

2007-2008 GRAND JURY REPORT

Beaumont-Cherry Valley Water District

Background

California State law defines a Special District as “any agency of the state for the local performance of governmental or proprietary functions within limited boundaries”, Government Code §16271(d). Special Districts possess many of the same governing powers as cities and counties. They can enter into contracts, employ workers, and acquire real property through purchase or eminent domain. They can also issue bonds, impose taxes, levy assessments, and charge fees for their services.

The Beaumont-Cherry Valley Irrigation District was established March 1, 1919 under the Wright Water Irrigation Act of 1897. In December of 1920, the District purchased the holdings of the Beaumont Land and Water Company and the San Geronio Land and Water Company. In the 1970's the Beaumont Irrigation District was changed to the Beaumont-Cherry Valley Water District, hereafter referred to as the District. Currently, the 2008 budget for the District is \$11,191,700. Operating revenue comes from water sales and services and developer fees. As of March 2008 the District has \$1,375,576.37 in their Operating Reserves and \$469,133.48 in their Emergency Reserves.

The District is responsible for delivering domestic water to residences, businesses, and industries within the District boundaries, primarily in the City of Beaumont and the unincorporated area of Cherry Valley. The District's sources of water are wells located in Edgar Canyon and the Beaumont Basin.

The District's General Manager is under contract with the five-member Board of Directors, hereafter referred to as the Board, who are elected to four-year staggered terms. The District is organized and managed as a governmental agency subject to public oversight and meets monthly. Minutes of Board meetings are available on the District's website at <http://www.bcvwd.org>.

Findings

1. Audits:

California Government Code §26909 requires special districts to submit annual audited financial statements to the County Auditor-Controller. Information obtained from the District's management personnel revealed that "due to inadequate management practices, incomplete and mismanaged accounting records, outdated and unusable computer software, and unqualified accounting personnel, the District has not submitted audited financial statements for the years 2004, 2005, and 2006". On June 12, 2007, the Riverside County Auditor-Controller (RCAC) sent a letter to the District regarding the overdue audited financial statements for the subject years. The District did not reply. RCAC sent a second letter in October 2007, to inform the District that RCAC would perform the audits if financial statements were not received in their office by December 31, 2007. The RCAC, General Manager and Legal Counsel for the District met in October 2007 to develop a work plan (see Board Minutes of November 8, 2007).

2. Unpaid Invoices:

Review of records, invoices, and sworn testimony revealed that the District owes \$3,073,410 to a local engineering firm. The unpaid invoices number approximately 428 and cover a period from April 2004 through October 2007. A review of the invoices indicated no deficiencies and no apparent reason to deny payment. Investigation also revealed that the Board does not have access to and is unaware of any unpaid invoices. The auditor from a private firm confirmed that the unpaid invoices were not disclosed to them during an audit completed on March 24, 2008.

3. Brown Act:

The minutes of the Board Meeting of November 14, 2007, pages 3938 and 3939, revealed the Board's admission of violations of the Brown Act. The following are examples:

- On October 11, 2006, a substantial raise in salary for the General Manager was discussed and approved in closed session of the Board meeting. Investigation revealed that in that meeting, the General Manager requested an increase in salary to \$177,648 that he wanted as part of his new contract. The General Manager's salary increased 97% in two years. The Board discussed and voted for approval of the salary increase in closed session. This salary increase should have been voted on and disclosure made in open session.

- A change of leadership occurred at a Board meeting on October 10, 2007, page 3910 and 3911. The outcome of the change was well known by the public prior to the meeting indicating an agreement had already been made by some Board members, and it had leaked to the public. This is evidenced by public comments made at the meeting prior to the agenda item coming to the floor. The public indicated they knew in advance that the current president and vice president were going to be replaced and were in disagreement with the action that was yet to take place.
- Legal counsel reported that agreements had been reviewed for four housing units belonging to the District. The review dated back to the year 2000 and that there were amendments made to these agreements in 2004 and 2006, in closed session, without Board approval or public comment. Reference the Board Minutes of December 12, 2007, page 3957.

4. The District misused public funds. The following are examples:

Education and Training:

- Over \$4,000 of District funds was paid for an employee, who is also the son of a management official, to attend pre-requisite courses leading to a degree in Civil Engineering, prior to executing a contract to cover the agreement. While attending school he is allowed to work hours ranging from 8 to 40 per week, while receiving full-time salary and benefits. The General Manager and the employee signed a contract in April 2007, without approval of the Board or public knowledge. Payment of these expenses is a violation of the Memorandum of Understanding (MOU) dated 2006-2008. The MOU covers reimbursement for job-related courses only.
- The District continues to pay for another employee, who is related to a senior management official, to obtain a Master's Degree in Public Administration. These courses and the degree are not relevant or applicable to the employee's current position or any current or projected positions in the District. This is a violation of the District's MOU of 2006-2008. This employee's education expenses in 2006 totaled \$2,970.53 and in 2007 totaled \$5,273.55.

Travel and Training:

- The District's General Manager sent two related employees to an American Water Works Association convention in Toronto, Canada because "the two employees excelled on the job and were chosen to go". One employee was the administrative assistant to the General Manager and the other was an inventory control specialist. The total cost of this trip was over \$4,000 and the employees only attended the exhibits and not the professional educational programs. The criteria for selecting these employees was not established prior to the convention and did not receive Board approval. See Board minutes of April 11, 2007.

District Housing:

- Top management employees are required, by employment contract, to live in four District homes in Edgar Canyon. These employees do not pay rent, maintenance expenses or utilities. The District requires that employees live in District housing as a condition of employment, as well as to provide security for the property, report illegal activities, pick up litter and respond to district facilities in case of emergencies.
- Top management employees and their families are living in a dangerous fire and flood prone area as documented in newspaper articles and District policy "District Residences and Facility Emergency Policy" adopted August 1998.

Delinquent Customers:

- The Beaumont-Cherry Valley Recreation and Park District (BCVRPD) is delinquent, as of December 2007, in payment to the District for water in the amount of \$93,956.20, since March 2005. The BCVRPD Board of Directors has two of its five-member Board who are related to a Board member and an employee of the District. The BCVRPD has an obligation to pay its just debt so that this lack of payment does not infringe on other customers' water rates.
- On March 13, 2008, the District shows a delinquency list totaling approximately 450 customers in turnoff status, 147 customers have received a third notice, and 61 customers in 'other' status. The total amount owed to the District is \$424,531.37. The national average for delinquent accounts, as reported by a leading engineering corporation, Black and Veatch, is between one-half and one percent. The District's delinquency rate is 4.6 percent. At

a Board meeting of November 14, 2007, page 3931, the General Manager made a statement that there were no delinquent water bills because the “water bills go with the property”.

District Credit Card:

- The District’s General Manager regularly uses the District’s credit card to pay for meals for himself, staff members, contractors, and others at local restaurants. No receipts were found, and no expense reports were submitted. Receipts for these expenditures were unavailable and the business nature of these expenses could not be established. The District’s credit card policy, the credit card agreement, and the credit card usage, are in conflict with each other. The California Government Code §8314 prohibits the personal use of public resources.

5. Contracts:

- The District does not have a written policy or procedure for obtaining Board approval for awarding of contracts. The practices of awarding and obtaining Board approval for contracts are inconsistent. Requests for proposals are issued for contracts involving, for example, Zone Tanks and Outfitting Wells, but not for landscaping and building contracts.
- The District has an open-ended landscape agreement, dated August 2006, with a landscaping firm, the owner of which is the father of one of the District’s senior management officials, to landscape approximately 10-acres at the District’s 80-acre Recharge Facility, excluding cost of materials. From August 2006 to December 2007, the District paid the landscaping firm a cumulative amount of \$1,627,325.
- At the regular Board meeting of November 8, 2006, page 3836, a statement from the General Manager was recorded that this landscaping firm was the low bidder. The General Manager indicated a labor contract was negotiated with this landscaping firm to avoid paying prevailing wages. Investigation led to the fact that there was no Request for Proposals sent out by the District and no bids were received for the landscaping of the Recharge Facility. The District leased employees and equipment from the landscaping firm.

- A contract was issued on December 14, 2005, to an architectural firm for consulting services for the remodel/new construction of the District's administration building. The minutes of the regular meeting of the Board on June 8, 2005, the Board approved a Master Plan for the building and, when asked if the project would go out to public bid, management replied in the affirmative. However, no competitive bidding occurred. Public Contract Code Section 20561 does not require public bidding when approved by the Board in advance, however, Board approval was not given. The Board did approve \$1,500 for a Proposed Master Plan, \$1,000 for a Master Plan and retainer of \$37,000 for Phases I and II. The preliminary cost estimates were \$2,743,675. Due to the discovery of unsafe conditions in the building to be remodeled, the scope of the work changed from remodel to new construction. The architectural firm said the cost would be different. A new contract was not issued and the new cost is unknown.
- Under the architectural firm's original contract of December 7, 2005, Phase III states in part:

Bidding and Negotiation:

- a. Supply bidding Construction Documents to the various Plan Check rooms;
- b. Answer, in writing, all General Contractor Request for information questions, issue all project addendums;
- c. Assist Beaumont-Cherry Valley Water District with the Public Bidding process and review the General Contractor's bidding forms and submittals; and
- d. Attend and Chair the Project bid Opening Meeting.

Public bidding did not occur in the selection of the general contractor or any of the numerous subcontractors.

- At a Special Board Meeting on April 30, 2008, the cost of the new administration building was reported to be between \$3.8 and \$4 million. However, review of invoices submitted for payment by contractors and sub-contractors, revealed a conservative estimate for the cost of the building is \$5.3 million.

6. Investments:

- The Local Agency Investment Fund (LAIF) is the only investment account in which the District participates. In May 2007, the closing balance for the month was \$8,589,322.39. As of April 2008, the closing balance was \$2,104,228.93, a difference of \$6,485,093.46. There is no policy and procedure concerning District investments and the Board does not review the existing investment on a regular basis.

7. Nepotism:

The District has a conspicuous presence of nepotism within the organization. Interviews revealed that nepotism has promoted an erosion of confidence within the District and the community regarding the integrity and efficiency of the Board, management, and its' employees. Investigation revealed that most other water districts such as Rancho California Water District, Metropolitan Water District, and Eastern Municipal Water District, have a clear policy of no nepotism.

Examples of nepotism:

- A married couple working under the same supervisor with access to District funds.
- A father supervising his son.
- A father who is a superintendent and a son who is receiving a paid education.

8. Conflict of Duties and Errors:

- The General Manager serves as Secretary and Treasurer to the Board and attends all closed meetings. This arrangement adds to the current atmosphere of mistrust that exists between the Board and the General Manager, see pages 3 and 6 of The Governance Report of November 14, 2007. This report was requested by the Board and District Manager to attempt to achieve an effective working relationship. In addition, the General Manager has neglected his Treasurer role by not recognizing numerous accounting errors made by staff personnel and failing to provide annual audits to the RCAC. Complaints from the public and within the Board have been made that meetings are too lengthy due to the many questions, explanations, and corrections being made.

Reference minutes of the regular meeting of the Board of February 13, 2008, page 3983, and August 22, 2007, page 3900.

- The General Manager does not always respond to Board members' requests for inclusion of agenda items to the agenda, even when submitted on time. As of February 13, 2008, as recorded in the minutes, the Board members are not now allowed to request inclusion of agenda item to a Board's agenda.

9. Policies and Procedures Manual:

A Riverside County Grand Jury Report of 1998, recommended development of a policies and procedures manual. When the policies and procedures manual was requested on or about November 2, 2007, by the current Grand Jury, the District's General Manager reported that they did not have a policies and procedures manual. On or about November 30, 2007, the Grand Jury, received the manual in the mail from the District without explanation. An interview revealed that the manual, dated 1998, was found and given, anonymously, to a Board director, see minutes of the regular Board meeting November 2007, page 3939. The Board and management have operated independently without access to their own policies and procedures and without updating or revising them since approximately January 2000.

10. Board/Employee Training:

A District employee wrongly accused a Board Director of harassment. Harassment is a form of discrimination that violates Title VII of the Civil Rights Act of 1964, as amended. It is defined as unwelcome conduct that is based on race, color, sex, religion, national origin, disability, and/or age. The District's harassment policy adopted August 1998 contains further definitions, guidelines and procedures for filing a complaint. The Director's conduct did not meet the criteria of these directives. The District's policy states, "all communications regarding any type of harassment are to be kept in strict confidence." It further states, "each allegation of harassment will be thoroughly and confidentially investigated by the General Manager and will include a written statement from the alleged harasser". The General Manager did not keep the communications of the alleged harassment in confidence and did not obtain a written statement from the Director; rather he requested that the complaint be read in a public meeting and required the Director to make a public apology.

Recommendations

**Riverside County Board of Supervisors
Beaumont-Cherry Valley Water District, Board of Directors
Beaumont-Cherry Valley Water District, General Manager
Riverside County Auditor-Controller
Riverside County District Attorney, Ethics Division**

1. Audits:

The Board must immediately eliminate obstacles and comply with Government Code §26909 requiring annual audits. Specifically, replace outdated and unusable accounting software, keep accounting software current, and hire qualified accounting personnel. RCAC take appropriate action with the District for failure to comply with Government Code §26909.

2. Unpaid Invoices:

The Board must develop policies and procedures for ensuring timely payment of invoices from vendors and contractors. A list or ledger of unpaid invoices must be provided to the Board for review at their monthly meeting. The policy should include steps to be taken when an invoice is in dispute. Establish a time frame for payment. Invoices in excess of \$1,000 go to the full Board of Directors for review.

3. Brown Act:

The Ralph M. Brown Act, of 1953, requires public bodies to give 72-hours notice of their meetings in advance, hold them publicly, and deliberate and vote on most issues in a public forum. When the Board is in doubt whether or not an issue or circumstance may be violating the Brown Act, they must seek legal advice in advance of acting.

4. The District Misused Public Funds

Education and Training:

The Board must establish District policy concerning reimbursement of training and education expenses contained in the District's MOU. Discontinue payment of the educational expenses for employees who do not meet the conditions contained in the District's MOU. Require reimbursement from the employees for all non-job related courses and expenses. If an engineer is required, the District must contract for a qualified engineer to perform the engineering duties.

Travel and Training

- The Board must implement a policy for the General Manager to follow in the selection of employees for training. The criteria for selection of an employee to attend a conference must be made objectively, and established in advance. Training should be to qualify, and develop employees, not for performance recognition.
- International and out-of-state travel should require Board approval before the fact.

District Housing:

The Board must follow the IRS code as written in publication 15-B “Employer’s Tax to Fringe benefits” (for use in 2008).

The District employees’ families must be removed from the District houses due to dangers of fire and flood.

Delinquent Customers:

The Board must establish a written policy in dealing with delinquent accounts and ensure the policy is followed equitably, showing no favoritism. The Board must establish safeguards and take action when a customer, residential or commercial, becomes delinquent in paying their water bill.

District Credit Card:

Adopt a credit card policy similar to the Riverside County Board of Supervisors’ policy A-62. Use of credit cards must not be used to conduct staff meetings at local restaurants at the cost of taxpayers.

5. Contracts:

The Board must develop policies and procedures for awarding contracts and competitive bidding for large expenditures over \$10,000 to be approved by the Board prior to issue, such as the construction of the District’s administration building. The Public Contract Code must be followed in word and spirit, allowing for fair competition in bidding among vendors and contractors, avoiding the appearance of favoritism, and rendering the greatest potential value. The General Manager must not assume ‘carte blanche’ status and must request guidance from the Board.

6. Investments:

The Board must develop policies and procedures for District investment programs, including regular review by the Board, and discussed at public meetings. The Board must recognize the downward financial spiral and control spending.

7. Nepotism:

The Board must develop and implement a policy that will prevent any future nepotism within the District.

8. Conflict of Duties and Errors:

- The Board must maintain a separation of powers when selecting a Secretary and Treasurer. For this reason the General Manager should not serve in either of these capacities. The selectee for either of these positions must not be an employee of the District. The duties and responsibilities of these positions should be spelled out in a Board policy manual.
- Planning agenda for Board meetings is the joint responsibility of the General Manager and the Board. Board members must be allowed to place topics on the agenda of their own meeting.

9. Policies and Procedures Manual:

The Board must demonstrate that their operations conform to all statutes and regulations under state law, as reflected in their policies and procedures manual. Policies and procedures must focus on governance, ethics, Board conduct, conflict of interest, district finances, and reserves. This list is not all-inclusive. The 1998 policy and procedure manual has been available for eight years. It is recommended that a complete review be made by the Board to update, change and abide by the policies. The manual should be updated by the General Manager, reviewed by the District's legal counsel, and voted on by the Board for approval and implementation.

10. Board/Employee Training:

The Board should institute an annual training program for key management personnel and the review of all policies and procedures including discrimination and harassment procedures. Review the policies that employees must follow when filing a complaint to the General Manager. The General Manager must keep complaints confidential. The General Manager must deal with the Board in a positive and respectful manner and within appropriate time limits.

Report Issued: 06/23/08
Report Public: 06/25/08
Response Due: 09/22/08