



# County of Orange

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County Executive Office

August 8, 2023

Honorable Maria D. Hernandez  
Presiding Judge of the Superior Court of California  
700 Civic Center Drive West  
Santa Ana, CA 92701

Subject: "Historic Rain Yet Drought Remains" Grand Jury Response

Dear Judge Hernandez:

Per your request, and in accordance with Penal Code 933, please find the County of Orange response to the subject report as approved by the Board of Supervisors. The respondents are the Orange County Board of Supervisors and the County Executive Office.

If you have any questions, please contact Liz Guillen-Merchant of the County Executive Office at 714-834-6836.

Sincerely,

Digitally signed by Frank Kim  
DN: cn=Frank Kim, o=County  
of Orange, ou=CEO,  
email=frank.kim@ocgov.com,  
c=US  
Date: 2023.08.10 14:12:06  
-07'00'

Frank Kim  
County Executive Officer

Enclosures

cc: Orange County Grand Jury  
Lilly Simmering, Deputy County Executive Officer  
Liz Guillen-Merchant, Director, Performance Management and Policy



Responses to Findings and Recommendations  
2022-23 Grand Jury Report:

*“Historic Rain, Yet Drought Remains”.*

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**SUMMARY RESPONSE STATEMENT:**

On June 9, 2023, the Grand Jury released a report entitled “Historic Rain, Yet Drought Remains” This report directed responses to findings and recommendations to the Orange County Board of Supervisors.

The County of Orange (County) appreciates the issues raised by the Grand Jury in the report; however, the County does not supply water within the unincorporated areas of the County, nor does it have jurisdictional authority over special districts which supply water on the wholesale or retail level. The County defers to the Orange County Water District, Municipal Water District of Orange County, Metropolitan Water District and the 29 independent water districts and cities that serve Orange County.

It is within the above-described jurisdictional limitations that the County presents responses to the Findings and Recommendations below:

**FINDINGS AND RESPONSES:**

**F1. Future water supplies are impacted by climate change and current supplies will not meet future demands.**

**Response: Disagree partially with this finding.**

The County does not have the requisite technical expertise, experience, industry-specific training or knowledge to determine the impact of climate change on future water supplies or whether current water supplies will meet future demands. Publicly available information published by several of the largest water suppliers within the County indicates that they believe their current supplies are sufficient to meet demand, at minimum, for more than a decade. Given technological advances over the next decade and robust climate goals touted by the State, the County cannot possibly disagree with the Grand Jury’s prediction as to events at some undetermined “future time.”

**F2**                    **Climatologists predict future extended periods of low moisture with occasional wet years.**

**Response:**        **Disagree partially with this finding.**

The County does not have the requisite technical expertise, experience, industry-specific training or knowledge to make climate change and/or weather pattern predictions which comprise the finding. The County defers to the expertise of local water suppliers and/or climatologists.

**F3**                    **Climate change is inevitable and is exacerbated by human behavior.**

**Response:**        **Disagrees partially with this finding.**

The County does not have the technical expertise, experience, industry specific training or knowledge to make this determination. The County acknowledges and supports efforts to mitigate climate change impacts on Orange County residents. The County works to support regional water supply through water reclamation, recycling, conservation and reuse. The County recently applied to join the Environmental Protection Agency’s Climate Pollution Reduction Grant cohort with LA County. Orange County has created a Director of Sustainability position within OC Waste and Recycling and has begun the work to start a Climate Action Plan.

**F4**                    **South Orange County relies primarily on the importation of water.**

**Response:**        **Disagree partially with this finding.**

The County does not have the requisite technical expertise, experience, industry-specific training or knowledge to determine whether “South Orange County relies primarily on the importation of water.”

**F5**                    **Local water suppliers recognize that enhanced stormwater capture and storage, wastewater recycling, and infrastructure improvements will not be sufficient to address the long-term forecast of drought and its effects on supply.**

**Response:**        **Disagree partially with this finding.**

The County is not a “local water supplier” nor does it have the requisite technical expertise, experience, industry-specific training, or knowledge to determine whether the water capture, storage, and recycling actions referenced in the finding will be sufficient to address the effects of drought on water supply. The County defers to the expertise of local water suppliers. Publicly available information provided by local water suppliers through their Urban Water Management Plans indicate that, in most cases, local water suppliers predict sufficient supplies to meet forecasted demand, even in the case of multiple dry years, through at least 2045.



**F6**            **There is significant water infrastructure planning, but inadequate implementation.**

**Response:**    **Disagree partially with this finding.**

The County does not have the requisite technical expertise, experience, industry-specific training or knowledge to determine whether water supply infrastructure planning, which is within the purview of water suppliers, is significant, or whether its implementation is inadequate. Information provided in each local water supplier's Urban Water Management Plan indicates a wide variability in the implementation of an array of actions intended to ensure the sustainability of water supplies. As local water suppliers have more complete and better information pertaining to this topic, we defer to local water suppliers.

**F7**            **The review and approval process for major water capital projects is cumbersome and overly restrictive.**

**Response:**    **Disagree partially with this finding.**

The County does not have the requisite technical expertise, experience, industry-specific training or knowledge to opine on the nature of review and approval processes for the various water suppliers in the County. All local water suppliers adopt capital improvement programs, which are administered in accordance with each agency's respective review and approval processes. A brief review of the estimates those capital improvement programs provide for approval and implementation of major projects appear to align with the timeframes applicable to other types of major infrastructure projects. As local water suppliers have the best knowledge as to the reasonableness of those timeframes and review and approval processes, the County defers to local water suppliers on those subjects.

**F8**            **Failing to find solutions to water shortages will have a significant impact on the Orange County economy.**

**Response:**    **Disagree partially with this finding.**

While the anecdotal information may support this conclusion, the County does not have the requisite technical expertise, experience, industry-specific training or knowledge to make the determination in the finding. There is no publicly available information analyzing economic consequences of theoretical water shortages for Orange County specifically. We, therefore, defer to local water suppliers and/or economists.

**F9** Continued development in Orange County creates additional water supply needs.

**Response:** Agree with this finding.

Net increases in development will necessarily place an increase upon demand. However, when new developments are proposed, the County, as the local agency reviewing the development in unincorporated areas, requires the developer to obtain a “Will Serve” letter from the applicable water supplier, to demonstrate that the water supply is sufficient for the project.

During either the entitlement phase and/or the permitting phase, a developer is required to submit a valid Will Serve Letter, and failure to supply a valid Will Serve Letter restricts the ability of the land use authority to approve entitlements and the Building Official to issue building permits. If the water supplied by the Colorado River Aqueduct is constrained, local water suppliers would need to evaluate their various sources of water to ascertain if their other sources of supply could adequately serve existing customers and/or future development or if their demand management measures and water shortage contingency plans would need to be enacted. This potentially includes not issuing Will Serve Letters for newly proposed development. Will Serve Letters are only valid for a certain duration of time (typically one year) and are limited to a specific development that has been proposed. In certain circumstances a Will Serve Letter may be conditionally issued based on the developer constructing certain improvements for the local water supplier to be able to supply water. In the absence of a valid Will Serve Letter, existing law already restricts the County’s ability to issue development authorizations.

**F10** Conservation and efficient use of water is essential.

**Response:** Agree with this finding.

**F11** Increased outreach and public education are necessary.

**Response:** Agree with this finding.

Increased communication is always an essential component of any public education or outreach effort. However, the County is not responsible for the water supply for unincorporated Orange County and thus, public education should come from the entity or entities charged with managing the water supply.

**F12** Desalination has proven to be technologically and environmentally feasible and is slowly being embraced as a drought-resistant source of water.

**Response:** Disagree partially with this finding.

The County does not have the requisite technical expertise, experience, industry-specific training, or knowledge to make determinations on the technological and/or environmental feasibility of desalination in Orange County at large, or its of acceptance for the area. In 2022, the California Coastal Commission refused to permit the

Poseidon Huntington Beach desalination project but went on to permit the Doheny Ocean Desalination Project sponsored by South Coast Water District., so desalination does appear to be a viable, project-specific option for some water suppliers.

**RECOMMENDATIONS AND RESPONSES:**

- R1. The County of Orange Board of Supervisors should take a leadership role by the end of calendar year 2023 to explore the establishment of a “Climate Resiliency District” or Joint Powers Authority to fund and expedite implementation of a drought-resistant source of water.**

**Response:**

**The recommendation will not be implemented because it is unreasonable.**

The County does not have the requisite technical expertise, experience, industry-specific training, or knowledge to make determinations regarding the necessity of a “Climate Resiliency District” or Joint Powers Authority to fund and expedite implementation of a drought-resistant source of water.

The County does not provide water to its jurisdictional area, nor does it have oversight authority over special districts which supply water at the retail or wholesale level. As such, the County is not the appropriate entity to assume the leadership role in the exploration of the topic. The County, however, would consider participating in the research and examination of such an effort if led by the special districts charged with providing water at the wholesale and/or retail level.

- R3. The County of Orange and all Orange County cities should formulate an emergency development moratorium plan in anticipation of the Colorado River water supply being constrained. The emergency moratorium plan should be developed by the end of calendar year 2023.**

**Response:**

**The recommendation will not be implemented because it is not warranted.**

The County does not have oversight authority over water suppliers. It would be inappropriate for the County to establish a development moratorium plan as it would be making decisions based on assumptions of the adequacy of water suppliers’ sources of water which are under the purview of water suppliers.

Further, adequate, existing processes, both at the state and local level, are in place to stop and/or prevent the issuance of development approvals should water suppliers determine they are unable to service new developments due to inadequate water supply.

Water supplies in Orange County come from numerous sources, including the State Water Project, the Colorado River Aqueduct, the Diemer Water Treatment Plant, local groundwater extraction and water reclamation. Under state law, water suppliers are required to forecast and report on the reliability of future water supply, through submission of an Urban Water Management Plan (UWMPs; California Water Code §§ 10610-10656 and § 10608). Specifically, UWMPs are required to base their water use projections on land use plans applicable to the service area and to specifically cite the land use plans



utilized in making the water use and water savings projections. (Water Code § 10631, subd. (d)(4)(B).) UWMPs are reviewed by the California Department of Water Resources (DWR). Additionally, suppliers that rely on groundwater extraction are required, under the Sustainable Groundwater Management Act (California Water Code §§ 10720 et seq.), to generate long-term plans for sustainable groundwater use, and are subject to annual reporting requirements so DWR can track implementation of, and compliance with, these plans, in the context of actual supply and demand data. Similar to UWMPs, Groundwater Sustainability Plans are required to include processes to review land use plans and coordinate with land use planning agencies to ensure consistency between land use planning and groundwater supply management. (Water Code, § 10727.4.)

At the local level, as discussed in Response to Finding F9, the County's role as the land use authority, responsible for reviewing and permitting development within the unincorporated areas, protects against permitting new developments that do not have a commitment of water supply. The County defers to local water suppliers to determine if their systems have adequate sources of supply and if their systems have adequate capacity (pressure) to provide water to a proposed development. This process is formally documented by a Will Serve Letter that is issued by the local water supplier at the request of a property owner or developer. This type of verification of the sufficiency of water supply is required by various state laws for proposed development. (E.g., Gov. Code, § 66473.7; Pub. Resources Code, §§ 21060.5, 21065.3, 21068; CEQA Guidelines Appendix G.)

The inability of a local water supplier to issue a Will Serve Letter for a specific development would functionally serve the same purpose as the County adopting a moratorium on development. Because State Law has clearly articulated the necessity of a Will Serve Letter and proscribed the County's ability as the local land use authority for the unincorporated areas to issue entitlements/permits for proposed developments in the absence of a Will Serve Letter, adhering to the existing State Law requirements and restrictions is the preferred method for addressing a potential decrease in water supplies from the Colorado River.

**ORANGE COUNTY BOARD OF SUPERVISORS**

**MINUTE ORDER**

**August 08, 2023**

Submitting Agency/Department: County Executive Office

Approve proposed response to FY 2022-23 Grand Jury Report "Historic Rain Yet Drought Remains" - All Districts

**The following is action taken by the Board of Supervisors:**

APPROVED AS RECOMMENDED  OTHER

MOTION TO APPROVE AMENDED RESPONSE TO FINDING 3 AS PRESENTED BY SUPERVISOR FOLEY FAILED TO CARRY (AMENDMENT ON FILE WITH THE CLERK OF THE BOARD)

**Unanimous**  (1) DO: N (2) SARMIENTO: Y (3) WAGNER: N (4) CHAFFEE: N (5) FOLEY: Y

*Vote Key: Y=Yes; N=No; A=Abstain; X=Excused; B.O.=Board Order*

**Documents accompanying this matter:**

- Resolution(s)
- Ordinances(s)
- Contract(s)

Item No. 27

Special Notes:

Copies sent to:

*CEO – Liz Guillen-Merchant  
Superior Court  
Grand Jury*

8/11/23



I certify that the foregoing is a true and correct copy of the Minute Order adopted by the Board of Supervisors, Orange County, State of California.  
Robin Stieler, Clerk of the Board

By:   
Deputy



**ORANGE COUNTY BOARD OF SUPERVISORS**  
**MINUTE ORDER**  
**August 08, 2023**

Submitting Agency/Department: County Executive Office

Approve proposed response to FY 2022-23 Grand Jury Report "Historic Rain Yet Drought Remains" - All Districts

***The following is action taken by the Board of Supervisors:***

APPROVED AS RECOMMENDED  OTHER

APPROVED WITH AMENDMENT TO RESPONSE FOR FINDING 3 TO READ AS FOLLOWS: DISAGREES PARTIALLY. THE COUNTY DOES NOT HAVE THE TECHNICAL EXPERTISE, EXPERIENCE, INDUSTRY SPECIFIC TRAINING OR KNOWLEDGE TO MAKE THIS DETERMINATION. THE COUNTY ACKNOWLEDGES AND SUPPORTS EFFORTS TO MITIGATE CLIMATE CHANGE IMPACTS ON ORANGE COUNTY RESIDENTS. THE COUNTY WORKS TO SUPPORT REGIONAL WATER SUPPLY THROUGH WATER RECLAMATION, RECYCLING, CONSERVATION AND REUSE. THE COUNTY RECENTLY APPLIED TO JOIN THE ENVIRONMENTAL PROTECTION AGENCY'S CLIMATE POLLUTION REDUCTION GRANT COHORT WITH LA COUNTY. ORANGE COUNTY HAS CREATED A DIRECTOR OF SUSTAINABILITY POSITION WITHIN OC WASTE AND RECYCLING AND HAS BEGUN THE WORK TO START A CLIMATE ACTION PLAN.

**Unanimous**  (1) DO: Y (2) SARMIENTO: N (3) WAGNER: Y (4) CHAFFEE: Y (5) FOLEY: N

*Vote Key: Y=Yes; N=No; A=Abstain; X=Excused; B.O.=Board Order*

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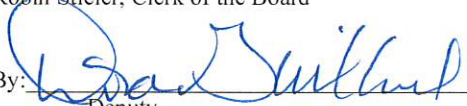
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8/11/23



I certify that the foregoing is a true and correct copy of the Minute Order adopted by the Board of Supervisors, Orange County, State of California.  
Robin Stieler, Clerk of the Board

By:   
Deputy



AGENDA STAFF REPORT

Agenda Item

27

ASR Control 23-000666

23F3

MEETING DATE: 08/08/23
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: County Executive Office (Approved)
DEPARTMENT CONTACT PERSON(S): Liz Guillen-Merchant (714) 834-6836
Lilly Simmering (714) 834-6234

RECEIVED
CLERK OF THE BOARD

JUL 19 2023

SUBJECT: "Historic Rain Yet Drought Remains" Grand Jury Response

Table with 3 columns: CEO CONCUR (Concur), COUNTY COUNSEL REVIEW (No Legal Objection), CLERK OF THE BOARD (Discussion, 3 Votes Board Majority)

Budgeted: N/A Current Year Cost: N/A Annual Cost: N/A

Staffing Impact: No # of Positions: Sole Source: N/A

Current Fiscal Year Revenue: N/A

Funding Source: N/A

County Audit in last 3 years: No

Levine Act Review Completed: N/A

Prior Board Action: N/A

RECOMMENDED ACTION(S):

- 1. Approve proposed response to FY 2022-23 Grand Jury Report entitled "Historic Rain Yet Drought Remains."
2. Direct the Clerk of the Board to forward this Agenda Staff Report with attachments to the Presiding Judge of the Superior Court and the FY 2022-23 Grand Jury no later than September 7, 2023.

SUMMARY:

Approval of proposed response to FY 2022-23 Grand Jury Report entitled "Historic Rain Yet Drought Remains" will fulfill the County's required response to the Grand Jury.

BACKGROUND INFORMATION:

On June 9, 2023, the Orange County Grand Jury released a report entitled "Historic Rain Yet Drought Remains." The report directed responses to findings and recommendations to the Board of Supervisors. Attachment B is the County's proposed response to the Grand Jury.