

Office of the City Council



September 1, 2009

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

Subject: Orange County Grand Jury Report: "Paper Water: Does Orange County Have a Reliable Future?" dated June 19, 2009

Dear Judge Dunning:

The City of Tustin (City) is in receipt of the Orange County Grand Jury's letter dated June 19, 2009 concerning its findings in the report titled "Paper Water: Does Orange County Have a Reliable Future?" The City thanks the Grand Jury for its study of the reliability of Orange County's water supplies.

The City does not disagree that there is a water supply problem affecting the state and Southern California at this time. However, the City disagrees with several of the Grand Jury's findings and recommendations. Our primary disagreement stems from the fact that the solution to this problem is outside of Orange County's immediate control. A federal judicial ruling in 2007 known as the Wanger Decision and resulting biological opinion reduced Southern California's imported water supply reliability an estimated 30-40% in a single day. This critical decision has exceedingly complex and costly consequences for the future of both Orange County and Southern California's imported water supplies.

Please note that the City's responses incorporate by reference the background and educational elements contained within the detailed response prepared by the Municipal Water District of Orange County (MWDOC); City staff participated in the preparation of this response. Following are the City's responses to the Grand Jury's Findings (F-1 through F-4), and Recommendations (R-1 through R-4):

Grand Jury Findings

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.

Response: *The City of Tustin disagrees with the finding and believes that adequate coordination currently occurs between Tustin's local land-use planning agency and local water supply agencies. The City believes that the existing, coordinated process supports a full review of the issues related to a proposed development project's impact upon the water supply or service. Two water agencies currently serve Tustin; City coordination with both agencies is essential because of their specific water expertise. Both of Tustin's water supply agencies are knowledgeable of a proposed*

development project's water resource needs, the regional utility service demand, and both are regularly apprised of any larger, state-wide water supply concerns. Given their significant level of expertise and access to current information, the City's water supply agencies are best equipped to provide input to the City regarding a proposed development project's potential impact (if any) upon the available water supply or service.

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

Response: *The City of Tustin disagrees with the finding and is unaware of any water agency acting in this manner.*

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

Response: *The City disagrees with the finding. The local land-use agency does not have the expertise or access to current data to independently generate nor critically evaluate the limitations of the water agency's supply projections. The local land-use agency must continue to rely upon the expertise of the local water supply agency for this analysis. To require the local land-use agency to critically evaluate information provided by the water supply agency would be duplicative, costly and ultimately unnecessary. Further, the City complies with state law that requires local cities to communicate and coordinate with the local water supply agency. Per Government Code Section 10910, the California Environmental Quality Act (CEQA), and California Planning and Zoning Law provides a process and framework for local land-use planning agencies and local water supply agencies to utilize when investigating and concluding whether a sufficient water supply exists for planned development projects.*

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.

Response: *The City partially agrees with the finding. The City and the Orange County water industry have many communication and outreach avenues which are effective in informing the public. For example, the City and the water industry have collectively advertised itself as the "Family of Southern California Water Agencies," and promoted "Bewaterwise.com" to get the word out on the current water supply situation, along with water conservation tips and opportunities. In addition, the City utilizes bill inserts, newsletters and websites to inform customers about important water issues. The City also participates in meetings of a Public Affairs Workgroup sponsored by the Municipal Water District of Orange County (MWDOC) to develop message points for use by retail water agencies.*

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 necessary solutions.

Response: *The City partially disagrees with the finding. It is our experience that Tustin citizens are intelligent, interested individuals who keep apprised of local and regional issues and act upon this information in a responsible and urgent manner, once the seriousness of the water supply situation and urgency of the necessary solutions is made clear. In addition, for the past several years, a Tustin City Council member has actively participated on the Water Advisory Committee of Orange County to enable the City to stay informed about issues affecting Orange County's water supply reliability (e.g., the Wanger Decision).*

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

Response: *The City of Tustin partially agrees with the finding. Recent polling conducted by MWDOC to track water industry messages and the understanding of the public indicate that a high percentage of consumers understand there is a drought (76%). Furthermore, 78% indicated they would change their water using habits to conserve to prevent water rationing, and 67% believe that their local water agency does an effective job of keeping them informed about water supply. The City also believes that a high percentage of the public are engaged because of recent actions such as the run on rebates for water conservation devices, which exhausted available funding from the Metropolitan Water District of Southern California (MWD). Following is a summary of several on-going outreach efforts in which the City is an active participant:*

- *In June 2008, the Public Affairs Workgroup developed a comprehensive, strategic communications plan that incorporated public education, strategic partnerships with the business community, and specific marketing techniques. The plan complements and enhances the major conservation media campaign implemented by MWD in 2007 to increase public awareness of the drought and related water supply issues.*
- *For many years, City council members, local business leaders and educators have participated in MWD sponsored tours of major regional and state water facilities to learn about key water issues.*
- *The City also actively participates in both the MWDOC and Orange County Water District (OCWD) school education programs to increase awareness of water issues by students and their families.*

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 the Orange County retail water agencies, acting on their behalf with their surface water supplier Metropolitan.

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.

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

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.

Response: *The City agrees with all of the findings. The City has actively participated in the stakeholder meetings facilitated by LAFCO for the MWDOC Governance Study. The City will continue to monitor and provide input as appropriate as LAFCO's study process continues forward.*

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.

Response: *The City agrees with the finding.*

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

Response: *The City agrees with the finding, since this situation has been the case for many years. To allow south County water agencies access to the Orange County Groundwater Basin (Basin) would require legislative modification to the Orange County Water District Act.*

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.

Response: *The City partially disagrees with the finding. Use of storage in the Basin is allowed only by agreement with OCWD. The OCWD is responsible for managing the Basin. OCWD has entered into storage arrangements that allow MWD to store up to 66,000 AF of imported water, and to recall as much as 20,000 AF out of this same storage in any one year. This additional yield out of storage benefits water users in Orange County and southern California. Also, in February 2006, an Emergency Services Program Agreement was also developed by OCWD that allows emergency water supplies from the Basin to be exchanged with water agencies in south Orange County. Specifically, this program allows the conveyance of water to south Orange County during emergency situations. Allowing access to the lower cost groundwater outside of the Basin, or allowing access to more storage by south County agencies would increase the cost to the City and other Basin agencies and put the Basin agencies at risk.*

Grand Jury Recommendations

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.

Response: *This recommendation will not be implemented because the City of Tustin already prepares an Urban Water Management Plan every five years. Also, MWD prepares an Urban Water Management Plan, an Integrated Resources Plan and a Water Supply Outlook. In addition, the City's adopted General Plan currently includes a Conservation/Open Space/Recreation Element that notes the constraints associated with essential natural resources (including water) and sets forth goals and policies that further the protection and maintenance of these natural resources. The City's Conservation/Open Space/Recreation Element encourages many water conservation goals and measures including protection of domestic groundwater supply, conservation, expansion of reclaimed water production and use, coordination of water quality and supply programs with responsible water agencies, and cooperation and participation in water quality and supply plan preparation and programs. Collectively, these documents already provide the information suggested in the Grand Jury's report.*

The proposed Water Element is not mandated by state law to be included in a City's General Plan. Current state law grants cities the discretion to choose which additional optional elements should be included in a General Plan. The Grand Jury does not have the authority to supersede state law and mandate that cities adopt an additional General Plan element. In addition, if state law were to be adopted mandating cities to adopt a Water Element as part of the General Plan, adoption by June 30, 2010 would be unrealistic. Existing state law prohibits a City from amending its General Plan more than four times a year. Past General Plan amendments would preclude many cities from meeting the proposed deadline.

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 widespread 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.

Response: *The recommendation has already been implemented by the City which addresses both public outreach and emergency planning. From a public outreach standpoint, the City and water industry communications systems already in place provide sufficient opportunities for the public to be informed about key water conservation and supply issues. In terms of emergency planning, the scenario involving a complete sudden break in imported water deliveries was a component of the Golden Guardian exercise sponsored in 2008 by the State. The Water Emergency Response Organization of Orange County (WEROC) was an active participant in this important statewide emergency test exercise.*

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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.

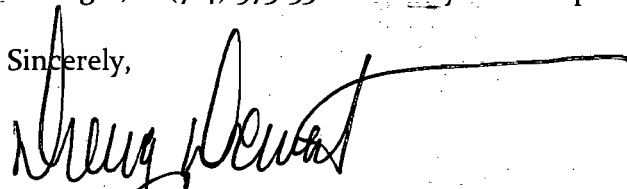
Response: *The recommendation has already been implemented by the City. The City has actively participated in the stakeholder meetings facilitated by LAFCO for the MWDOC Governance Study. The City will continue to monitor and provide input as appropriate as LAFCO's study process continues forward.*

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.

Response: *The recommendation has already been implemented by the City. WEROC was established to conduct emergency planning and preparedness at the regional level, and respond to disaster type events that could impact the City as well as other water and wastewater agencies within Orange County. WEROC participates with regional and statewide emergency planning forums as well. The City also has an emergency plan and periodically conducts activities to be in a state of emergency preparedness. In addition, the City maintains emergency interties with neighboring water agencies to allow water to be moved back and forth as needed during emergency situations.*

The City trusts that the submittal of this response letter demonstrates our intent to work in full cooperation with the Orange County Grand Jury. Please call Fred Adjarian, Water Services Manager, at (714) 573-3381 should you have questions, or require additional information.

Sincerely,



Doug Davert
Mayor

c.: Honorable City Council
William A. Huston, City Manager
Douglas Holland, City Attorney
Douglas S. Stack, Acting Public Works Director/City Engineer
Elizabeth Binsack, Director of Community Development