

Triunfo Sanitation District

Summary

The 2006-2007 Ventura County Grand Jury (Grand Jury) received a complaint regarding the governance, management, and financial administration of the Triunfo Sanitation District (TSD). Since TSD has no staff, management and financial administration are performed under contract by Ventura Regional Sanitation District (VRSD) staff. Upon investigating the complaint, the Grand Jury found that a majority of TSD Directors do not live within the TSD service area. Two of the five TSD Directors are elected by the voters of the District. One of the non-resident directors serves only because that person is a director of VRSD. In addition to having VRSD staff serve as TSD staff, both districts use the same law firm even when contracts between the two districts are under consideration. A significant fiscal action was taken on behalf of TSD by the VRSD Board of Directors without prior consultation with or authorization by the TSD Board. A report on the management of VRSD and its fiscal administration that significantly impacted TSD was not provided to TSD Directors in a timely manner.

The Grand Jury concluded that there is the appearance of a conflict of interest in the TSD-VRSD relationship, particularly the renewal by TSD of the long-standing contract for staff and management services from VRSD. Although the new contract ultimately proved not to be detrimental to TSD and there is confirmation that there was no illegality related to this action, it nevertheless gave the appearance of a conflict of interest. The Grand Jury also concluded that a TSD Board of all-elected members might minimize the appearance of conflicts of interest.

The Grand Jury recommends that the TSD Board employ a manager who is accountable only to the Board. The Grand Jury also recommends that TSD evaluate changing its structure or governance.

Background

The Triunfo Sanitation District (TSD) is a special district — a distinct government organization — created in 1963 as the Triunfo County Sanitation District to provide sewer services in southeastern Ventura County. In 1993, TSD purchased a private water company serving the Oak Park community (a portion of the TSD service area), which it operates as the Oak Park Water Service.

Initially, the Ventura County Board of Supervisors (BOS) was the TSD Board. After the City of Thousand Oaks incorporated (1964) and the Ventura Regional Sanitation District (VRSD) was created (1970), the TSD Board was reconstituted in 1971. The new structure consisted of the Chairman of the BOS, the Second District County Supervisor, the Chairman of Waterworks District Number 8, the Mayor of Thousand Oaks, and the Chairman of the VRSD Board of Directors or their designees. After a report by the 1979-1980 Ventura County Grand Jury [Ref-05] recommended electing a majority of the TSD Board, the Board was again reconstituted into its

present form, with two elected directors, a Ventura County Supervisor, a Thousand Oaks City Council member, and a member of the VRSD Board.

Methodology

The Grand Jury interviewed VRSD staff and some present and past TSD Board members. Related documents were reviewed, including VRSD memos and staff reports to the TSD Board, TSD Board meeting minutes, investment reports, audit reports, the TSD Website, and various newspaper articles relating to TSD. The Grand Jury also reviewed the 1979-1980 Grand Jury report that addressed TSD governance [Ref-05] and attended TSD's Board of Directors meeting on April 30, 2007.

Findings

General

- F-01.** Triunfo Sanitation District (TSD) is an independent special district, formed in 1963, that supplies potable water, reclaimed water, and sewer services to customers within a fifty square mile area in parts of Southeastern Ventura County adjacent to the Los Angeles County line.
- F-02.** TSD has no employees.
- F-03.** TSD has outsourced all management and labor positions to Ventura Regional Sanitation District (VRSD). This contract is for the equivalent of approximately 10 full-time positions.

Governance

- F-04.** California Health and Safety Code §§4730 and 4730.1 prescribe how a sanitation district's board of directors is constituted. The TSD Board is composed of the Chairman of the Ventura County Board of Supervisors (BOS), the Mayor of Thousand Oaks, the Chairman of the VRSD Board (or designees from their respective boards), and two members elected at-large from the TSD service area.
- F-05.** The two elected TSD Directors must reside within the District's boundaries. The other three directors may reside elsewhere in Ventura County.
- F-06.** The Ventura County Local Agency Formation Commission (LAFCO) recommended in 2004 that TSD should examine increasing the number of directly elected directors from two to three [Ref-02, §III.1].
- F-07.** The TSD Board could be reconstituted to be entirely elected at-large from among residents of the TSD service area according to Health and Safety Code §4730.1(b) by following the procedures set forth in §4730.2.
- F-08.** For many years prior to November 2004, the two "elected" TSD Directors were appointed by the BOS because neither of the elected at-large seats were contested. A non-incumbent ran for election and was defeated in 2004. A non-incumbent candidate ran successfully in 2006, unseating a longtime incumbent.

- F-09.** In March 2005, a motion was made to change TSD's governance to a fully elected board. However, the motion died for lack of a second.
- F-10.** In April 2007, the TSD Board again considered the District's governance:
- A motion to have a fully elected board was defeated by a vote of 3-2.
 - Subsequent motions to replace one or two non-elected directors with elected directors were similarly defeated or died for lack of a second.
 - TSD's attorney stated that his preliminary analysis of California codes indicated that an action to increase the number of elected directors would require changing to a fully elected board.
 - The Board directed its attorney to research this issue more fully, including seeking a formal opinion from the California Attorney General, and then report back to the Board.
- F-11.** TSD pays \$218 per director per meeting or day of service with a maximum of six compensated days per month. The employee portion of Social Security taxes (FICA) is paid by TSD. Directors attend regional and national conferences at TSD expense.
- F-12.** In fiscal years 2002-2003 and 2005-2006, several TSD Directors attended as many as four conferences in such locations as Palm Springs, Monterey, Napa, and Yosemite National Park as well in Orlando and Washington, DC, at TSD expense.
- F-13.** A March 2005 memorandum from the VRSD General Manager to the TSD Board of Directors regarding TSD governance stated:
- Consolidation with Las Virgenes Municipal Water District (LVMWD). I believe this is the best approach environmentally, technically and managerially. The system is currently bifurcated and would continue to be with the above systems [referring to either maintaining the status quo or going to an all-elected board]. This idea was brought to LVMWD several years ago, but there was little interest at that time.*
- F-14.** California Water Code §71060 indicates that a municipal water district can have territory in more than one county.

Conflicts of Interest

- F-15.** Both VRSD and TSD use the same law firm for legal representation.
- F-16.** The same accounting firm performed both VRSD and TSD annual audits. In March 2007, the TSD Board of Directors hired a firm for its future audits, a firm different from the one used by VRSD.
- F-17.** The VRSD auditor conducted an exit audit when a former finance director left that district. The July 2004 auditor's report to VRSD recommended that several actions taken by the former VRSD finance director — actions affecting TSD — be reevaluated to determine whether they were

appropriate and beneficial. The auditor further recommended that each action should then be ratified or reversed by the VRSD Board.

- F-18.** The July 2004 exit audit report to VRSD was not presented to the TSD Board until 2006. Two TSD Directors who were also VRSD Directors — as well as VRSD staff serving TSD — received the report when it was originally presented to VRSD, but they failed to bring relevant TSD items in the report to the attention of the other TSD Directors.
- F-19.** After the July 2004 auditor's report was presented to the VRSD Board, that Board took none of the recommended actions.
- F-20.** An October 2000 report by consultant Arroyo Associates [Ref-03] noted that a specific Triunfo District Manager position was to be provided by VRSD. At that time the position was vacant, and how or when it would be filled was uncertain. Currently the VRSD General Manager also serves as TSD District Manager.

(See Attachment 1 for a time-line corresponding to findings F-21 through F-26.)

- F-21.** Prior to the current TSD-VRSD contract for labor and management services, the California Water Service Company (CalWater) was solicited to make a proposal to manage TSD's water service. Data initially provided to CalWater by VRSD staff was summary information that was insufficient for preparing a meaningful proposal.
- F-22.** The VRSD General Manager informed the VRSD Executive Committee about the CalWater proposal. In a letter to the Executive Committee, the General Manager stated, "Approval by the TSD Board for a private purveyor contract would cause significant reductions in the VRSD revenues and work force." Two members of the Executive Committee who were informed of the CalWater proposal were also TSD Directors at that time.
- F-23.** On a recommendation from VRSD staff (acting as TSD staff), the TSD Board approved a new contract with VRSD more than five months before Brown & Caldwell, an outside consultant, submitted its review of the CalWater proposal. (See F-25.)
- F-24.** The vote of the TSD Board to ratify the contract with VRSD was 4-0-1, with two TSD Directors who were also VRSD Directors voting in favor.
- F-25.** A detailed proposal based on more comprehensive data specific to TSD was presented by CalWater to TSD. Brown & Caldwell was retained to evaluate that proposal.
- F-26.** Brown & Caldwell concluded that the CalWater proposal would be more costly than the VRSD contract. This conclusion was not reported to the TSD Board [Ref-01] until after the ratification of the contract with VRSD.

Services

- F-27.** TSD area sewage is processed by the Tapia Water Reclamation Facility (Tapia), which is jointly owned with the Las Virgenes Municipal Water District (LVMWD) through a joint-powers agreement. Potable water

purchased from the Calleguas Municipal Water District is distributed by TSD. TSD's infrastructure for providing both sewer and potable water services is maintained by VRSD as a contractor to TSD.

- F-28.** TSD owns 29.4% of Tapia, which is located in Los Angeles County adjacent to Malibu Canyon. LVMWD manages operations of Tapia as its majority owner. In this role, operations of LVMWD to provide services within its jurisdiction are kept separate from the operation of Tapia.
- F-29.** The 1994 ten-year services contract between VRSD and TSD included an option for an independent review of VRSD service performance every two years. The only performance report was completed and submitted to the TSD Board in October 2000 [Ref-03].

Financial Issues

- F-30.** Acting as fiscal manager for TSD, VRSD placed TSD capital funds into a non-interest-bearing bank account in 2004. The balance in this account fluctuated, at one time reaching \$3.1 million. Thirty months later VRSD management stated that the failure to place these funds in an interest-bearing account was an "oversight".
- F-31.** In August 2006, TSD was credited with a payment from VRSD of \$99,736.36 to compensate for foregone interest earnings on its funds. The TSD Board was informed by VRSD staff that the payment was based on what an interest-bearing account would have earned. However, the actual payment was based on what might have been earned on TSD's actively managed investment portfolio. (See F-34.)
- F-32.** VRSD calculated the interest reimbursement and credited it to TSD without any input from or prior approval by the TSD Board.
- F-33.** In September 2003, approximately \$9.6 million of TSD's \$12 million investment portfolio was transferred from accounts in the California State Local Agency Investment Fund (LAIF) and the County of Ventura pooled investment fund (MCP) into an actively managed bond portfolio.
- F-34.** In accord with TSD investment policy at that time, much of the bond portfolio was sold prior to maturity and reinvested in an attempt to improve investment returns. Substantial losses and transaction fees were incurred as a result of this policy.
- F-35.** On three occasions in 2005, VRSD staff recommended that bonds in the TSD investment portfolio be held to maturity. The TSD Board took no action.
- F-36.** Beginning in 2004, a TSD Director and members of the public expressed repeated concerns regarding ongoing losses in the professionally managed bond portfolio. However, the TSD Board took no action to revise the District's investment program until 2006. Remaining bonds are now being held to maturity, with resulting proceeds being invested in the State and County pooled investment funds.

Public Involvement

- F-37.** According to the California Little Hoover Commission, special districts are often invisible to the public and policy-makers, compromising oversight and accountability. [Ref-04]
- F-38.** Compared to City Council elections, the electoral process for special districts is less vigorous with fewer competitive races, fewer voters involved, and more seats filled by appointment. [Ref-04]
- F-39.** A long-standing special district concern is that compensation paid to board members discourages them from giving up their seats in the name of efficiency. [Ref-04]
- F-40.** TSD Board meetings are sparsely attended except when controversial issues are on the agenda. Meeting notices are posted on the District's Website and at the Oak Park Library.
- F-41.** Regular TSD Board meetings are held at 5:15 p.m. on the fourth Monday of each month. Most special districts hold meetings after working hours at a time that would be more convenient to residents. [Ref-02]
- F-42.** An existing Oak Park water tank was to be replaced by TSD based on a finding of no significant impact (negative declaration). However, community opposition forced further study, which resulted in a requirement to prepare an environmental impact report (EIR).
- F-43.** Two opposite positions regarding the originally proposed location of a new water tank are:
- The site is in a remote location, at a high elevation, on ground that will support the filled structure, not visible from any residence, and is close to the water distribution system.
 - The site is next to a heavily used hiking trail leading to the Santa Monica Mountains National Recreation area, will be illuminated after dark, will spoil views, and will require a paved access road.
- F-44.** Water and sewer services in the District are more expensive than in surrounding areas for a number of reasons including:
- All of the water is high-quality water from the California Water Project, which is significantly more expensive than water pumped from local aquifers.
 - TSD must repay revenue bonds that were issued to purchase the Oak Park Water Service from a private water company. The water rate is TSD's only source of revenue for this purpose, thus requiring a rate higher than otherwise required to purchase water and pay operating expenses.
 - Wastewater effluent from Tapia is not permitted to be discharged into the Malibu Creek Watershed without undergoing expensive tertiary processing.

Conclusions

- C-01.** TSD rate-payers may be ill-served because three out of five directors are neither elected from nor required to reside in the TSD service area. The TSD Board has considered increasing the number of directly elected directors. While this has not been favored by a majority of the Board, the issue remains unresolved. (F-04 through F-10, F-13, F-18, F-24, F-29)
- C-02.** TSD out-sources its labor and management staff from VRSD. A VRSD Director is also a TSD Director, which presents the appearance of a conflict of interest. (F-02, F-03, F-17 through F-20, F-22, F-23, F-24, F-32)
- C-03.** Employment of the same law firm and the same accounting firm by both VRSD and TSD may give the appearance of a conflict of interest. (F-15, F-16)
- C-04.** Recommendations to the TSD Board regarding contracts with VRSD originate from VRSD management acting as TSD management. Even when the results are appropriate, this may convey the appearance of a conflict of interest. (F-21 through F-26)
- C-05.** Minimal distribution of meeting announcements and agenda and inconvenient meeting times contribute to the lack of public involvement and oversight of TSD operations. (F-40, F-41)
- C-06.** The amount credited unilaterally by VRSD to TSD to reimburse foregone interest is questionable. For example, it might have been inappropriate to assume that all funds deposited in TSD's non-interest-bearing checking account would have been transferred to the District's underperforming, actively-managed investment portfolio. (F-30, F-31, F-32)
- C-07.** Compensation, travel benefits, and lack of public involvement encourage directors to retain their seats. Until recently, the two elective TSD Directors were reappointed because they were unopposed at election time. (F-11, F-12, F-38 through F-41)
- C-08.** An EIR is the appropriate disclosure process for siting TSD's replacement of the Oak Park water tank. (F-42, F-43)
- C-09.** A merger (consolidation) between TSD and LVMWD has been suggested and is legally possible. (F-13, F-14)

Recommendations

- R-01.** The TSD Board of Directors should be reconstituted to an entirely elected board. (C-01, C-02)
- R-02.** In order to minimize the appearance of conflicts of interest, TSD should consider:
- hiring an individual or retaining a private firm or public agency (other than VRSD or LVMWD) to provide general management and oversight services and to be accountable directly to the TSD Board

- engaging a law firm different from that used by VRSD
(C-03, C-04, C-06)
- R-03.** A focused review should be conducted for TSD by an independent auditor or other qualified professional to verify that interest earnings reimbursed by VRSD were equitable. (C-06)
- R-04.** All aspects of major capital projects and issues, including EIRs, should be considered by the TSD Board at well-publicized meetings with notification to stakeholders. (C-05, C-08)
- R-05.** In order to increase public awareness and involvement, TSD should publicize all meetings in local newspapers and water bills. Community TV coverage should be invited, and notices should be posted in public locations and on the District's Website. Additionally, annual mailings should be distributed to District rate-payers. In easily understood terms, annual mailings should include:
- District mission and purpose
 - summary financial information presented in a standard format and simple language, including information about reserve funds and their purpose
 - District policy on the accumulation and use of reserves
 - plans for the future, including anticipated revenues, expenditures, reserves, trends in user rates, and capital projects
 - performance and quality of service indicators
 - Board member benefits and compensation
- (C-05, C-08)
- R-06.** The TSD Board of Directors should adopt a formal policy regarding conference attendance. The policy should also require disclosure in the District's annual report of the number and type of conferences actually attended at District expense. (C-07)
- R-07.** TSD should explore consolidation with another special district. (C-09)

Responses

Responses Required From:

Triunfo Sanitation District Board of Directors (R-01 through R-07)

Other Responses:

Responses from individual directors of the Triunfo Sanitation District will be accepted.

References

- Ref-01.** Brown and Caldwell letter; subject: Analysis of Oak Park Water System Water Storage Replacement Options and Cal Water Operating and Leasing Proposal; dated July 22, 2004
- Ref-02.** *Water and Wastewater Municipal Service Review Report*; LAFCO; January 2004 (on the Web at <<http://www.ventura.lafco.ca.gov/pdf/MSR/WaterWastewaterFinal.pdf>>)
- Ref-03.** *Interagency Service Evaluation and Benchmarking Study for the Triunfo Sanitation District*; Arroyo Associates, Inc.; October 12, 2000
- Ref-04.** *Special Districts: Relics of the Past or Resources for the Future?*; Little Hoover Commission; May 2000 (on the Web at <<http://www.lhc.ca.gov/lhcdir/155/report155.pdf>>)
- Ref-05.** "Triunfo County Sanitation District", *County of Ventura Grand Jury Report 1979-1980*
- Ref-06.** Minutes of the Triunfo Sanitation District Board of Directors meeting of January 26, 2004

Attachments

1. Timeline for Approving Current Contract Between TSD and VRSD

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Attachment 1: Timeline for Approving Current Contract Between TSD and VRSD

Sep 15, 1977	Original TSD-VRSD contract signed.
Nov 1, 1990	Original TSD-VRSD contract modified and extended.
Mar 1994	New ten-year TSD-VRSD contract signed.
Jul 22, 2003	After two contract extensions, VRSD General Manager memo to TSD Board advising of upcoming March 17, 2004, contract expiration.
Oct/Nov 2003	Initial proposal to operate potable and reclaimed water services submitted to TSD by CalWater.
Dec 2003	At its December meeting, TSD Board directs CalWater to refine its proposal and present a more comprehensive proposal. From the discussion, VRSD initially provided incomplete information on TSD to CalWater.
Jan 2, 2004	VRSD General Manager memo to VRSD Executive Committee (included TSD Directors Gillette and Acosta) re-affirming to the Committee that a competing proposal was being prepared by CalWater to operate potable and reclaimed water services for TSD and that such a change "... would cause significant reductions in the VRSD revenues and work force".
Jan 16, 2004	CalWater memo to VRSD General Manager responding to TSD's December 2003 directive to refine its proposal. (CalWater requested up-to-date financials, operating expenses, and capital assets for Oak Park Water Service only, since consolidated, general information previously provided by VRSD was of little value.)
Jan 26, 2004	VRSD contract renewal approved by a 4-0-1 vote by the TSD Board. CalWater's revised proposal was still being prepared but not yet received. The new contract with VRSD was approved after two TSD Directors and the joint TSD-VRSD attorney declared potential conflicts of interest. [Ref-06]
May 14, 2004	CalWater's revised proposal submitted to TSD. TSD contracts with Brown & Caldwell to evaluate the proposal.
Jul 22, 2004	Brown & Caldwell report to VRSD General Manager validating correctness of January 2004 Board action approving VRSD contract renewal.

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