board and the employees exhibit the highest standard of personal honesty, fairness, and integrity in carrying out their duties. The Policy includes:

- Core Values and Beliefs
- Proper Use and Safeguarding of District Property and Resources
- Post Employment Relationships
- Gifts
- Contracts with the District
- Protection of "Whistleblowers"
- Ethics Training and Education Requirements

In accordance with AB 1234, the Board of Directors and the District's Management Staff attend ethics training sessions a minimum of every two years.

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

**Response: MNWD Disagrees With This Finding.**

MNWD's regular monthly Board Meetings are conducted at 1:30 in the afternoon on the third Thursday of each month. Regularly scheduled Board Committee Meetings are held at 9 AM, as are most Special Meetings that are conducted. The regular monthly Board Meeting time has been unchanged for well over 20 years. The District has not received comment from the Public that our meetings are held at inconvenient times, or times that have been selected to discourage public attendance. Nor have we been requested to change meeting times to encourage greater

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attendance. Our meetings are occasionally attended by members of the public, and those that attend have not commented on the meeting times as being inconvenient.

Recently the District conducted a meeting in accordance with Proposition 218 regarding an increase in Water and Sewer Rates. This meeting was held beginning at 6 PM during the week. There were no comments received that this was an inconvenient time.

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

**Response: MNWD Partially Disagrees With This Finding.**

MNWD feels that this clearly does not pertain in our District. In the 2008 General Election, three incumbent directors lost their re-election bids, and two of the three were originally appointed. While three of the four remaining directors were originally appointed, they have run for election numerous times, while frequently being opposed, but the voters felt they should be re-elected.

***Finding 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: MNWD Disagrees With This Finding.**

MNWD has no board member holding multiple elected positions.

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

**Response: MNWD Agrees With This Finding.**

This is a true statement as it pertains to MNWD. We cannot comment for other water districts in Orange County.

***Recommendation 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)***

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**Response: This Recommendation Will Not Be Implemented Because It Is Not Warranted or Is Not Reasonable.**

As discussed under Finding F.1, MNWD does not have any Member Agencies. Also, as discussed under Finding F.1, the District uses the Request for Proposal process to select consultants, and utilizes a detailed listing of criteria to evaluate proposals and the ultimate selection of a consultant.

Additionally, the Board of Directors must comply with provisions of the Fair Political Practices Commission, including the conflict of interest laws contained in the Political Reform Act of 1974.

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

**Response: This Recommendation Has Been Implemented.**

In addition to previously adopting and maintaining an Ethics Code, the District Board and Management Staff comply with AB 1234 requirements.

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

**Response: This Recommendation Requires Further Analysis.**

The Board feels that MNWD's current meeting schedule provides the opportunity to generate a high degree of public attendance. However, the District also believes that providing the maximum opportunity for public attendance is only one of several factors that should be considered; others include the availability of key staff members and additional costs which may be incurred by scheduling meetings outside of the District's normal working hours.

***Recommendation 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)***

**Response: This Recommendation Has Been Implemented.**

MNWD feels that the decision to fill vacancies by appointment or election should be made on a case-by-case basis. Naturally, applicable state law will be complied with, however, MNWD feels that cost considerations of a special election are an important factor, and could in some cases be considered to be an exceptional circumstance.

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*Recommendation 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)*

**Response: This Recommendation Will Not Be Implemented Because It Is Not Warranted or Is Not Reasonable.**

MNWD believes this Recommendation is not warranted, as the District already follows applicable state laws, the Fair Political Practices Act, the AB 1234 ethics requirements, and has no Member Agencies.

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

**Response: This Recommendation Will Not Be Implemented Because It Is Not Warranted or Is Not Reasonable.**

The MNWD Board believes, per Recommendation R.4, that the voters of the District should elect their representatives. It is contrary to democratic principles to disqualify individuals merely for having been previously elected by the voters.

Moreover, it is reasonable to infer that such a policy would unnecessarily diminish the expertise and efficiency of the Board.

MNWD appreciates the opportunity to respond concerning the report. Please contact the District in the event further information or explanation is required.

Sincerely,

MOULTON NIGUEL WATER



Robert C. Gumerman, PhD., P.E.  
General Manager

cc: Moulton Niguel Water District Board of Directors