

**RESPONSES OF THE
TRABUCO CANYON WATER DISTRICT
TO
REPORTS OF THE
ORANGE COUNTY GRAND JURY**

**“Paper Water”– Does Orange County Have
A Reliable Future?”**

and

✓ **“Water Districts: A New Era in Public Involvement”**

August 20, 2009

Submitted to:

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

**RESPONSE OF THE TRABUCO CANYON WATER DISTRICT
TO ORANGE COUNTY GRAND JURY REPORT
“Water Districts: A New Era in Public Involvement”**

F.1: Water District’s 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 members agencies to provide professional services.

TCWD’s Response to F.1:

TCWD respectfully disagrees with Finding No. F1. California Code does not currently require competitive bidding either for construction or consultant contracts by county water districts. Accordingly, the Board may seek a sole source bid for a designed project. This rule (policy) does not preclude the Board from seeking multiple bids. All contracts which the District executes through a competitive bidding process are made in accordance with Article 9 of the District’s General Policy and Rules and Regulations, Contracting by the District.

The District applies the aforementioned Article 9 not only to designed projects but also to professional service contracts. Frequently, professional service contracts are evaluated not necessarily by cost but by which professional service provider can best meet the needs of the project at hand. On December 18, 2008 the District’s response to the Grand Jury request for professional services records included contracts it has entered into for the Grand Jury specified timeframes for professional engineering services, both for general services and for the preparation of the year 2000 and 2005 Urban Water Management Plans and public relations and/or lobbyist services.

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

TCWD’s Response to F.2:

TCWD agrees with Finding F.2 in general but not as it applies to TCWD. A Code of Conduct and Expense Reimbursement Guidelines was updated and approved by the Board of Directors in January of 1996. This code applied to both Board members and employees.

A more comprehensive document entitled, “Guidelines for Conduct for Board of Directors” was approved in November 2005, applying specifically to TCWD Board members. This policy sets forth the basic ethical standards to be followed by the Board of Directors. The objectives of this policy are to (1) provide guidance for dealing with ethical issues, (2) heighten awareness of ethics and values as critical elements in Board

members' conduct, and (3) improve ethical decision-making and values-based management.

Section 6, Conflict of Interest, states that:

A Board member will not have a financial interest in a contract with the District...unless the Board member's participation was authorized under Government Code Sections 1091 or 1091.5, or other provisions of law. A Board member will not participate in the discussion, deliberation or vote on a matter before the Board of Directors, or in any way attempt to use his or her official position to influence a decision of the Board, if he or she has a prohibited interest with respect to the matter, as defined in the Political Reform Act, Government Code Sections 81000, and following, relating to conflicts of interest.

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.

TCWD's Response to F.3:

TCWD agrees that codes of ethics may vary, by agency, and some agencies may not have a code in place.

TCWD's Board members are required to satisfy the requirements of applicable Government Code. All five current Board members have participated in public service education and have received certification acknowledging this education.

The District's Conflict of Interest Code is consistent with the current model by the Conflict of Interest Code as set forth in the Title 2, Division 6, California Code of Regulations, Section 18730.

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

TCWD's Response to F.4:

TCWD agrees that some water board meetings are scheduled at inopportune times of the day, making it difficult for members of the public to attend.

With respect to TCWD, TCWD respectfully disagrees that meetings are held at times that discourage public attendance. TCWD's Regular Meetings of the Board of Directors are held on the third Wednesday of each month at 7:00 p.m. at the District's administrative/operational facility located at 32003 Dove Canyon Drive, Trabuco Canyon, CA. The day of the month and time of the Regular Meeting has been in place for over 20 years. Agendas of all Regular and Special Board Meetings and Committee Meetings are provided to those members of the public who have requested to be on the District's "agenda mailing list", at no charge, each month. Meeting notices are properly

posted within view for the public at the District's administrative/operational facility. Additionally, the District provides the time and place of the Regular Meeting each month in its *On-Tap* newsletter. The newsletter has been mailed to each District customer along with his/hers utility billing for 15 years. Agendas are also provided on the District's website.

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

TCWD's Response to F.5:

TCWD agrees that the practice of appointing Directors may, as a percentage, appear high with respect to individuals serving on water boards. TCWD believes, in many instances, this appointment is driven by prudent business decisions due to the cost of Stand Alone Elections. The extremely high cost of the Stand Alone Elections, in many cases, would adversely affect the operating budgets of the districts and thus adversely affect the rate payers of the districts due to possible rate increases.

TCWD has appointed Directors in lieu of holding a costly Stand Alone Election and has a procedure in place for doing so. The District follows the requirements of the water code and government code for such Director appointments. The District goes above and beyond the legislative requirements to solicit candidates for appointed positions. A Notice of Vacancy is published in local newspapers, forwarded to the homeowner associations within the District boundaries for publication in their respective newsletters, and posted in conspicuous places within the district boundaries.

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.

TCWD's Response to F.6:

TCWD concurs with this finding and has previously implemented it as stated in Section 8, Incompatible Offices, of the Board-approved "Guidelines for Conduct for Board of Directors" which states,

Any Board member appointed or elected to a public office of another public entity, the duties of which may require action contradictory or inconsistent with the interests of the first entity (as determined under applicable law), will resign from the former office.

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

TCWD's Response to F.7:

TCWD agrees with the Grand Jury Finding. TCWD also notes that the duration of time an individual may serve on a water board is permitted by statute. Further, TCWD water board members regularly must file with the Registrar of Voters and may be challenged by residents of the their district at the appropriate election cycle. If, in the performance of their duties, the residents of the district have become dissatisfied with the Directors' service, they may be unelected. The lack of terms allows an individual to gain valuable experience among peers which is advantageous to members of the public.

Recommendations

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 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.

TCWD's Response to R.1:

The District has implemented this recommendation. Please see TCWD's Response to F.2.

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

TCWD's Response to R.2:

TCWD previously implemented this recommendation, and all Board members are trained and certified. Board members report their activities regarding meetings on behalf of the Board of Directors. Additionally, any and all expenditures related to Board of Directors members are publicly reported monthly at the Board of Directors meeting.

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

TCWD's Response to R.3:

TCWD concurs with and has previously implemented Recommendation No. 3. TCWD's board meetings are scheduled to allow for maximum public attendance.

R.4: Each water district should choose to hold elections to fill board vacancies. The appointment process should be used only in exceptional circumstances.

TCWD's Response to R.4:

TCWD respectfully disagrees with and declines to implement Recommendation R.4. The costs associated with a Stand Alone Election range from \$29,410 to \$33,133. (Range provided by the Orange County Registrar of Voters.) In comparison, TCWD's cost for participation in the November 2008 General Election totaled \$8,095 which is four times less than the highest projected cost of a Stand Alone Election. TCWD believes that the high cost of a Stand Alone Election would be a burden to its ratepayers. Please also see TCWD's Response to F.5.

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.

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.

TCWD's Response to R.5:

TCWD previously implemented this recommendation in its Guideline for Conduct for Board of Directors, Section 8, Incompatible Offices, which states,

Any Board member appointed or elected to a public office of another public entity, the duties of which may require action contradictory or inconsistent with the interests of the first entity (as determined under applicable law), will resign from the former office.

TCWD consults with its general legal counsel, as necessary, if there is an appearance of any incompatibility of offices.

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

TCWD's Response to R.6:

TCWD respectfully disagrees with and declines to implement R.6. Unlike municipalities which can adopt Ordinances which would be extremely difficult to reverse, any requirement currently adopted by a current Board in TCWD's Rules and Regulations regarding term limits may be eliminated or modified by any future Board of Directors by a simple majority vote of the Board. The imposition of term limits that may be reversed at a future time and date applies an inequitable standard to current and future board members who may serve the District.