

SOUTH COAST



WATER DISTRICT

September 16, 2009

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

SUBJECT: GRAND JURY RESPONSE  
WATER DISTRICTS: A NEW ERA IN PUBLIC INVOLVEMENT

Dear Honorable Kim Dunning:

In response to the request from the Grand Jury dated June 15, 2009, South Coast Water District (SCWD) submits the following information:

### **Response to Findings**

#### **F.1 Water Districts' procedures for the selection of professional consultants' contracts**

The Respondent disagrees wholly with the finding as related to SCWD. SCWD is not in a position to either evaluate or comment on the procedures utilized by all other water districts.

The SCWD has completed a procurement policy update in November 2008, attached. It details our procedure for the selection of professional consultants and the policy was also approved by the Board in November 2008. District believes the policy as written reflects best practices and complies with California law. We have hired a full-time Contracts Officer, who has been in residence at the District since April 2007. The Contracts Officer prepares and has oversight of all professional consulting services. Additionally, a standard professional consulting services agreement is in use at the District which protects the District's interests in obtaining outside consulting services, including detailed insurance and indemnification requirements (see attached). Employees have been specifically trained on the use of the policy, and Departments work directly with the Contracts Officer to insure their compliance.

SCWD hired Ergun Bakall in June 2005 to prepare the update to the 2005 Urban Water Management Plan, and to our knowledge this is the only occasion in which a standing board member of a neighboring agency has worked for the District. Mr. Bakall's hiring was the result of an RFP process.

#### **F.2 Some Board members are conducting their professional practices with member agencies**

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1

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SCWD disagrees wholly with the finding as related to SCWD. SCWD is not in a position to comment on or evaluate the conduct of all other water districts.

SCWD does not believe this finding applies to the activities of any of its Board Members. No current director works in business. All SCWD Board Members are retired and devote their time to public service in varying venues.

#### **F.3 Codes of ethics among districts are quite varied**

SCWD disagrees wholly with the finding as related to SCWD. The District is not in a position to comment on or evaluate the policies of all other water districts.

The District Board understands its role as stewards of public resources, and complies with the numerous State laws governing ethics and the prohibitions on personal benefit gained from public service, including the requirement for bi-annual ethics training under Government Code Section 53235. See also Government Code Section 54202. These State standards are further amplified through a series of additional detailed polices contained in the District Board Policy Handbook, including: 1) Expense and Reimbursement Policy for Directors and Employees Resolution 13-03-04; (2) Rules of Procedure for the Conduct of District Business, Resolution 12-03/04; (3) Policy Pertaining to Governance of the Board of Directors, Resolution 11-04/05; (4) Policy Stating Official Duties of the Board of Directors for which Compensation May be Paid; (5) Conflict of Interest Code, Resolution 3-09/10 (recently updated). Copies available on request.

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

SCWD disagrees wholly with the finding as related to SCWD. The District is not in a position to comment on or evaluate the practices of all other water districts.

SCWD Board policy supports full transparency of meetings as follows (1) bi-monthly board meetings are held at 6 p.m. in the Dana Point City Council Chambers which are aired on live television on Cox Channel 3 and Channel 855 as well as from the District's own website as a webcast. Meetings are replayed on Cox Channels 3 and 855 multiple times over the following two weeks (until the next scheduled meeting); (2) Meeting videos are archived at the District's website for viewing 24/7 by the public (see SCWD.org); (3) Standing Committee meetings are held at 2:00 p.m. – two meetings per month. These meetings are held at the District's Administrative Center and can be viewed live from our website and are available post meeting on video playback from the District's website (see SCWD.org); (4) In addition, for purpose of greater public outreach on important issues, the District utilizes outside venues well known in the community, such as the Ocean Institute, to hold community forums which are also taped and replayed on the public access channels and on our website. Such topics of recent interest have included rate changes and the public review and input to the important water conservation ordinance and implementation plan.

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

SCWD disagrees wholly with the finding as related to SCWD. The District is not in a position to comment on or evaluate the practices of all other water districts.

By law, SCWD directors serve through the general election process; none of the current directors have been "appointed" by other bodies. The District's history would include few appointments as well. In 1991, 1992, and 1993 due to a Director resigning, the Board appointed one Director each time. This District does not have a pattern of political appointments to its board offices.

**F.6 Some board members hold multiple elected positions**

SCWD disagrees wholly with the finding as related to SCWD. The District is not in a position to comment on or evaluate the activities of the Directors of all other water districts.

The District Board has never had a Director that held another elected position while serving on the SCWD Board. On the current Board, Director Rayfield serves as an appointed member of the San Diego Regional Water Quality Control Board, by appointment of Governor Schwarzenegger, and he recuses himself from participation in any issue involving the Regional Water Board that may come before the District Board.

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

SCWD agrees wholly with the finding as related to SCWD. The District is not in a position to comment on or evaluate the laws applicable to all other water districts in Orange County.

The District has no self-imposed or statutory term limits. The Board believes that term limits would be counter-productive to the complex issues of water management and the necessary history and background to competent service. Nonetheless, over the District's history, it is typical that every 4 years at least one incumbent is replaced by a new member from the community.

**Recommendations****R.1 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 recommendation has been implemented in part. A portion of the recommendation will not be implemented as the action is not warranted.

The District believes that the Statement of Economic Interest filing requirements under Government Code Section 87100 et seq., Form 700, disclosure of sources of income real property and business interests are sufficient rules to provide notice of any business relationships or earnings stemming from member or related agencies. As noted in Finding F.1 response, the District updated its Procurement Policies to address Professional Consulting Services (and other procurement) in 2008.

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

The recommendation has been implemented in part. A portion of the recommendation will not be implemented as the action is not warranted.

As noted above, the District considers its compliance with State law, ethics training requirements, and supplemental policies (as stated in the response to Finding F.3) to comprise a strong ethical standard for the conduct of the District's business. Numerous procedures are in place to monitor Board and staff compliance with existing law and policy, including authority resting in the District's Contracts Officer to require compliance with the Procurement Policy.

**R.3 Water board meetings need to be scheduled at times that would generate maximum public attendance**

The action has been implemented.

See response to Finding F.4 above. As noted the Board of Directors has insured that the public may view the work of the District and attend Board meetings at convenient times and locations.

**R.4 Each water district should choose to hold elections to fill board vacancies**

The recommendation has been implemented in part. A portion of the recommendation will not be implemented as the action is not warranted.

State law currently provides for vacant positions to be filled by action of the Board of Directors and in failure to so act, the County Board of Supervisors may make the appointment, see Government Code Section 1780. Appointed Board Members serve out only the term of office remaining to the next election, if the vacancy occurs in the first half of a term of office and is at least 130 days prior to the next general election. Thereafter, the Board Member must stand for election, and in no event is any appointed period longer than 28 months.

**R.5 Each water district should promulgate rules requiring each director to inform the other board members of any other offices that he/she holds**

**R.5a Water districts should consult their legal counsel to advise them**

The recommendation has been implemented in part. A portion of the recommendation will not be implemented as the action is not warranted.

Public Officials must disclose financial interests as related to offices through the Form 700 Statement of Economic Interest processes. This provides a means of discovery to the District as to sources of income and business interests. However, officials would be wise to make known potential incompatibility of their own volition due to the consequences of discovery resulting in the automatic vacation from the first held office, See, Gov Code 1126. For SCWD Board, this hasn't proven necessary as Board Members readily disclose political activity to the District Counsel for purposes of assessing compatibility of office under State law.

The District does consult its legal counsel in the event of board members holding other offices. By example, in 1998, Director Ingrid McGuire was elected to the City Council of Dana Point and resigned her Board position due to incompatibility of office concerns. As noted Director Rayfield is a sitting member of the District Board and the RWQCB, and the agencies' counsels have reviewed RWQCB policies requiring recusal on overlapping issues.

**R.6 Water district should adopt self-imposed term limits for their members**

The recommendation will not be implemented.

The District has no self-imposed or statutory term limits. The Board believes that term limits would be counter-productive to the complex issues of water management and the necessary history and background to competent service. Nonetheless, over the District's history, it is typical that every 4 years at least one incumbent is replaced by a new member from the community. The responsibility to elect competent directors rests with the electorate. Artificial term limits could easily produce excessive turnover reducing competence in highly technical areas.

Sincerely,

SOUTH COAST WATER DISTRICT



Richard Dietmeier  
President, Board of Directors

RD:rb

cc: James R. Perez, Foreman, 2008-2009 OC Grand Jury  
SCWD Board of Directors