



# CITY OF NEWPORT BEACH

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September 9, 2009

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

**RE: Response to the Grand Jury Report on "Paper Water' – Does Orange County Have A Reliable Future?"**

Honorable Judge Dunning:

This letter is submitted in response to the June 15, 2009 Grand Jury report entitled "Paper Water' – Does Orange County Have A Reliable Future?" As mandated by Penal Code Sections 933.05 (a) and (b), the following responses address the findings and recommendations of the Grand Jury.

In accordance with the report, the City of Newport Beach was requested to respond to Findings F.1, F.1 (a), F.1 (b), F.2, F.2 (a), F.2 (b), F.3, F.3 (a), F.3 (b), F.3(c), F.4, F.4 (a) and F.4 (b) and Recommendations R.1, R.2, R.3 and R.4. Our responses are provided below:

## **GRAND JURY FINDINGS:**

**Finding F.1:** There is inadequate coordination between local land-use planning agencies and local water supply agencies, resulting in a process that fails to fully engage the issues.

**Disagree.**

The City of Newport Beach is a retail water supplier, with that function managed by the City's Utilities Department. There is regular coordination between the Planning Department and the Utilities Department with regard to long range planning such as the General Plan as well as with regard to specific development projects. The City's Urban Water Management Plan was used as a resource in preparation of a comprehensive update to the General Plan and the EIR on that project in 2006. The City's Utilities Department, as well as Mesa Consolidated Water District and Irvine Ranch Water District, which serve parts of Newport Beach, were consulted during preparation of the General Plan EIR. Likewise, the appropriate water supplier is asked to prepare a water supply assessment for each proposed development project with more than 500 dwelling units, as required by SB 221 and SB 610. The Planning Department and the City's environmental consultants review these reports and, if necessary, ask questions of the water suppliers before the information is used in the project EIRs.

It is important to note that the responsibilities of cities include providing for the development of new housing for a growing population. This is clear in the State's Housing Element requirements and Regional Housing Needs Assessment numbers that must be included as goals in Housing Elements. Newport Beach has provided the water agencies that serve our community with our adopted Housing Element to assist them with planning, as required by State law. While the California Water Code provides that housing for lower income households should be given priority in water supply, the reality is that few affordable housing projects are developed without some kind of connection to the development of market rate housing. Water agencies generally view their jobs as using water resources more efficiently to accommodate growth, and this assists in meeting the State's and cities' housing goals.

Nonetheless, the water conservation ordinance currently under consideration by the Newport Beach City Council includes a provision that no new connections will be permitted when water shortages reach Water Shortage Crisis (Mandatory >40% reduction) This is regardless of whether land use approvals have been granted for development.

**Finding F.1(a):** Water agencies have tended to avoid interfering with or participating in growth-management decisions.

**Disagree.**

The City of Newport Beach wouldn't characterize the participation of water agencies in long-range planning or growth-management decisions as "interference." As described in the response to Finding 1, water agencies that supply Newport Beach do participate in local planning analyses and decisions.

**Finding F.1(b):** Cities and the County have tended to not critically evaluate the limitations of the water agencies' supply projections.

**Agree.**

The City's Planning Department, Planning Commission and City Council rely on water agencies as experts on water supply and delivery, just as they rely on archaeologists, biologists, geologists, hydrologists, traffic engineers and others as experts in their fields. The California Environmental Quality Act (CEQA) speaks to the weight of information and testimony presented by qualified experts as opposed to opinions of non-experts. The adequacy of an EIR could be challenged if the document differed from information presented by the recognized expert, the water agency, without evidence from other qualified parties.

The City of Newport Beach is aware of short-term water supply problems. Conservation efforts in Newport Beach, as a result of mitigation measures on development projects and voluntary actions by residents and businesses, have resulted in reductions in water use of 8% over the last fiscal year. The City will continue to require water conservation measures in new development projects. However, the Planning Department is not qualified to "second guess" the water agencies that serve our City with regard to long-term analysis and the water agencies' progress in developing new sources of water and securing water

transfers. Likewise, the Utilities Department and Newport Beach's other water supply agencies are constrained to use supply projections provided to them by regional suppliers.

**Finding F.2:** California's looming water supply crisis receives very little, if any, expressed concern from the public in comparison to the numerous other environmental issues presented during development project reviews.

**Agree.**

CEQA charges planning agencies with presenting information on all potentially significant environmental impacts of proposed projects. It is true that EIRs and other analyses of development projects in Newport Beach include more detailed discussion on issues such as traffic and noise than on water supply. The reason is that these are the issues that are most often raised by our citizens in response to notices of preparation (NOPs) of EIRs and in comments on Draft EIRs. CEQA requires that lead agencies in the environmental review process address issues raised during the NOP process in EIRs, and respond to all written comments received on Draft EIRs. Therefore, the issues of concern to our citizens are those that receive the most discussion. This is not to say that water supply is ignored. Potential impacts in this area are analyzed and discussed, and mitigation measures (such as water conservation) are often imposed. If there are no public comments on this impact area, the analysis and mitigations are considered adequate.

Perhaps water supply will become a greater concern in the future, in which case Newport Beach will expand our discussion of this issue in development project reviews. Until that occurs, it would not be appropriate or responsible for the City to suggest that significant environmental impacts would occur when information from reliable sources (i.e., water agencies) shows no evidence of such impacts.

**Finding F.2(a):** Orange County's citizens and interest groups do not appear to grasp the seriousness of the water supply situation or the complexity and urgency of the solutions.

**Disagree partially.**

The Newport Beach City Council has no information on which to comment or base a more detailed response. It would be presumptuous to comment on what our citizens and interest groups "grasp."

Water consumption has reduced over the past year within the City of Newport Beach, providing evidence that citizens have taken notice of the water supply situation. The City used nearly one thousand acre feet less water in fiscal year 08-09 than the previous year.

**Finding F.2(b):** Several recent, substantial water supply awareness efforts are underway (e.g., the O.C. Water Summit) that show promise but appear targeted to audiences that are already well informed.

**Agree.**

Large regional efforts such as the O.C. Water Summit do target audiences that work in the industry; however, these efforts seem to focus on keeping officials up to date and retaining a consistent message.

The City utilizes various means of keeping Newport Beach customers informed about the state of water supply in the City, such as website, bill stuffers, local and regional classes related to conservation issues such as the children's education festival and public and committee forums to discuss the proposed water conservation ordinance. All of the local efforts show promise as well, and are targeting audiences that are not informed.

**Finding F.3:** LAFCO is the agency charged with facilitating constructive changes in governmental structure to promote efficient delivery of services. To this end, LAFCO is conducting a governance study of MWDOC which is the designated representative for nearly all of the Orange County retail water agencies, acting on their behalf with their surface water supplier Metropolitan.

**Agree.**

The City agrees that LAFCO is the appropriate agency to conduct the study.

**Finding F.3(a):** There are a number of points of governance disagreement between MWDOC and several of its member agencies. This is creating an impediment to the on-going effectiveness of these agencies in critical areas of Orange County's water supply management.

**Agree.**

The City agrees that this issue needs to be resolved expediently.

**Finding F.3(b):** The current disagreement is a distraction from the greater good of the agencies working toward Orange County's water future.

**Agree.**

The City agrees that this issue needs to be resolved expediently.

**Finding F.3(c):** The stakeholders in LAFCO's study failed to meet their March 11, 2009 deadline for LAFCO's public hearing on this matter. Continued delays are unacceptable.

**Agree.**

**Finding F.4:** Orange County is uniquely fortunate to have a vast, high-quality, well-managed groundwater basin serving its north geographical area. However, in its south reaches, it has an equally large, high-growth area with virtually no available groundwater resources.

**Agree.**

The City recognizes that we are fortunate to have access to the groundwater basin and the south areas have virtually no ground water source.

**Finding F.4(a):** The difference in groundwater availability creates a “haves versus have-nots” situation that is conducive to inherent conflicts.

**Agree.**

**Finding F.4(b):** The difference in groundwater availability provides opportunities for responsible participants to develop and construct long-term solutions which will benefit the entire County.

**Disagree partially**

The finding is not clearly stated, but appears to include two implications that Newport Beach believes require expanded information. The first implication is that local resources are not being fully developed in south Orange County. This is not correct. Critical groundwater, recycled water and ocean water supplies are all being developed in south Orange County. The second implication is that there is sufficient water supply in the OCWD Groundwater Basin to supply south as well as north Orange County. The groundwater basin is managed to provide water supplies to its overlying landowners. The OCWD Act that formed OCWD governs how it manages the basin. Currently the basin meets 62% of each member agency's supply. The capacity of the basin was developed at a significant cost and it will never be able to supply 100% of the existing member agencies' demands.

#### **GRAND JURY RECOMMENDATIONS:**

**Recommendation R.1:** Each Orange County municipal planning agency, in cooperation with its respective water supply agency, should prepare for adoption by its city council, a dedicated **Water Element** to its General Plan in conjunction with a future update, not to exceed June 30, 2010. This document should include detailed implementation measures based on objective-based policies that match realistic projections of the County's future water supplies. These objectives, policies and implementation measures should address imported supply constraints, including catastrophic outages and incorporate the realistic availability and timing of “new” water sources such as desalination, contaminated groundwater reclamation and surface water recycling. (Findings F.1(a) & (b), and F.2(a) and (b))

**This recommendation will not be implemented.**

Implementing this recommendation would create a redundant, and possibly conflicting, planning process to the existing Urban Water Management Plan (UWMP) requirement of the State Water Code. UWMPs already serve a long-range planning function for water supply issues. They are required to include the very topics listed in this recommendation, and are required to be updated more frequently (5 years) than General Plans are suggested to be updated (10 years).

Water planning is more appropriately and effectively done by water agencies than by municipal government. If cities were to prepare Water Elements, they would have to rely on the same projections of water supply as the water agencies do, and it is unclear what additional benefit would be gained from Water Elements.

The preparation of Water Elements would be complicated, confusing and problematic. Newport Beach is served by three water agencies: the City, Mesa Consolidated Water District and Irvine Ranch Water District, and we would have to work with all three of these water agencies in preparing a Water Element. If policies are not consistent among the three water agencies, Newport Beach could be faced with writing a Water Element with conflicting policies, while State law requires that General Plans be internally consistent. Likewise, Mesa Consolidated Water District and Irvine Ranch Water District would have to work with multiple cities as they prepare their own Water Elements. The water agencies, too, might be faced with trying to implement policies that vary from city to city – assuming that cities' Water Elements would even have any mandatory impact on water agencies. Water agencies are special districts under State law, and cities do not have jurisdiction to set policy for them.

Only the State Legislature has the authority to establish General Plan requirements for cities and counties. The Government Code establishes the seven mandatory elements of General Plans: land use, circulation, housing, conservation, open space, noise, and safety. The conservation element is required to address the conservation, development and utilization of natural resources including water, and the portion of the element dealing with water must be developed in coordination with all agencies that have developed, served, controlled or conserved water for the city.

Newport Beach has satisfied this requirement with the Natural Resources Element of our General Plan, which includes discussion of both water supply and water quality. The City Council has adopted two goals with respect to water supply, each with a set of policies and implementation measures. The goals are as follows:

**NR 1**

Minimized water consumption through conservation methods and other techniques.

**NR 2**

Expanded use of alternative water sources to provide adequate water supplies for present uses and future growth.

Requiring another General Plan element would constitute an unfunded government mandate, at a time when cities and counties are struggling to meet other State requirements while the State depletes city and county resources.

**Recommendation R.2:** Each Orange County retail and wholesale water agency should affirm its responsibility to develop new, additional, innovative public outreach programs, **beyond water conservation and rationing** programs, to expose the larger issues surrounding water supply constraints facing Orange County. The objective should be to

connect the public with the problem. The outreach effort should entail a water emergency exercise that simulates a complete, sudden break in imported water deliveries. The exercise should be aimed directly at the public and enlist wide-spread public participation on a recurring basis beginning by June 30, 2010. This recommendation may be satisfied by a multi-agency exercise but the inability to coordinate such an event should not preclude the individual agency's responsibility. (Findings F.2(a) and (b))

**This recommendation will not be implemented.**

Current efforts are underway locally and working with MWDOC to educate the public about water supply issues not confined to just import supplies. The City of Newport Beach receives its water supply from both import and local groundwater supplies. The proposed water conservation and supply level regulation ordinance addresses water supply shortages from a multitude of circumstances that could reduce water supply. Supply shortage levels are built into the ordinance to address all supply issues not just import supplies. The City participates in emergency planning and exercises with WEROC, as well as emergency drills organized by the City and other government agencies that prepare us for a variety of possible emergencies. These drills require a significant amount of staff time and inter-agency organization, and it would not be practical to conduct County wide exercise on water emergencies involving 80 -100 thousand residents.

**Recommendation R.3:** Each MWDOC member agency should reaffirm to LAFCO that it will assign the resources necessary to expediently resolve regional governance issues. While the subject study is being facilitated by LAFCO, the options are with the agencies to decide what is best for all. Once conclusions are reached, the parties need to agree quickly and, hopefully, unanimously to adopt a course of action. (Findings F.3(a), (b) and (c))

**This recommendation will be implemented.**

The City agrees that this issue needs to be resolved expediently. The City of Newport Beach will assign the resources necessary. Upon completion of the study by LAFCO, where conclusions are reached, the City will respond in the required time frame set by LAFCO or agreed timeframe by member agencies.

**Recommendation R.4:** Each Orange County retail and wholesale water agency should affirm its commitment to a fair-share financial responsibility in completing the emergency water supply network for the entire County. The **entire** County should be prepared **together** for any conditions of drought, natural or human-caused disaster, or any other catastrophic disruption. WEROC should commence meetings of all parties, to facilitate consensus on an equitable funding/financing agreement. (Findings F.4(a) and (b))


**This recommendation is being implemented.**

The City already participates with WEROC to annually plan and run emergency scenarios to better prepare staff for emergency response on all levels. We have already spent our fair share and we will continue to do so as appropriate for the activities and events and how they relate to the City's functions and operations

The City is currently working with local agencies to study the emergency intertie water connections and ability to assist each other in an emergency. The study will address hydrology, water quality issues, and resources needed.

If you have any questions regarding this response please contact George Murdoch, Utilities Director, at (949) 644-3011 or [gmurdoch@newportbeachca.gov](mailto:gmurdoch@newportbeachca.gov), or Sharon Wood, Assistant City Manager at (949) 644-3222 or [swood@newportbeachca.gov](mailto:swood@newportbeachca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Edward Selich", written over a horizontal line.

Edward Selich, Mayor

cc: Orange County Grand Jury