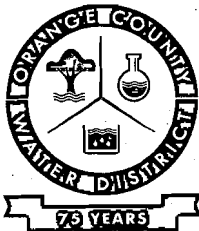


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**ORANGE COUNTY WATER DISTRICT**  
ORANGE COUNTY'S GROUNDWATER AUTHORITY

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First Vice President  
WES BANNISTER

Second Vice President  
DENIS R. BILODEAU, P.E.

General Manager  
MICHAEL R. MARKUS, P.E.

September 2, 2009

Honorable Kim G. Dunning  
Orange County Superior Court  
700 Civic Center Drive West  
Santa Ana, CA 92701

Re: Response to Orange County Grand Jury Report "Water Districts – A New Era in Public Involvement"

Dear Judge Dunning:

Pursuant to California Penal Code sections 933(c) and 933.05, the Board of Directors of the Orange County Water District has reviewed and hereby provides these comments to the Presiding Judge of the Orange County Superior Court on the findings and recommendations pertaining to the Orange County Grand Jury's 2009 report entitled "Water Districts – A New Era in Public Involvement":

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Findings

*Required response to FINDINGS is either to:*

- (1) Agree, or
- (2) Disagree wholly or partially (specify dispute)

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:*

OCWD disagrees with Finding F.1, insofar as OCWD is concerned. OCWD has adopted and utilizes a written consultant selection process that is fair, transparent and objective.

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

*Response:*

OCWD disagrees with Finding F.2, insofar as OCWD is concerned. OCWD is not aware of any such instances involving OCWD.

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:*

OCWD disagrees with Finding F.3, insofar as OCWD is concerned. OCWD has adopted a number of resolutions setting forth ethics policies and conflict of interest restrictions and requirements, which do not "merely reference" state law.

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

*Response:*

OCWD disagrees with Finding F.4, insofar as OCWD is concerned. OCWD holds its Board of Directors meetings at 5:00PM on the first and third Wednesday of every month.

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

*Response:*

OCWD disagrees with Finding F.5. The Orange County Water District Act, Ch. 924, Stats. 1933, as amended ("OCWD Act"), requires that three of its ten Directors must be appointed from the Cities of Anaheim, Fullerton and Santa Ana. Historically, the OCWD Board has determined whether to fill vacancies by appointment or election on a case-by-case basis, in accordance with State law.

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:*

OCWD disagrees with Finding F.6, insofar as OCWD is concerned. The OCWD Act specifically authorizes officials elected to office in other jurisdictions to serve on the OCWD Board of Directors. OCWD is unaware of any conflict of interest relating to OCWD based upon duties held in another official capacity.

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

*Response:*

OCWD agrees with Finding F.7, insofar as OCWD is concerned.

## Recommendations

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### **Response required to RECOMMENDATIONS is:**

- 1. Recommendation has been implemented**
- 2. Will be implemented – specify timeframe**
- 3. Requires further analysis – specify scope and timeframe**
- 4. Will NOT be implemented – specify reason**

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)

#### *Response:*

Recommendation R.1 will not be implemented by OCWD, because it is not warranted insofar as OCWD is concerned. OCWD has promulgated a written consultant selection process, and adopted resolutions setting forth ethical policies and conflict of interest restrictions and requirements. OCWD is unaware of any OCWD official engaging in conduct that violates any State laws or regulations or any policies adopted by OCWD.

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

#### *Response:*

Recommendation R.2 has been implemented by OCWD. Resolutions adopted by OCWD's Board of Directors comprise ethical and conflict of interest policies, and OCWD monitors the State law requirements for periodic training of governmental ethics and conflict of interest disclosure and disqualification requirements.

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

#### *Response:*

Recommendation R.3 has been implemented by OCWD. OCWD's Board of Directors holds its meetings at 5:00PM on the first and third Wednesday of every month.

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:*

Recommendation R.4 will not be implemented by OCWD because it is not warranted, insofar as OCWD is concerned. The OCWD Act requires that three out of the ten members of the OCWD Board of Directors must be appointed. Issues regarding the filling of vacancies on the Board of Directors are made by the OCWD Board of Directors on a case-by-case basis in accordance with California statutory law.

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)

*Response:*

Recommendation R.5. Will not be implemented by OCWD because it is not warranted insofar as OCWD is concerned. OCWD is unaware of any conduct by an OCWD official that has created the need for such rules. Recommendation R.5a has been implemented by OCWD, in that OCWD officials routinely seek legal advice from their legal counsel regarding decisions and actions that could implicate governmental ethics and conflict of interest requirements and restrictions...

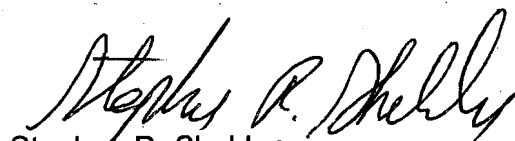
R.6: Water districts should adopt self-imposed term limits for their members, not to exceed three terms of service. (F.7)

*Response:*

Recommendation R.6 will not be implemented by OCWD, because it is not reasonable or warranted insofar as OCWD is concerned. Under the OCWD Act, the City Councils of the Cities of Anaheim, Fullerton and Santa Ana have full appointment and removal power over three of the ten members of the OCWD Board of Directors. The OCWD Act provides that the remaining seven members of the Board of Directors are elected by the voters within their respective divisions, and the OCWD Act does not restrict the number of terms a member of the Board of Directors may serve.

If you have any questions on this matter, please contact Michael R. Markus, General Manager. Mr. Markus can be reached at (714) 378-3305 or by e-mail at [mmarkus@ocwd.com](mailto:mmarkus@ocwd.com).

Sincerely,



Stephen R. Sheldon  
President  
Orange County Water District

cc: Board of Directors  
Michael Markus, General Manager  
Joel Kuperberg, General Counsel