



Yorba Linda Water District

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September 2, 2009

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

Re: 2008/09 Orange County Grand Jury Report "Water Districts: A New Era in Public Involvement"

Honorable Kim Dunning:

Thank you for providing the Yorba Linda Water District ("YLWD") the opportunity to reply to the findings and recommendations set forth by the 2008/09 Grand Jury in the above referenced report. YLWD concurs that pending issues such as water shortages, rationing and the rising cost of water certainly thrusts water agencies into the center stage of the public's awareness. This new era of public involvement and communication has created new opportunities for public agencies to further explore innovative and creative solutions for conducting business, while soliciting public awareness, understanding and "buy-in".

While Yorba Linda was specifically mentioned in the Grand Jury report in reference to the Freeway Complex Fire of 2008, the YLWD takes prides in its public openness and transparency. The District has taken great strides and made tremendous efforts to communicate and solicit feedback from the residents it serves. In support of this effort, the Board of Directors formed a Citizens Advisory Committee in March 2009 comprised of volunteer residents to meet and discuss pending YLWD issues and to make recommendations to the Board.

Findings

The following are YLWD's responses to the Grand Jury Findings F.1 –F.7:

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.

YLWD disagrees with this Finding

YLWD has a resolution (Resolution No. 07-11) in place for the acquisition and procurement of goods and services. Section 4 of the resolution clearly defines procedures for engaging professional and non-professional services and contracts, including but not limited to legal services, engineering consultants and auditors. The policy establishes four approval stages, which define authorization levels and the quantity of competitive bids or quotes required for the selection process. While this

resolution was adopted in 2007, it is YLWD's intent to review, update and revise the policy with the assistance of the agency's financial auditor by November 2009.

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

YLWD disagrees with this Finding

While board members of YLWD are employed in the private sector, their activities and business relationships are not areas of concern for YLWD. Board members of YLWD generally err on the side of caution by recusing themselves from participating in discussions or abstaining from voting on action items or approving payment warrants if a direct or perceived conflict of interest potentially exists.

F.3: Codes of ethics among districts are quite varied. Some are very comprehensive and some do not exist other than to reference state law.

YLWD agrees with this Finding

Each public agency is required to adopt a conflict-of-interest policy as required by the State and compliance established by the Orange County Board of Supervisors. An agency may optionally adopt an ethics policy above and beyond what is legally required. YLWD adopted a revised conflict-of-interest policy in July 2009 as requested and recommended by the Orange County Board of Supervisors. YLWD is in the process of developing and implementing a comprehensive and detailed ethics policy as a supplement to the conflict-of-interest policy. This effort should be completed with adoption anticipated by February 2010.

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

YLWD disagrees with this Finding

Public attendance and participation is encouraged by YLWD. While YLWD regular board meetings are generally held the 2nd and 4th Thursday of every month at 8:30 a.m., YLWD has conducted, and continues to conduct evening meetings in cases where an increase of public attendance is anticipated. For example, following the Freeway Complex Fire event in 2008, YLWD conducted evening board meetings for seven months due to the temporary increase of public attendance. Soon thereafter, attendance subsided and board meetings reverted to mornings. Additionally, in September 2009, a public hearing for a general water rate increase has been set for an evening meeting due to an anticipated increased attendance. Every community is unique and diverse with their various issues and should be addressed and acknowledged accordingly. YLWD believes that low public attendance at board meetings sends the message of that the public is content with the day-to-day management of the agency. On occasion, however, issues or events arise that require YLWD to recognize those events as "the exception to the rule" and accommodate those events accordingly. It should also be noted that meetings not held during normal District business hours may result in additional overtime labor costs for non-exempt District staff.

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

YLWD disagrees partially with this Finding

The appointment process is in place to resolve vacancy issues that unexpectedly occur on a governing board and to avoid a costly special election, which is estimated to range between \$165,000 and \$186,000 for YLWD according to the Orange County Registrar of Voters. The Grand Jury report viewed appointments for some agencies as "managing the process". YLWD disagrees with this characterization. If a board member is replaced by means of the appointment process, it is the very same political body, elected by the people, that makes the appointment. Board members are elected by the people to represent and make decisions on their behalf with respect to agency business. The election process provides an opportunity for the people to retain or to elect another candidate to replace the appointed representative during a following election. Furthermore, the election process also provides an opportunity to elect another candidate other than the board members who made the initial appointment of another board member. And finally, the system also allows and provides for a recall election of any board member prior to a general election if the residents are unhappy with any or all of their representatives.

Since 1958, 25 elections have taken place. Of the 20 board members who have served since 1958, nine were appointed.

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.

YLWD agrees partially with this Finding

While no board member of YLWD holds multiple elected positions, YLWD agrees that the appearance and perception of a conflict may exist if multiple elected offices were held. It is in this aspect that YLWD agrees with the Finding. In February 2010, YLWD will be adopting and implementing an ethics policy that will address, among other items the holding of multiple offices and the potential incompatibilities thereof.

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

YLWD agrees with this Finding

There are no term limits in existence for YLWD board members. Generally, if the public is content with their elected representatives and the manner in which the agency is managed, board members are typically re-elected by their constituents or are unopposed during the election process. During the 25 elections since 1958, six did not occur for YLWD since the board members subject to re-election were unopposed. As a result, these same board members were re-appointed to the Board for another term.

Recommendations

The following are YLWD's responses to the Grand Jury Recommendations R.1 – R.6:

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)

The Recommendation has not yet been fully implemented, but will be implemented in the future.

YLWD currently has in place a conflict-of-interest policy, which was previously updated in July 2009 per a recommendation set forth by the Orange County Board of Supervisors. By February 2010, YLWD intends to adopt and implement a comprehensive ethics policy. By November 2009, a modified and updated procurement policy is slated for adoption that will include procedures for acquiring goods and services in addition to professional services.

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

The Recommendation has not yet been fully implemented, but will be implemented in the future.

YLWD intends to adopt and implement a comprehensive ethics policy by no later than February 2010. Newly elected board members are required to attend ethics training within six months of beginning their term and existing board members are required to attend ethics training every two years. This is the current practice of YLWD.

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

The Recommendation has been implemented.

As previously discussed in F.4, YLWD modifies its scheduled meeting times to evenings when increased public attendance is anticipated due to an issue or unexpected event. During uneventful periods of time, attendance at public meetings is generally very low regardless of the meeting time. YLWD will continue to adjust meeting times as the need arises accordingly. As previously noted, meetings that are held outside District business hours may result in additional overtime labor costs for non-exempt staff members.

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)

The Recommendation will not be implemented because it is not warranted and unreasonable.

As previously discussed in F.5, YLWD believes the appointment process is effective and continues to provide residents the ability to re-elect or not re-elect an appointee, or a board member(s) who made the appointment, at an upcoming election. The recommendation is further declared to be unreasonable due to the cost of funding a special election, which ranges anywhere from \$165,000 to \$186,000 for the customers of YLWD. YLWD believes a special election should be considered only in exceptional circumstances.

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)

The Recommendation has not yet been implemented, but will be implemented in the future.

In February 2010, YLWD will be adopting and implementing an ethics policy which will address the holding of multiple offices, including offices of member agencies, and the potential incompatibilities thereof. The policy will contain provisions for consulting with legal counsel to render a legal opinion if a potential incompatibility of office exists.


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

The Recommendation will not be implemented because it is not warranted and unreasonable.

Existing law Gov. Code 53077 requires that the voters approve any proposal or initiative that imposes term limits on their elected representatives. Therefore, the law does not permit water districts to adopt self-imposed term limits for their members.

Once again, thank you for the opportunity to respond to these Findings and Recommendations. Should you have any questions or need clarification of any of the aforementioned items, please contact Ken Vecchiarelli, General Manager of the Yorba Linda Water District.

Sincerely,


John W. Summerfield
President of the Board of Directors

Cc: Orange County Grand Jury
Board of Directors
Ken Vecchiarelli, General Manager