

**SPECIAL  
DISTRICTS**

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**Special Districts Committee**  
**Planning & Environment Committee**

***El Dorado County Water Agency***

**Reason for the Report**

Members of the Special Districts Committee and the Planning & Environment Committee of the 2000/2001 Grand Jury separately and independently became concerned about the water and power supplies available to residents of El Dorado County. They decided, in light of that shared concern, to join together in investigating whether potential growth or increases in per capita usage within the County were likely to outstrip the water and power supplies necessary to service those needs, and if so, what if anything could be done about it.

**Scope of Investigation**

These Committees interviewed:

- The current General Manager of the El Dorado County Water Agency ("Agency");
- The present and past General Managers of the El Dorado Irrigation District ("EID");
- All of the members of the 1999/2000 Board of Supervisors;
- A member of El Dorado Citizens for Water; and
- A private attorney with extensive experience in representing water and power clients.

Additionally, these Committees reviewed:

- The El Dorado County Water Agency Act;
- The Placer County Water Agency Act; and
- Senate Bill 428, 2001 Legislative Term, California State Senate.

**Findings**

- F1. The El Dorado County Water Agency was created and operates pursuant to Chapter 2139 of the 1959 Statutes of California, as amended, known as the El Dorado County Water Agency Act ("Act"). The Agency's governing authority appears at Chapter 96 of the Appendix to the California Water Code. All further section references in these findings are to provisions contained in the Appendices to the Water Code.

- F2. The Agency was created because the California Legislature found, in 1959, that "water problems in the county require county-wide water conservation, flood control and development of water resources," and that the then existing "county water districts, municipalities, and water conservation districts" were "unable alone to economically develop an adequate water supply and control the floods of the county." The Legislature further found that it was "necessary to have a political entity coextensive with the geographical limits of the entire county," that conditions within the County were "peculiar to it," and that the Act was "necessary for the conservation, development, control and use of said water for the public good and for the protection of life and property" within the County. (Section 96-103.)
- F3. The territorial jurisdiction of the Agency consists of "all the territory lying within the exterior boundaries of the County of El Dorado." (Section 96-2.)
- F4. The Agency has the authority to acquire real and personal property, both by exercise of the power of eminent domain and by grant, purchase, gift, devise and lease. (Sections 96-8 and 96-9.) The Agency has exercised this power only sparingly, and in those instances in which it has exercised the power, it has subsequently transferred ownership of the property thus acquired to water purveyors within the County rather than retaining it.
- F5. The Agency has the power, except as otherwise expressly limited by the Act, "to do any and every lawful act necessary in order that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants" within the Agency's territory, "including, but not limited to, irrigation, domestic, fire protection, municipal, commercial, industrial, recreational, and all other beneficial uses and purposes." (Section 96-11.) The Agency has not exercised this power aggressively.
- F6. The Agency presently has the following statutory powers, among others:
- a. "[T]o construct, operate and maintain works to develop hydroelectric energy as a means of assisting in financing the construction, operation and maintenance of its projects for the control, conservation, diversion and transmission of water," and "to enter into contracts for the sale of such energy ... at wholesale rates to any public agency or private entity engaged in the sale or use of electric energy." (Section 96-12.) "Incidental to the construction and operation of the works of the agency, the agency shall have the power to contract for the sale of the right to use falling water for power purposes with any public or private entity." (Section 96-22.);
  - b. "[T]o control the flood and storm waters of the agency" and "to conserve such waters for beneficial and useful purposes" (Section 96-13.);
  - c. "[T]o store water in surface or underground reservoirs;" "to conserve and reclaim water;" "to appropriate and acquire water and water rights, and import water into

the Agency;" to engage in any "action or proceeding involving or affecting the ownership or use of waters and water rights" in which the Agency has an interest; "to prevent interference with or diminution of, or to declare, rights in the natural flow of any stream or surface or subterranean supply of waters;" "to prevent unlawful exportation of water;" and "to prevent contamination [and] pollution" of waters (Section 96-14.);

- d. "[T]o construct, purchase, lease, or otherwise acquire works and ... water and water rights, useful or necessary to make use of water for any purposes authorized" by the Act (Section 96-15), including but not limited to "pipes, pipelines, flumes, [and] tunnels and other conduits, including facilities for the transmission of electric energy to the works of the agency" (Section 96-18.);
  - e. "[T]o operate, repair, improve, maintain, renew, replace and extend all works and property of the agency" (Section 96-16.);
  - f. To "enter into contracts with any member unit" of the Agency as defined in the Act (Section 96-24.);
  - g. "[T]o cooperate and contract with the United States ... for the purposes of construction of works, ... or for the acquisition, purchase, extension, operation and maintenance of such works, whether for irrigation, drainage, or flood control, ... or for a water supply for any purposes" (Section 96-30.); and
  - h. To hold legal title to property (Section 96-42.).
- F7. The Agency has failed, either totally or at least substantially, to exercise the powers set forth in subsections "a" through "e" of the preceding Finding. It has, instead, deferred to water purveyors within the County for primary activity in those areas.
- F8. The Agency has the duty, among others, "to equitably apportion the benefits of the agency to the lands within the [various] zones" located within the Agency. (Section 96-46(a)). The Agency has delegated the majority portion of that authority to EID. EID, however, may in the future have significant potential disputes with the Georgetown-Divide Public Utilities District concerning the diversion and allocation of water from the South Fork of the American River at Folsom Lake. Those potential disputes may ultimately result in a conflict of interest on the part of EID, between its inter-district water allocation role and its role as a water supplier to its own customers.
- F9. At the present time, the Board of Supervisors of the County ("BOS") is, ex officio, the Board of Directors of the Agency ("Board"). Each member of the BOS serves as a member of the Board without additional compensation, except for expense reimbursement. (Section 96-33.) This Board composition is counter-productive to the long-term interests of water and power development within the County, because the normal planning focus of BOS members is relatively short-term and is diluted by

competing planning interests unrelated to the development of water and power, whereas the appropriate and required planning focus of Agency Board members must necessarily be long-term in nature, i.e., 20 to 40 years or more in the future.

- F10. By contrast, and by way of example, the composition of the Board of Directors of the Placer County Water Agency, which is authorized in Section 81-7 et seq. of the Appendix to the California Water Code, is significantly more flexible, in that the original directors, members of the Board of Supervisors *ex officio*, have been replaced by directors who are elected from the five supervisorial districts within Placer County. (See Section 81-7.1.) The Placer County Water Agency has the reputation of being an efficiently organized, managed and operating entity. Other water and/or power suppliers which have similar reputations for efficiency include the Turlock Irrigation District, the Modesto Irrigation District, the Nevada Irrigation District, the Northern California Power Agency, the M-S-R Power Authority, and the Sacramento Municipal Utility District.
- F11. Senator Rico Oller has introduced proposed legislation, SB 428, which would amend Section 96-33. In its form as of April 11, 2001, SB 428 would revise the composition of the Board of Directors of the Agency by providing for a five-member Board, three of whom would be members of the Board of Supervisors, with specific consideration being given to the Supervisor representing a district that includes the largest area in the county not served by a water district. The other two Agency directors would be appointed by the water districts within the County, with one director being from either the South Lake Tahoe Public Utility District or the Tahoe City Public Utility District, and the other being from either EID, the Grizzly Flats Community Services District or the Georgetown Divide Public Utility District. EID, however, would have a representative filling this position on at least an every other term basis. The BGS has adopted a resolution supporting this proposed legislation.
- F12. The Grand Jury agrees in concept, and without taking a specific position on the details of Senator Oller's proposed legislation, with the principles that water purveyors, and unaffiliated members of the public to the extent reasonably possible, within the County should be represented on the Agency's Board of Directors.
- F13. The Agency does not presently have a current county-wide water plan. A draft plan was prepared in 1993, but that plan was never completed. Projections of demand have significantly changed since 1993. At the Agency's request, the BOS has authorized a request for proposals for the preparation of an updated county water plan, showing options for actions to meet projected demand through 2020, and projections of those estimates to 2050, but also requiring identification and consideration of environmental concerns along with economic and technical issues. The Grand Jury supports the preparation, and ultimate adoption, of such a Plan. Such a Plan need not necessarily envision any particular degree or extent of population growth within the County, if increases in water and/or power usage can reasonably be anticipated to occur for reasons other than growth.

- F14. The Court of Appeal, Third Appellate District, State of California, in County of Amador v. El Dorado County Water Agency, 76 Cal.App.4th 931, has held that the adoption of environmental documents pertaining to specific water development plans are impermissible unless and until a countywide general plan has been adopted. Accordingly, the absence of a formally adopted countywide general plan inhibits action on any county water plan, which may be appropriate for the benefit of the residents of the County. In the interim, water resources to which El Dorado County has, or may have, potential development rights may be lost to potential water users downstream from the County, or in the San Joaquin Valley, in Southern California, and elsewhere. For that reason, among others, it is necessary that a countywide general plan be adopted and put into place at the earliest possible opportunity.
- F15. The County's present water difficulties have resulted from a history of the BOS, sitting as the Agency's Board of Directors, having played politics with the issue, sacrificing water development needs to other, more immediate and politically beneficial, purposes. Plans for water development and power generation have been created and then, for various reasons, have failed to be implemented. As a result, significant opportunities for such development and generation have been lost and, with changing conditions, cannot now be reclaimed. Action is necessary at this time to ensure that similar opportunities, which may presently exist, are not lost by reason of inertia, conflict or other causes of delay.
- F16. In summary, the Grand Jury has concluded that the El Dorado County Water Agency, which has existing statutory authority to play a major role in the acquisition and development of water and power resources within the County, has not been exercising that authority to its maximum efficiency, but instead has been delegating that authority to individual water purveyors whose interests may (or may not) conflict.

### **Recommendations**

- R1. The composition of the Board of Directors of the El Dorado County Water Agency should be changed, to include one or more representative(s) of water purveyors, and one or more representative(s) of the public who have more than minimal knowledge of water and power issues within the County. The BOS should support legislation to provide for such a change.
- R2. Members of the Board of the Agency should communicate with staff members and/or Board members of the Placer County Water Agency, the Turlock Irrigation District, the Modesto Irrigation District, the Nevada Irrigation District, the Northern California Power Agency, the M-S-R Power Authority, the Sacramento Municipal Utility District, and other efficiently operating water and power developers and suppliers. These communications should be undertaken for the purpose of learning how water and power supplies can be developed and operated in coordinated ways that are efficient and equitable but that also appropriately respect reasonable environmental considerations.

- R3. The budget of the Agency should be increased in order to enable the Agency to undertake a significantly greater exercise of its statutorily authorized powers.
- R4. The Agency should hire an Assistant General Manager at the earliest possible opportunity. In doing so, the Agency should look for a person with existing experience with water and power issues and who also can reasonably be expected to remain active with the Agency for a significant number of years in the future, with a possible goal of promoting that person to General Manager when the current General Manager retires.
- R5. The Agency should undertake studies directed toward the development of water storage facilities, to be filled during the winter and spring months when excess water is "spilled" into Folsom Lake without being beneficially used either in El Dorado County or elsewhere, for subsequent use during summer and fall months when usage demands for water are high.
- R6. The Agency should also undertake studies directed toward the development of hydro-electric power from water storage facilities. Those studies should include, but not be limited to, communication with the staff and/or Board of EID concerning the use and operation of Project 184.
- R7. In summary, the Grand Jury recommends that the Agency expand its activities to more fully exercise its statutory role.

**Responses Required for Findings**

- F1 through F16: El Dorado County Water Agency Board of Directors  
El Dorado County Board of Supervisors  
El Dorado Irrigation District Board of Directors  
Georgetown-Divide Public Utility District Board of Directors  
Grizzly Flat Public Utility District Board of Directors  
South Lake Tahoe Public Utility District Board of Directors  
Tahoe City Public Utility District Board of Directors

**Responses Required for Recommendations**

- R1 through R7: El Dorado County Water Agency Board of Directors  
El Dorado County Board of Supervisors  
El Dorado Irrigation District Board of Directors  
Georgetown-Divide Public Utility District Board of Directors  
Grizzly Flat Public Utility District Board of Directors  
South Lake Tahoe Public Utility District Board of Directors  
Tahoe City Public Utility District Board of Directors



## **Special Districts Committee**

### ***EL Dorado Irrigation District***

#### **Reason for the Report**

In light of many news articles and citizens' complaints, the Special Districts Committee of the 2000/2001 Grand Jury elected to undertake a limited investigation and review of the operations of the El Dorado Irrigation District (District).

#### **Scope of Investigation**

Because a full and complete investigation would have been so massive as to be beyond the capability of the Grand Jury with the time and resources available to it, the Grand Jury's investigation did not look at all aspects and operations of the District.

Members of the Special Districts Committee did, however:

- Review an independent Management Audit commissioned by the District and undertaken and completed by Barrington-Wellesley Group, Inc.;
- Attend meetings of the Board of Directors ("Board") of the District; and
- Review various newspaper articles pertaining to District meetings and activities.

Members of the Committee also heard testimony from:

- Two former General Managers of the District;
- The District's Interim, now current, General Manager;
- Employees of the District; and
- Other individuals interested and knowledgeable with regard to (i) issues involving water and power within and affecting El Dorado County, and (ii) the operation of the District.

#### **Findings**

- F1. The District serves the majority of the populated areas of the Western Slope of the County. It provides many different inter-related services, including supplying municipal and industrial water, irrigation water, wastewater treatment, and reclamation, as well as hydroelectric operations.
- F2. Management of the District is under the control of a Board of Directors and a General Manager.

- F3. Board members' negative public comments, quoted in the press, and their unprofessional conduct during public meetings, are negatively affecting the overall morale of the District's employees and are undermining the public's confidence in the activities of the District.
- F4. There is a lack of accountability at appropriate management levels.
- F5. There is no established plan for replacement/repair/maintenance of the District's water delivery systems.
- F6. The Board engages in micro-management of the activities of the District, and does not restrict itself to its proper and appropriate function, the setting of District policy.
- F7. The Management Audit found the same problems as the Special Districts Committee — only in much greater detail.

### **Recommendations**

- R1. The District should provide for the involvement of its managerial, supervisory and staff level employees in its decision-making process relating to the running of its operations. The Board should refrain from micro-managing the District, and should restrict itself to the setting of District policy and oversight of the performance of District managerial employees.
- R2. The Board members should conduct themselves in a more professional manner.
- R3. The Board should budget and implement a planned maintenance and replacement schedule for the District's infrastructure.
- R4. The Board should implement and enforce objective performance standards and an employee evaluation and accountability procedure.
- R5. The District should explore the possibility of entering into a joint venture with the El Dorado County Water Agency for the operation of the Project 184 power facilities which the District is acquiring from Pacific Gas & Electric Company.
- R6. The 2001/2002 Grand Jury should revisit the activities and operations of the District.

**Responses Required for Findings**

F3 through F6      Board of Directors, El Dorado Irrigation District

**Responses Required for Recommendations**

R1 through R5      Board of Directors, El Dorado Irrigation District

**Special Districts Committee**  
***Rescue Fire Protection District Inquiry***

Citizen's Complaint #C-00/01-017

**Reason for the Report**

The Grand Jury received an anonymous citizen complaint alleging various types of misconduct on the part of a high-ranking official ("Official") of the Rescue Fire Protection District ("District"). Although the complaint was anonymous, the allegations were of sufficient severity that the Grand Jury decided to report the allegations to the Board of Directors ("Board") of the District for its investigation and any appropriate action, and to inquire into the manner in which the District conducted its investigation and action.

**Scope of the Investigation**

The Special Districts Committee of the Grand Jury:

- Reported the allegations against the Official to the Chairman of the Board ("Chairman") in writing;
- Met with the Chairman and discussed the allegations;
- Attended a Closed Session of the Board, at which the allegations against the Official were discussed;
- Requested, received and reviewed a comprehensive report from the Chairman detailing the nature and scope of the investigation conducted by the Board with regard to the allegations; and
- Received and reviewed a report setting forth the Board's findings and actions taken as a result of its investigation.

**Findings**

- F1. An anonymous complaint, alleging three separate types of misconduct on the part of a high-ranking Official of the District, was received by the Grand Jury. That complaint was referred by the Grand Jury to the District's Board for investigation and, if appropriate, action.
- F2. The Board conducted an investigation of the allegations, and submitted a detailed report of that investigation to the Grand Jury.

- F3. The nature and conduct of that investigation was appropriate to the allegations, and the Board's report to the Grand Jury was well-reasoned and comprehensive.
- F4. The allegations against the Official appear to have been made in the context of :
- A history of an adversarial labor-management relationship between the District and its employees, and between the Official and other employees of the District; and
  - A prior disciplinary action initiated by the Official against another, subordinate, employee of the District.
- F5. There is evidence that some District employees were threatened and/or coerced by other District employees to support the allegations.
- F6. Although the complaint was made anonymously, and in confidence, to the Grand Jury, the Grand Jury's reference of the matter to the Board, and the Board's subsequent investigation, were "leaked" by unknown persons.
- F7. On the basis of an investigation that the Grand Jury finds to have been both comprehensive and appropriately conducted, the Board concluded that the Official was not culpable with regard to two of the allegations, but was culpable with regard to the third. The substance and contents of that third allegation, however, were significantly less important than the substance and contents of the first two allegations.
- F8. The Board appropriately counseled the Official as to the matter involved in the third allegation. The Official agreed to modify his conduct as to that matter, and he has done so. The Board concluded that no other administrative or disciplinary action was required. The Grand Jury finds that conclusion to have been appropriate.
- F9. As a result of the complaint and the Board's subsequent investigation:
- The Board has facilitated discussion groups and meetings with the District's employees to increase dialogue and understanding; and
  - The Official has initiated steps to increase the number of staff meetings to solicit employee input and feedback.

### **Recommendations**

- R1. The District, the Board and the Official should continue to take actions, similar to those set forth in Finding F9, to improve communications, employee relations, professional conduct and mutual respect among the District's employees.

**Responses Required for Findings**

F1 through F9          Rescue Fire Protection District Board of Director

**Responses Required for Recommendations**

R1                      Rescue Fire Protection District Board of Directors