California State Water Project Governance Options

Review Draft, March 4, 2010

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Final report will be published as a policy report of the Center for Natural Resources and Environmental Policy, University of Montana, www.cnrep.org

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EXECUTIVE SUMMARY

The California State Water Project is the largest state-owned, multi-purpose water project in the country and the only major water and power utility owned and operated by a state government agency rather than by a separate public or private entity. Serious questions have been raised about the ability of the California Department of Water Resources (DWR) to simultaneously serve as water wholesaler and as statewide water resources planner and manager.

This report summarizes the options for creating a new special-purpose public entity to operate the State Water Project separately from the DWR. Its analysis of governance options assumes that decisions about institutional change will necessarily begin with a robust deliberation about the mission and essential functions of the State Water Project, and how those mesh with the broader public responsibilities of the DWR. It suggests a framework for that foundational assessment, leading to decisions related to a new governance structure.

Based on this research, it appears that the State Water Project's' operating challenges could be addressed by creation of a separate public entity with the following attributes:

- Sufficient institutional independence from the DWR to operate more competitively in the utility market, outside state agency contracting and personnel requirements;

- Governing board empowered to provide policy and management oversight, with members who have experience with issues arising in Project operation and who are dedicated to the Project's broad public mission;

- Regular and organized input from stakeholders (including, but not limited to the State Water Contractors) through a broadly representative stakeholder advisory committee and/or stakeholder nomination process to choose governing board members; and

- Regular and organized input from independent experts through special-focus advisory boards to address highly technical aspects of operations, marketing, and regulatory compliance.

These qualities may be captured in a variety of organizational forms, the details of which are outlined in this report.

INTRODUCTION

The California State Water Project is the largest state-owned, multi-purpose water project in the country and the only major water and power utility owned and operated by a state government agency rather than by a separate public or private entity. This unusual arrangement reflects the historical imperative to move vast quantities of water over large distances to serve the state's growing population. Water supply and distribution in California has long been a matter of broad public concern and involvement, more so than in any other state in the country.

Despite its impressive record of performance in managing the State Water Project, serious questions have been raised about the continued ability of the California Department of Water Resources (DWR) to simultaneously serve as water wholesaler and as statewide water resources planner and manager. This report examines options for addressing these concerns through institutional changes. It examines a range of alternative approaches to govern a public water delivery entity separately from the DWR.

The analysis suggests criteria to evaluate alternative governance options, based on case studies of a variety of special-purpose public entities. It provides a starting point for the detailed deliberations that necessarily accompany consideration of major institutional change. This report provides a template for considering a range of options and highlights key elements of an accountable and responsive governance structure, but it does not advocate a single "ideal" model.

This analysis assumes several fundamental principles of State Water Project management, including the need to reflect broad public values and ensure transparency and accountability to the many affected interests and the general public whose water is at stake in all decisions concerning State Water Project operations. Thus, although privatization of water operations is theoretically an option, it is not within the range of alternatives explored here. The various governance options analyzed in this report all operate in the public realm, whether through direct supervision of an elected government body or through alternative oversight provisions.

This introductory section includes a summary of the discussion to follow, in order to orient readers to the materials in the report.

Roadmap to the Analysis

The goal of this report is to inform a broad public policy discussion about the State Water Project. It aims to provide a useful reference of the types of institutional arrangements that support public utility operations in other parts of the country,

and to suggest a basic set of questions to ask in deciding whether to change the current structure of the State Water Project.

The report begins with a brief summary of the history and institutional setting of the State Water Project. The DWR's responsibility for running this large public works project reflects the unique geographical and historical factors that influenced settlement in California. Increasingly, however, the DWR is challenged to serve both as statewide water resource manager and as the operator of a major water and power utility. Calls for separation are not new, but have accelerated in recent years, with some support from within the DWR.

After providing this historical and institutional context, the main analytical part of the report looks beyond the State Water Project to review the ways in which other major utilities are governed through "special-purpose public entities." This bulky descriptive title captures a wide variety of organizations such as special districts, public authorities, and government corporations. These titles vary in different states, so the report uses the general descriptive phrase to capture the full range of these entities. The discussion in this part of the report helps the reader understand the common characteristics of such organizations and what it would mean to create a new special-purpose public entity to govern the State Water Project. It suggests a series of questions to ask in evaluating possibly institutional change, and walks through a series of choices reflected in different institutional structures—choices related to accountability, responsiveness, and how affected interests are represented in decision making.

The report concludes with a discussion of key principles for State Water Project governance and observations about the potential benefits of creating a new special-purpose public entity with its own governing board to govern the operations of the State Water Project. This discussion suggests pros and cons of several models discussed in the earlier analysis.

Materials in the appendix provide more details of the governance structures of other public utility operations, ranging from water departments within municipal entities to those that operate almost entirely independently from elected government bodies. These case studies provide most of the examples mentioned in the analysis of institutional options in the body of the report.

In addition to this summary of the report's analysis, it is important to make clear that this report is neither a blueprint for combining the State Water Project with the federal Central Valley Project nor an analysis of the governance options currently under way for the Sacramento-San Joaquin Delta.

Recurring proposals to integrate federal and state operations make a great deal of sense. Combined operations are already a partial reality through the terms of the Coordinated Operation Agreement and the joint operations of facilities such as the

San Luis Unit. Many have called for the transfer of federal title to the State of California to effect a more fully integrated water management system.

This report suggests governance options that would accommodate but are not dependent on a change in the Central Valley Project's ownership. As Benjamin Simon observed in an analysis of proposed Bureau of Reclamation water facility title transfers, "The extent to which the federal interests can be protected does not necessarily depend on the federal government holding title, but more on clearly defining what these interests are and developing governance arrangements to protect them" (Simon at 1192).[1]

Moreover, California voters will decide in November 2010 whether to invest the Delta Stewardship Council with authority to implement the Bay Delta Conservation Plan's strategies to endangered and sensitive species in the Delta in a way that also provides protection and restoration of water supplies.[2] Discussions are now underway about the exact form and responsibilities of the new governance body, which will involve the operator of the State Water Project.

The Limits of Governance Reform

Governance is a process by which decisions are made, both within an organization and among organizations that work together. Governance choices dictate which individuals are involved in making decisions, how responsibilities are shared and goals prioritized, and how decision makers are held accountable to those they serve. By contrast, an organization's business model outlines functional responsibilities ("who does what"), incentives for productivity, and related operational details.

When an organization is being restructured, both the governance and business models may be changed. Some of the issues related to the DWR's responsibility for State Water Project operations relate more closely to business practices, and may or may not be addressed by changing the governance model. Indeed, improving the structures for governance is not a "silver bullet" for solving complex water management problems such as those challenging the State Water Project, but it is an essential component of a comprehensive strategy to do so. As stated succinctly in the book *Common Waters, Diverging Streams* (Blomquist at 16, 134),

> The water policy literature is filled with appeals to institutional change as the solution to a water management problem—transform public to private ownership, change from regulatory to market-based allocation, centralized

[1] Full citations for all publications referenced in the text are listed in the "Resources" section at the end of the report.

[2] See the materials generated by the BDCP Implementation Structure/Governance Working Group at http://resources.ca.gov/bdcp/implementation_structure_governance_working_group_2009.html

> water policy, or decentralized water management. These are like recommending "flipping the institutional switch" to achieve desired policy goals. . . . [But,] institutions matter not only because they inhibit, but also because they are absolutely necessary for realizing, desirable water practices.

In short, implementing any variation or combination of the options outlined here will not solve conflicts over interpretation and enforcement of legal mandates, public funding shortfalls, or allocation of resources between urban and rural populations. Nonetheless, an improved governance structure will make those outcomes more likely by empowering the people who need to be part of the solution to be in a position where that is possible.

In an oft-repeated aphorism that originally applied to architecture, "form follows function." As stated in a report evaluating policy options for the Metropolitan Water District of Southern California, "it is premature to select a governance structure for an organization before its mission and functions have been determined" (Dixon at 31). Accordingly, the following discussion of governance options assumes that decisions about institutional change will necessarily begin with a robust deliberation about the mission and essential functions of the State Water Project, and how those mesh with the broader public responsibilities of the Department of Water Resources. This report makes use of a working definition of missions, but assumes that these will be clarified and revised as this evaluation process moves forward.

INSTITUTIONAL CONTEXT

The location of the State Water Project within the Department of Water Resources may seem an anomaly compared with other water delivery entities, but the history of the DWR is linked tightly to the origin and construction of the State Water Project and close relations with organized groups of water users such as the State Water Contractors.

California's unique and complex water infrastructure reflects the state's legacy of booming growth, visionary and ambitious leaders, and frankly challenging physical conditions. No other state has devoted as much attention to moving water from where it is abundant to where people need it, or faced comparable environmental consequences from success in this endeavor. Through the State Water Project, the State of California assumed a major role in developing a comprehensive vision for water development and in pursuing that vision in major public works projects.

Proposals to construct a major north-south water conveyance system emerged in the early part of the twentieth century to meet water demands for urban and

agricultural growth in the southern part of the state. An early assessment of the options to transport large quantities of water from the north (articulated in the 1919 State Water Plan) prompted the state legislature to enact the first round of authorizing legislation, the Central Valley Act of 1933. Voters approved a $170 million bond act later that year, but revenue bonds were unmarketable during the Depression, and in 1935 the federal government stepped in to construct the Central Valley Project as a public works program.

In the mid-1950s, legislators convened special hearings to consider a series of reports prepared by state water officials proposing additional infrastructure to meet the needs generated by rapid growth after World War II. These reports inventoried the state's water resources, assessed the feasibility of large-scale transfers from the north to south, and proposed the new dams, aqueducts, and related facilities necessary to achieve this vision. The State Water Project generated a great deal of controversy and debate. In 1956 the legislature combined the Division of Water Resources of the Department of Public Works with the State Engineer's Office, the Water Project Authority, and the State Water Resources Board into a new Department of Water Resources, which was aimed squarely at implementing the vision of a State Water Project.

Shortly thereafter, legislators approved the Burns-Porter Act, which authorized $1.75 billion bond financing for the construction of the Project. California voters narrowly approved this measure in November, 1960. Although some of its components had already been approved and were in early stages of construction, the 1960 election launched the State Water Project in earnest. The Metropolitan Water District of Southern California signed on as the Project's first contracting agency before the end of the year.

Today the State Water Project includes 34 storage facilities, reservoirs, and lakes; 20 pumping plants; four pumping-generating plants; five hydroelectric power plants; and about 701 miles of open canals and pipelines. It provides water to approximately 23 million people and 755,000 acres of irrigated farmland. The State Water Project generates and uses a great deal of energy to pump water through the system, making it the single largest consumer of energy and the fourth largest hydroelectric generator in California.

This infrastructure was financed primarily through sale of general obligation and revenue bonds. The 29 water contractors that receive State Water Project deliveries will repay these bond funds, and also provide the bulk of annual capital and operating expenses.

The DWR holds water rights necessary to operate the State Water Project, and thus is a permittee subject to regulation by the State Water Resources Control Board, as well as federal regulatory agencies such as the U.S. Army Corps of Engineers,

National Marine Fisheries Agency, U.S. Fish & Wildlife Service, and the Environmental Protection Agency.

The DWR describes its overall mission: "To manage the water resources of California in cooperation with other agencies, to benefit the State's people, and to protect, restore, and enhance the natural and human environments." The agency operates and maintains the State Water Project, provides dam safety and flood control and inspection services, assists local water districts in water management and water conservation planning, and plans for future statewide water needs. Every five years, the DWR analyzes water supplies and projected needs in California Water Plan updates, and is required by law to convene an advisory committee to aid in that process.[3]

Approximately 70 percent of DWR staff works primarily on the State Water Project.[4] The DWR operates the State Water Project as a major water and power utility, with a defined customer base in the water supply agencies with contracts to receive Project water. This provider-client relationship distinguishes the DWR from most state agencies that serve dispersed and diverse public constituencies.

Although the DWR is a state agency subject to legal requirements for open meetings and public records, State Water Project governance takes place largely out of the public eye. The Deputy Director for the State Water Project reports to the DWR Director and publishes *Bulletin 132: Management of the California State Water Project*, an annual report with information regarding project costs and financing, water supply planning, power operations, significant events, hydrologic information, capital construction information, and activities related to water delivery, operations, and maintenance.[5]

The Operations Control Office manages daily water and power operations for the State Water Project, including negotiating for the sale and purchase of electrical power and coordinating operations with other state and federal agencies. This work is divided among three branches: Project Operations Planning; Project Operations Center; and Project Operations Support.[6]

Although not set up with strong oversight authority, the California Water Commission served for decades as a policy advisory body to the DWR. Its statutory authorization directs the nine-member Commission to "confer with, advise, and make recommendations to the [DWR] director with respect to any matters and

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[3] The current plan revision process is outlined at http://www.waterplan.water.ca.gov/index.cfm

[4] Statement of Ralph Torres, Little Hoover Commission Water Governance Subcommittee (9/23/09).

[5] Past reports (through water year 2006) are available at: http://www.water.ca.gov/swpao/bulletin.cfm

[6] The division of responsibilities among the branches is described at: http://www.water.ca.gov/swp/operationscontrol/

subjects under his jurisdiction."[7] Governor Schwarzenegger proposed eliminating the Commission, along with many other boards and commissions, in his 2005 reorganization plan, and did not appoint replacements for the members who resigned in 2003. The Commission is currently dormant, but recently enacted legislation would vest the body with the authority to allocate funds for water infrastructure and related purposes, if a bond measure is approved by California voters in November 2010.[8]

Proposals to separate the State Water Project from the DWR emerge periodically, with various recommendations for governance structures for a new water delivery entity. In the early 1970s, for example, the California Water Commission recommended creating a public authority to govern the water delivery system. The California Chamber of Commerce echoed and expanded upon this idea in a 1983 report, suggesting a new state agency, the State Water Project Authority, which would be governed by representatives of the executive branch of state government, the public, and the State Water Project contractors. In 2004, the California Performance Review Report suggested the same change, and urged transfer of portions of the water delivery infrastructure to a Joint Powers Agency created by the State Water Contractors. More recently, several parties appeared before the Little Hoover Commission to discuss options for separating the DWR's water delivery and statewide water management functions.[9] The DWR itself has studied the issue and is currently preparing a report focused on the challenges facing the State Water Project, laying the groundwork for a subsequent analysis of alternative governance structures for water delivery.[10]

GOVERNANCE CHOICES FOR SERVICE DELIVERY

The State Water Project is a publicly owned and operated enterprise serving a large sector of the state's population with an essential service through a complex set of contractual arrangements with other public entities.

This functional description fits many special-purpose public entities, which have proliferated since the middle of the nineteenth century. Since 1950, the number of such organizations expanded by 300 percent, adding up to 34,000 by 1999 (Bourdeaux at 441).

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[7] Cal. Water Code Sec. 161.

[8] S.B. 8, signed by Gov. Schwarzenegger on Nov. 9, 2009, part of the Comprehensive Water Package enacted in Special Session.

[9] This testimony is available at www.lhc.ca.gov

[10] Dept. Water Resources, Office of the Deputy Director, State Water Project, *Critical Issues Facing Administration of the California State Water Project* (draft dated June, 2009).

As defined by one scholar, "special-purpose entities are entities of government, established by a legislative body to perform a public purpose, that provide market-oriented services and produce revenue that meets or approximates their expenditures" (Eger at 125). One leading observer in their growth wrote that "a hallmark of special-purpose governments is their mix of public and private character, which earns them labels such as quasi-public governments or the businesses of government" (Foster at 8).[11]

All such entities serve some general-purpose (elected) government body, such as Congress or the state legislature. Eger (at 130) listed common characteristics of special-purpose public entities:

- The power of the entity is defined by public statute;
- The government wholly owns the entity;
- The entity is legally distinct from the establishing government;
- The entity is free of regulations and procedures applicable to traditional government service organizations;
- The entity may have an ex-officio board member;
- The board members may be politically appointed;
- The board of directors is not compensated;
- The entity has the ability to hire and fire employees;
- The entity has the ability to hire a manager or chief executive officer; and
- The entity has the ability to issue debt and the ability to charge fees for services rendered.

These organizations are known by a bewildering and inconsistently applied array of names: quasi-governmental bodies; public authorities; special districts; and government corporations. Thus, nomenclature alone is insufficient for distinguishing essential characteristics of special-purpose public entities. Accordingly, this analysis does not classify governance structures by title, but by governance characteristics such as independence of control, board membership, and organizational authority.

One particular designation deserves special attention, since it is commonly applied to the State Water Project. A "utility" is a legal monopoly authorized by law to provide a public service such as water or electricity. Public utility regulation typically allows for such monopolies to exist as a necessary means of doing business, in return for which the provider must serve all those persons within the service area, charging reasonable rates in a non-discriminatory manner (Tarlock et al. at 774). The State Water Project functions as a utility, but is not subject to

[11] As described in the Introduction, the terminology for such organizations is far from consistent. This report uses the general descriptive phrase "special-purpose public entity," but other phrases appear in quoted passages." The key elements of public ownership and private enterprise operations remain consistent despite the various titles applied.

regulation by the California Public Utilities Commission, whose jurisdiction extends to investor-owned (private) utilities.

What would it mean to create a new special-purpose public entity to manage the State Water Project in California?

A key change would be separation of water delivery and infrastructure management functions from the Department of Water Resources to a new separate public entity. This change could—depending on the legal authority of the new entity—eliminate the constraints on personnel management and contracting that currently apply to the SWP as part of a state agency.

An equally important change would be the addition of a new governing body or board to provide management oversight and broad policy guidance to State Water Project managers. Governance structures of special-purpose public entities are based on models developed in private corporations, and serve similar functions with relation to management. They typically rely on the recommendations of professional staff for management decisions, but cooperate in setting broad policies through strategic planning. By providing representation to the organization's constituencies, they provide management with a buffer from the demands of interest groups and elected officials.

Brief Overview of Special-Purpose Public Entities

Most of the water delivered in the United States comes through special-purpose public entities (Gottlieb and Fitzsimmons at 109). One category of water provider—the irrigation district—proliferated in response to a series of state and federal legislative enactments. For example, in the Wright Act of 1887, the California legislature allowed a majority of residents in an area to form a public entity for water delivery, and to finance its operation through bond sales. At the federal level, although the Reclamation Act of 1902 contemplated that the Bureau of Reclamation would contract directly with water users and private irrigation companies, the Warren Act of 1922 gave the Secretary of the Interior authority to contract with irrigation districts for repayment of federal project costs; subsequent legislation in 1926 mandated irrigation districts as the only form of irrigation organization to contract with the federal government for cost repayment (Bretsen at 317).

Water districts and similar special-purpose public entities enjoy a number of advantages over their private counterparts, such as the ability to levy taxes and/or issue bonds to raise money for new infrastructure, and the authority to acquire property through eminent domain. Conversely, they generally are not bound by the restrictions applicable to typical public agencies such as civil service and procurement laws and regulations, and they have broad authority to determine

their own policies and budgets, which typically are not included in state budgets, or are attached separately, as addenda.

California ranks near the top of the states in the creation of special districts. As described in an report to the California State Senate, "State law defines a special district as 'any agency of the state for the local performance of governmental or proprietary functions within limited boundaries' . . . In plain language, a special district is a separate local government that delivers public services to a particular area" (Mizany at 2). Special districts are categorized by whether they are: (1) single function versus multi-function (depending on the range of services provided); (2) enterprise vs. non-enterprise (depending on whether they are publicly funded or funded by user-generated revenues); and (3) independent vs. dependent (depending on degree of control exerted over them by a general purpose elected body, such as a city or county). Nearly three-fourths of California's water special districts are independent, and independent water districts account for nearly 90 percent of total water activity revenues in the state (Calif. LAO at 3-4).

California law also authorizes two or more public agencies to exercise "joint powers" to create new legal entity or to establish a joint approach to address a common problem, fund a project, or act as a representative body for a specific activity (Cypher & Grinnell at 5). The acronym JPA can refer to a joint powers authority or agency (a new legal entity) or a joint powers agreement (a formal contract to work cooperatively toward common goals). The legislature authorized the creation of joint powers agreements in 1921, and expanded the law to authorize joint powers agencies in 1947 (Cypher & Grinnell at 10).[12]

A report prepared for the California State Senate in 2007 provided a useful comparison of special districts and JPAs:

> A special district is a separate local government with its own governing body that delivers public services to a particular area. Special districts rely on state laws for their legal authority and elected or appointed boards of directors for their governance. . . . The legal authority for all JPAs comes from just one state law, the Joint Exercise of Powers Act. Each type of special district has its own principal act. . . . JPAs provide only the services that are common to their member agencies, while special districts can deliver any of the services that state law permits (Cypher & Grinnell at 20-21).

A special district may enter into a joint powers agreement or form a joint powers agency with other public entities, including other special districts and local, state, and federal agencies. Importantly, the JPA's legal powers include only those that are common to all member agencies.

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[12] See Joint Exercise of Powers Act, Government Code §6500, et seq.

Pros and Cons of Special-Purpose Public Entities

The proliferation of special-purpose public entities, in water service and in many other areas (housing, public transit, and other community services), reflected the "good government" theme of the Progressive Era. Their businesslike structure, it was believed, "would reduce corruption and increase efficiency by loosening control and abuse of funds by corrupt government personnel and putting the provision of services in the hands of an independent entity," ensuring "efficiency, expertise, and independence" (Rosenbloom at 861, 867).

Numerous studies have revealed the persistence of politics, political pressures, and management challenges despite creation of special-purpose organizations insulated from electoral politics. For example, a 1964 study concluded that "political decisions remain political decisions whether made by a unit of general government or a special district" (ACIR at 53). Others have criticized the typical special-purpose public entity as a "shadow government," that "lives and moves in a third dimension of political life" (Eger at 127).

One critic cautioned strongly that the assumptions underlying the trend toward special-purpose public entities ignore the reality of their operation:

> When tested against private corporate regulations, public authorities appear seriously deficient. Their use of private corporate structures does not produce a more efficient, expert and independent body. In fact, they have drawn only selectively on the private corporate structure, leaving many of the core components that promote efficiency, expertise and independence behind. In particular, public authorities are not required to operate in the interest of a definitive body like shareholders, nor are they subjected to market forces designed to gauge and check whether they are successfully operating in the shareholders' interest. The failure to adopt these two critical structural features results in an operation in which public authorities have neither an ultimate goal (i.e. increasing shareholder investment) nor a standard with which to judge attainment of that goal (i.e. market forces) (Rosenbloom at 898).

Similarly, the Little Hoover Commission's report on independent special districts in California concluded that these entities "often operate in relative obscurity, hidden from the scrutiny of the public they were created to serve. The accountability mechanisms that do exist . . . are often inadequate" (LHC at iv).

A recent study of the responsiveness of special districts presented a more favorable view. Megan Mullin, in her forthcoming book on water district governance, concludes that,

> On the whole, I have found that special districts are more responsive to their constituents than the conventional wisdom suggests, but that does not make them a simple fix for local public problems. Policy questions that cross issue boundaries pose a challenge for specialized governance, and fragmentation of authority introduces new actors into the policy process who represent multiple political constituencies. Interaction among governments and groups in an institutionally fragmented system may produce outcomes unanticipated by those who backed a special district's formation. (Mullin at 265)

In light of these divergent views, the key point is that creating a special-purpose public entity—whatever its label—is not a magic formula to ensure efficient services and accountability. It can, however, be a useful tool for delivery of public services if tailored to respond to the particular needs of the constituents and the service providers.

Questions to Ask in Evaluating Options

There are many choices for governing special-purpose public entities. Choosing a model for any particular application requires a careful consideration of the desired balance of independence and accountability necessary to achieve organizational objectives. Choices among the many possible elements should respond to the particular needs, conditions, and demands of the organization and its constituents.

The following questions will help assess relevant factors and should support a meaningful decision process in considering governance options for the State Water Project. The initial questions (1 and 2) are beyond the scope of this report, but are included because they are necessary prerequisites to a consideration of governance options. A report currently in preparation at the DWR[13] will provide useful background for this initial analysis.

1. What is the mission of the State Water Project in relation to the Department of Water Resources?

- ***What do we expect each organization to do?***
- ***What legal authority does each organization require to do this?***
- ***How do the operations of the State Water Project relate to overall water resources management and planning in California?***

Currently, the DWR's mission is described as: "To manage the water resources of California in cooperation with other agencies, to benefit the State's people, and to protect, restore, and enhance the natural and human environments."

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[13] Dept. Water Resources, Office of the Deputy Director, State Water Project, *Critical Issues Facing Administration of the California State Water Project* (draft dated June, 2009).

For the sake of discussion, the State Water Project's mission could be articulated as, "To achieve operational efficiency and reliable water supplies while mitigating for environmental impacts and protecting the broad public resource values encompassed by project operations."

If the State Water Project is to be separated from the DWR, more specific mission statements and legal authorities would need to be spelled out. There is considerable concern about "gutting" the state agency by removing a large portion of the professional expertise devoted to the State Water Project. Thus, despite the potential for operational efficiencies and other advantages of a new special-purpose public entity, equal consideration must be given to the structure and authority of the DWR as a water management agency without utility operations responsibility.

2. Would this mission be better served by creating a new special-purpose public entity to operate the State Water Project?

- ***Would this save money and provide water delivery more efficiently?***
- ***Would the State Water Project be operated with greater expertise?***
- ***Would it be beneficial to operate water delivery independently from statewide water resources management and planning?***

Assessment of the fiscal and other operational benefits of removing the State Water Project out of the DWR is beyond the scope of this report. Some initial analyses have been completed by the State Water Contractors, and additional studies are underway at the DWR. Importantly, fiscal efficiency is only one factor among many in governing public resources such as water, but improving the State Water Project's financial position could result in enhanced opportunities for protection and restoration of water-related resources, as well as reduced costs for the State Water Contractors and others with a stake in project operations.

3. What legal entity would provide the desirable level of independence from the DWR and elected officials for the State Water Project?

The State Water Project currently is located within the DWR and thus is completely within its authority. Options for separation range from creating a new governmental body within the Resources Agency to setting up an entirely independent legal entity.

Limited independence is useful when public policy favors strong centralized control by a general-purpose government body. The U.S. Census Bureau looks to the authority of the public entity in determining its independence. If the organization requires approval from elected officials to set its budget or issue debt, it is not considered independent. Similarly, the Census Bureau does not consider an entity to be independent if its board (whether elected or appointed) is composed entirely or

primarily of representatives of the government that created the district (Mullin at 36).

An *advisory body*, such as the California Water Commission (currently inactive), provides a minimal level of separation, emphasizing input over authority. Such a structure can be useful in facilitating inter-agency communications—as when members of an advisory body are ex officio members of state government who serve on several such boards—and they can enhance opportunities for stakeholder input. But an advisory body does not provide strong oversight, as its members have no controlling authority over management policies or operations. In short, choosing to establish a new advisory body would represent essentially no change in governance for the State Water Project, although it might improve stakeholder participation processes.

Dependent authorities that operate under direct supervision of elected officials represent the next level of limited independence. The Los Angeles County Metropolitan Transportation Authority, for example, is governed by a 13-member board of directors: the five Los Angeles County Supervisors; the Mayor of Los Angeles; three Los Angeles mayor-appointed members; four city council members representing the other 87 cities in Los Angeles County; and one non-voting member appointed by the Governor of California.

Similarly, *joint powers* entities (agencies or authorities) represent a model of a dependent special-purpose public entity. As described earlier, a JPA is formed when the public officials of two or more agencies agree to create another legal entity or establish a joint approach to work on a common problem, fund a project, or act as a representative body for a specific activity (Cypher & Grinnell at 5). A JPA has no authority beyond that of the government bodies that create it. Because its governance is controlled by the agencies that created it, a JPA is not considered an independent special-purpose public entity. Among many examples of JPAs in California, the Southern California Public Power Authority formed in 1980 to finance the acquisition of generation and transmission resources for its members, which include 11 municipal utilities and one irrigation district. The chief executive officers of these member utilities comprise the SCPPA's governing board, all serving in an ex officio capacity.

Dependent special districts, such as County Service Areas, offer an example of broader, but still limited, governing autonomy. Unlike a JPA, a dependent special district is a separate government entity that delivers public services to a particular area. Also in contrast to a JPA, a special district relies on state laws for its legal authority rather than authorities derived from the governments that created it. (Cypher & Grinnell at 20). Dependent special districts remain under the control of elected officials. These officials may supervise a dependent district directly or may appoint a local advisory board to assist them. A report prepared by the Legislative Analyst's Office in 2002 observed that county supervisors overseeing a dependent

water special district might have difficulty dedicating enough time to understand complex water delivery issues; on the other hand, governance by elected officials "may offer a broader community perspective than one which focuses exclusively on water issues" (Calif. LAO at 6).

Moderate independence results when the enabling government body appoints members of a governing board who are authorized to determine policy and provide some level of supervision over management and operations of the special-purpose public entity. This is a widely applied model in the case of water and electrical power wholesale entities. Depending on the method of appointment, board members may serve essentially as proxies of those who appointed them, or they may act quite independently. In both cases, the service entity's governing board enjoys considerable autonomy in setting policies and shaping management priorities, but remains linked to a general purpose public government, whether through a political appointment process or by periodic audits and reviews.

One example of moderate independence is Denver Water, which is organized as a *municipal corporation* and governed by a 5-member Board of Water Commissioners appointed by the Mayor of Denver. The Denver Water Board exercises independent authority in setting water rates and overseeing operation of the water works system, but is treated as a "component unit enterprise fund" in the City's financial reporting. With limited exceptions, Denver Water is subject to all the civil service requirements of other City agencies, and enters into contracts in the name of the City and County of Denver.

The Tennessee Valley Authority exemplifies a more autonomous but still "moderate" level of independence. This *public corporation*, created by an act of Congress, is wholly owned by the federal government and is subject to a variety of audits, investigations, and congressional oversight hearings. On the other hand, Congress has no say over TVA board members' decisions about power rates.

The **highest level of independence** occurs when the governing body of a special-purpose public entity makes policy and management decisions independently, and is not called upon to justify or defend these decisions by elected officials. Examples of highly autonomous entities include *independent special districts* and independently structured *public benefit corporations*. An independent public entity "possesses substantial freedom from other governments in its fiscal and administrative options" (Bollens at 35).

The majority of California's water special districts are independent special districts.[14] Independent special districts' governing bodies are either directly

[14] The LAO reported that nearly three-quarters of the state's special water districts are independent, and that independent water districts account for nearly 90 percent of total water delivery revenues (LAO at 4).

elected by the voters or appointed for a fixed term of service by elected officials. The LAO concluded that independent special districts offer several advantages over dependent districts for water delivery: (1) board members are likely to devote more time to develop the necessary expertise on water issues; and (2) separate administrative systems offer economies of scale over separate functions performed by general government bodies.

The California Independent System Operator (CAISO) represents an independent special-purpose organization subject to regulation by other agencies but not by the appointing government body. Members of the board of this nonprofit public benefit corporation are appointed by the Governor with Senate confirmation, but enjoy broad discretion in the exercise of their authority to oversee management and set trading rules for the state's energy transmission grid. The CAISO is an unusual institutional creature—a private corporation headed by a publicly appointed board.

Another level of independence is achieved in special districts whose boards are elected by the general public. For example, voters in the counties in which the District operates the Central Arizona Project elect members of the Central Arizona Water Conservation District's Board of Directors. The District operates with a great deal of autonomy, but the U.S. Bureau of Reclamation retains authority over the terms of contracts for CAP water deliveries.

Institutional restructuring that results in privatization of water delivery infrastructure represents the highest level of independence from government control. Although not considered in this report—which is focused on the options for creating a new *public* entity to govern the State Water Project—the privatization option is the subject of considerable literature and discussion. In the late 1980s and early 1990s, for example, New Zealand sold government-owned irrigation projects to water users and other entities interested in operating them for profit (Simon at 1191). A National Research Council report on privatization of water services in the U.S. noted "the possible contradiction between short-term profit maximization and long-term needs to protect infrastructure and water source areas" (NRC at 5). The Resources section of this report includes several sources on the governance implications of privatizing public water systems.

4. What governance structure would enable the State Water Project to fulfill its mission with optimum accountability?

- ***What size governing body is appropriate?***

The size of a governing board will depend in part on whether it is set up to represent a designated number of interests or geographic areas. Organizations whose boards are selected by member organizations may have larger boards; for example, a 37-member Board governs the Metropolitan Water District

of Directors, appointed by the District's 26 member agencies. Advisory boards also tend to be large, with members representing partner agencies, representative stakeholders, and other identified interests.

Special-purpose public entities are more typically governed by smaller boards, ranging from five to 15 members. An odd number of board seats can help prevent ties in board voting.

- ***How should governing body members be selected?***

The method of board member selection may reflect the independence of the public entity but relates more closely to the lines of accountability from board members to constituents. The initial question is whether the board should be appointed or elected, but there are numerous choices within each of those categories.

Appointed boards are more common in the special-purpose public entities reviewed in this research. Methods of appointment vary widely, ranging from strictly defined stakeholder representative boards to wholly discretionary appointed boards to fully "independent" boards in which members select their own successors. Often an executive official (e.g. Governor) makes the initial appointments, with a legislative confirmation process.

Ex officio board appointment is typical for dependent models of special-purpose public entities such as public authorities and JPAs. These appointed members serve as a result of another official government position they hold, and do not continue in the board position if they leave their government position. This model works well to encourage information sharing and policy consistency in a joint enterprise requiring actions by multiple entities over a large geographic area, but it does not provide independent oversight.

More typically in independent special-purpose public entities, board members bring an independent perspective to their governance work. Board members of the Northern Colorado Water Conservancy District are selected by *judicial appointment*, with appointments allocated among the district's service counties.

The Tennessee Valley Authority (TVA) exemplifies a *politically appointed* board. There is no formal nomination process; instead, the President of the United States appoints the nine members of the TVA Board of Directors, subject to approval by the U.S. Senate. Federal law places some parameters on the qualifications of board members (residency, competence, and independence), but the President maintains a great deal of discretion in this selection process. This model of board selection offers a high degree of accountability to the general government body, but raises risks that board members are more likely to be selected based on their political connections than for their knowledge of the industry. Statutory qualifications, enforced by the

body with approval authority (in this case, the U.S. Senate) can answer this concern to some extent.

The CAISO provides a model for a board that is *politically appointed with stakeholder nominations*. In this case, an independent search firm provides a list of qualified board candidates for review by a 36-member Nomination Committee, whose members represent various affected interests. Committee members participate in candidate interviews, and submit a list of four names for each open board position. The Governor then chooses from this list in making his appointments to the CAISO board, subject to approval by the California Senate. Board nominees must be "independent"—meaning that they cannot be employed by, consult for, or hold any direct or indirect financial interest in the generation, transmission, or marketing of energy.

The CAISO's original governing board consisted of *stakeholder-selected* members, representing sectors of the energy market affected by the CAISO's operations. The Federal Energy Regulatory Commission (FERC) ruled that this model did not comply with its requirement that an ISO be independent of control by market participants: "We recognize that transmission owners need to be able to hold the ISO accountable in its fiduciary role, but should not be able to dictate day-to-day operational matters."[15] After regulatory challenge by FERC, the California legislature adopted the new independent board structure described above.

The Metropolitan Water District of Southern California exemplifies a variation on the stakeholder-selected board. The 37 members of MET's board are appointed by the 26 represented member agencies. Each agency has its own method of appointment: some agencies appoint a member of their own board; others empower their mayors to appoint board representatives; others select from members of their community. This model of directly appointed representation works well for an organization whose operations necessarily remain in the tight control if its customers, but it has been criticized for not representing other affected interests (Gottlieb at 115).

The most autonomous model for an appointed board is one in which new members are *board-selected*; current members of the governing board choose the individuals to fill board openings. This is a common structure in corporate boards, usually facilitated by a board nominating committee with decisions voted upon by the full board or an executive committee. There is no example of this structure among the special-purpose public entities surveyed for this report.

Elected boards operate more independently from elected officials, with direct accountability to the voters. While this approach offers the potential for a highly

[15] FERC ISO Principles expressed in Order 888 (April 24, 1996).

responsive governing body, in reality most voters are unaware of the positions of individual candidates and narrow interests can "capture" the process relatively easily. One study revealed that "special districts usually have a miniscule number of voters participating in elections, with involvement of 2 to 5 percent of the electorate regarded as an unusually high turnout" (cited in LHC at 18).

Also, many elected board members resign before the end of their elected term, allowing those with the authority to make appointments to choose their temporary successors—who typically win the subsequent election as quasi-incumbents (LHC at 21). This pattern eliminates the putative advantage that elections offer by drawing board members from outside the circle of people in authority.

In her forthcoming book, *Governing the Tap*, Mullin notes the advantages of elected special district boards in assuring direct public accountability. Although public awareness of board elections may be low, "they provide a mechanism for citizens to influence a district's policy direction. . . . On the whole, I find that without direct elections to provide accountability, local officials expend less effort to provide public goods and solve policy problems" (Mullin at 270-271).

Another scholar favoring elected boards concluded that "the nonelected governing boards of nontaxing districts are perhaps more accountable to the underwriters and investors who finance district projects than they are to consumers of district services." (Foster at 227-28). This is consistent with Mullin's finding that elected boards are more responsive than their counterparts on appointed boards to broader public concerns.

Elected board members may represent geographic sub-areas served by the special-purpose public entities, such as counties within the service area of a water conservancy district. In this model, elected officials have very little control over the operations of the special-purpose public entity, other than enforcing the parameters of enabling legislation. Examples of this model include the Central Arizona Water Conservation District, which operates the Central Arizona Project, and the East Bay Municipal Utility District.

Hybrid boards combine election and appointment to select governing bodies of special-purpose public entities. Although no hybrid boards were surveyed in this research, boards governing soil conservation districts are often selected by a combination of appointment (by state soil conservation committees) and election (local district voters). Similar models exist in housing authorities and other public entities (Bollens at 34).

- ***What qualifies a candidate for board service?***

Elected boards seldom require strict qualifications for service. For example, a candidate for the Board of Directors for the Central Arizona Water Conservancy District must be a resident of one of the Central Arizona Project's three service counties and must obtain sufficient signatures to appear on the ballot. Thus, virtually any member of the public may seek office on the District board.

Appointed board members may be held to more strictly defined standards of professional expertise, affiliation (in a representative board), or independence. For example, the federal law governing presidential appointments to the TVA board requires that eligible individuals must: (1) be a citizen of the United States; (2) have management expertise relative to a large for-profit or nonprofit corporate, government, or academic structure; (3) not be an employee of TVA; (4) make full disclosure to Congress of any investment or other financial interest that the individual holds in the energy industry; and (5) affirm support for the objectives and missions of TVA, including being a national leader in technological innovation, low-cost power, and environmental stewardship. No more than two of the TVA Board members may be legal residents outside of TVA's service area.

Laws governing the CAISO emphasize independence from energy generating, marketing, or transmission, and the CAISO nomination process relies on initial screening by a professional search firm to ensure competent candidates.

Stakeholder-selected representative boards consist of members selected by the designated constituent groups, each of which may apply its own selection criteria. In some cases, board members will be ex officio, based on their elected positions in general-purpose government.

- ***What is the board's authority?***

The degree of a special-purpose public entity's independence will largely determine its authority. Thus, an advisory body will have no decision-making authority, while an independent governing body has authority to approve operational budgets and determine operational priorities.

Board authority is spelled out in the legislation establishing the special-purpose public entity and in the bylaws defining its governance structure. Certain limited-authority entities such as JPAs cannot assume any more authority than those held by the government bodies that created them; statutorily created special districts can exercise all powers grated by the legislature.

Typically among the entities surveyed for this report, the governing bodies (boards of directors) are responsible for overseeing management, approving rules and rates

for service delivery, strategic planning, and approving budgets. Day-to-day operations are the responsibility of a management team, under the direction of a chief executive officer. This corporate model envisions a board playing a policy-setting role rather than participating in hands-on management, and is consistent with governance trends. For example, prior to 2005, three full-time politically appointed directors managed the TVA. The Consolidated Appropriations Act of 2005 restructured the board consistent with this corporate model, with separate policy and management functions. The current TVA board includes nine part-time members, charged with establishing broad goals, objectives, and policies; approving annual budgets; and establishing a compensation plan for employees.

- ***How will the board and staff receive input from stakeholders and experts?***

Whether or not governance changes occur, there are a number of opportunities to improve the means of soliciting input from organized groups of stakeholders, members of the public, and experts in State Water Project planning and decision making.

Any of the special-purpose public entities described here would remain subject to the open-meeting requirements of the Ralph M. Brown Act,[16] as well as to the additional notice and public comment requirements of other statutes such as the California Environmental Quality Act[17] and relevant laws such as statutes those governing special district operations.

These procedural requirements provide the baseline for what is required, but do not satisfy the needs of meaningful stakeholder/public/expert participation. As the Little Hoover Commission observed in its report on special districts, "The Brown Act, in effect, requires that people come to the government, not that government comes to the people. But the people generally do not go to special district government, either because they are unaware of its existence and activities, or because it is inconvenient" (LHC at 22).

Successful special-purpose public entities seek regular and sustained input from those outside their operations and governance, through such mechanisms as formal advisory boards, public surveys, on-line interactive forums, and newsletters and other public education tools that invite feedback and participation. More formal mechanisms for input include the CAISO's stakeholder-comprised Board Nominee Review Committee and its expert-comprised Market Survey Committee.

In many cases, sharing information and seeking input requires those responsible for governance to participate in other public processes, such as the ongoing discussions about the future of the California Bay-Delta. Such interaction will be inevitable

[16] Cal. Govt. Code 54950 et seq.

[17] Cal. Pub. Res. Code 21000 et seq.

regardless of governance structure, given the State Water Project's role as a permittee.

- ***How can the governance structure provide appropriate oversight?***

Effective oversight is an essential component of governance structures. Indeed, a core justification of creating a new governing body is to provide regular objective supervision of management activities. The board, in turn, must be accountable to its constituencies.

Corporate scandals in the past decade resulted in new laws such as the Sarbanes-Oxley Act of 2002 to ensure ethical conduct by officers of private corporations. Current best practices suggest that a majority of directors be independent; that boards form governance, audit, and compensation committees; and that corporate directors be educated regularly about corporate operations and their own responsibilities.

Board membership is no longer viewed as a passive activity. Rather, an effective board of directors has "the ability to assess the corporation's environment, organization, personnel and political affairs, as well as resulting financial accounting practices. This ability is essential in many challenges and opportunities requiring knowledge sufficient to test management's initiatives and resulting performance" (MacAvoy & Millstein, quoted in NY State Comptroller at 11).

These same principles apply to the governance structures of special-purpose public entities, although the lines of accountability are more complicated when the universe of "shareholders" extends to the general public. As summarized in a recent examination of Regional Transmission Organizations, "The idea is that the board should be 'accountable to all stakeholders, and to market participants in particular, for its actions, but the board should not be beholden to any particular set of stakeholders'" (Dworkin & Goldwasser at 563). Similarly, in the case of the State Water Project, the independent-director principle cautions against a governance body composed exclusively of State Water Contractors.

A recent initiative to reform governance of public authorities in New York directed those special-purpose public entities to adopt model corporate governance principles including:

- Training for board members;
- Separation of oversight and executive functions;
- Establishment of governance and audit committees, with a requirement that all members of the audit committee be independent;
- Establishment of policies to promote honest and ethical conduct by authority directors, officers and employees;

- Strengthening internal controls; and
- Increasing transparency and disclosure through the issuance of annual operational and financial reports, as well as a report on internal controls certified by board members and senior managers (NY State Comptroller at 12).

Other model governance principles, with similar elements have been suggested for special-purpose public entities operating regional power grids such as the CAISO.[18]

CONCLUSION: GOVERNANCE OPTIONS FOR THE STATE WATER PROJECT

This report bases analysis of governance options on several fundamental principles of State Water Project management, including the need to reflect broad public values and ensure transparency and accountability to the many affected interests and the general public whose water is at stake in all decisions concerning State Water Project operations. The various governance options analyzed in this report all operate in the public realm, whether through direct supervision of an elected government body or through alternative oversight provisions.

Based on conversations with affected parties, review of literature, and analysis of existing organizations, it appears that the State Water Project's' operating challenges could be addressed by creation of a separate special-purpose public entity with the following governance attributes:

1. Sufficient independence from the Department of Water Resources to operate outside state agency contracting and personnel requirements. This would eliminate the dependent special-purpose organizations listed above (such as JPAs), which only have the authority of the general-purpose governments to whom they are subservient.

2. A governing board consisting of diverse individuals demonstrating experience with issues arising in Project operation and dedication to the Project's broad public mission, empowered to provide policy and management oversight.
   - This favors selection by appointment, preferably through a process that defines broad qualities for nominees rather than strict interest-group or other representation.
   - This does not determine whether board members should be strictly independent of Project operations, an important public policy decision. Current trends in model corporate governance and in relevant mandates for boards governing regional power operators would favor such an independence requirement.

[18] See, e.g., Dworkin & Goldwasser and NASUCA.

3. Regular and organized input from stakeholders (including, but not limited to the State Water Contractors) through a broadly representative stakeholder advisory committee and/or stakeholder nomination process to choose governing board members.

4. Regular and organized input from independent experts through special-focus advisory boards to address highly technical aspects of operation, marketing, and regulatory compliance.

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APPENDIX: EXAMPLES OF SPECIAL-PURPOSE PUBLIC ENTITIES

The following examples are organized roughly around relative autonomy from the enabling government, beginning with the most dependent and progressing through increasingly independent governance structures.

The table at the end of the examples presents a summary of this information.

Southern California Public Power Authority

This joint powers authority (JPA) was formed in 1980 to finance the acquisition of generation and transmission resources for its members, which include 11 municipal utilities and one irrigation district. The SCPPA operates five electrical generation projects and three transmission projects, bringing power from Arizona, Nevada, New Mexico, Texas, Utah, and Wyoming.

SCPPA's legal authority derives from California's joint powers statute, Calif. Government Code 6500 et seq. Its projects have been financed by tax-exempt bonds, backed by the credit of its participating members.

The chief executive officers of each of the member agencies comprise the SCPPA's governing board, each serving in an ex officio capacity. On general matters, each member has one vote, but when voting on particular projects, votes are weighted by each member agency's financial contribution.

Denver Water

In 1918, the voters of Denver supported creation of a new public water entity to purchase the assets of a private water supplier and to plan for construction of infrastructure to secure future supplies. The Denver Water Department was set up as an independent City water agency, with the philosophy that it would be operated as a business and remain separate from political influences.

Denver Water's legal authority is outlined in the Charter of the City and County of Denver, 10.1.1 et seq.

The mayor of Denver appoints Denver's five-member Board of Water Commissioners to staggered six-year terms. Commissioners are responsible for setting water rates and monitoring the cost and maintenance of the system. The Board holds its public meetings generally twice a month. Commissioners are paid $600 annually for their service. Board members are charged with all management responsibilities for operating the water works system, as well as setting rates for

water used in the service area. The City Charter directs the Board to hire a Manager to carry out the Board's policies.

The Board may issue revenue bonds, in addition to generating funds through operations of the water works system. Under the Denver City Charter, Denver Water is a legally separate and distinct legal entity from the City and County of Denver and the City and County is not financially accountable for Denver Water. Nonetheless, the City elects to include Denver Water's financial statements in the City's financial statements as a "component unit enterprise fund" because, "in the City's opinion, the nature and significance of Denver Water's relationship with the City are such that exclusion would cause the City's financial statements to be misleading or incomplete" (Denver Water at I-2).

Denver Water's employees are within the state civil service classification except for specially designated employees (up to 2 percent of total) who serve solely at the pleasure of the Board.

The City Charter directs the Auditor of the City and County of Denver audit the accounts of the Board at least annually and make a report of his or her findings to the Council of the City and County of Denver. Denver Water's Citizens Advisory Committee is a 10-member volunteer committee that advises Denver Water staff and the Board of Water Commissioners on a variety of issues while encouraging and coordinating public participation in the water department's policy-making process. The Committee is a strictly advisory body, as the Board is prohibited by law from delegating its decision authority.

Tennessee Valley Authority

Congress created the Tennessee Valley Authority in 1933, charging the public corporation with managing the Tennessee River's navigation and flood control problems, encouraging reforestation and proper land use, and fostering agricultural and industrial development. Today, the TVA operates primarily as a power wholesaler.

The TVA is a wholly owned corporation of the federal government, pursuant to the authority of the Tennessee Valley Authority Act of 1933, 48 Stat. 58-59, 16 U.S.C. sec. 831.

The Consolidated Appropriations Act of 2005 amended the TVA Act by restructuring the TVA Board from three full-time members to nine part-time members, at least seven of whom must be legal residents of the TVA service area. TVA Board members are appointed by the President of the United States with the advice and consent of the U.S. Senate. The TVA Act provides that to be eligible to be appointed as a member of the TVA Board, an individual must: (1) be a citizen of the United States;

(2) have management expertise relative to a large for-profit or nonprofit corporate, government, or academic structure; (3) not be an employee of TVA; (4) make full disclosure to Congress of any investment or other financial interest that the individual holds in the energy industry; and (5) affirm support for the objectives and missions of TVA, including being a national leader in technological innovation, low-cost power, and environmental stewardship. No more than two of the TVA Board members may be legal residents outside of TVA's service area. After an initial phase-in period, TVA Board members serve five-year terms, and at least one member's term ends each year. The TVA Board establishes broad goals, objectives, and policies for TVA; establishes long-range plans to carry out these goals, objectives, and policies; approves annual budgets; and establishes a compensation plan for employees.

Initially, all TVA operations were funded by federal appropriations. Direct appropriations for the TVA power program ended in 1959, and appropriations for TVA's stewardship, economic development, and multipurpose activities ended in 1999. Since 1999, TVA has funded all of its operations almost entirely from the sale of electricity and power system financings TVA debt securities are obligations of its power system and are only issued for power program purposes, including refinancing of existing debt. TVA debt securities are not obligations of the U.S. government, and do not carry a government guarantee.

To allow TVA to operate more flexibly than a traditional government agency, Congress exempted TVA from some general federal laws that govern other agencies, such as the federal labor relations laws and the civil service laws related to federal employees' hiring procedures, supplies and services procurement, and land acquisition. Other federal laws enacted since the creation of TVA have been made applicable to TVA, including those related to paying employees overtime, environmental protection, cultural resources preservation, and civil rights.

TVA's actions are reviewed by an Inspector General appointed by the President, the Office of Management and Budget, the Government Accountability Office, the House Transportation and Infrastructure Committee, and the Senate Environment and Public Works Committee. The 2005 legislation added a requirement that the TVA Board create an Audit Committee and to begin filing financial reports with the Securities and Exchange Commission (SEC). In setting power rates, however, the TVA Board has absolute authority: these rates are not subject to judicial review or to review or approval by any state or federal regulatory body.

California Independent System Operator (CAISO)

California created the ISO as part of its initial deregulation of energy transmission in 1998. The CAISO is a non-profit public benefit corporation—a private corporation headed by a publicly appointed board.

The 1992 Federal Energy Policy Act and subsequent state legislation authorize the formation of ISOs. The California Public Utilities Code Sec. 345 obligates the CAISO to provide for the "efficient and reliable operation of the transmission grid." The CAISO does not own assets, but operates the electric grid under existing state policies. The CAISO also anticipates and participates in the development of new policies concerning electric energy transmission in the state.

The Governor of California appoints a five-member Governing Board, with approval of the State Senate. Members of the board are deemed "independent" as they cannot be employed by, consult for, or hold any direct or indirect financial interest in the generation, transmission, or marketing of electricity. After previously disapproving of the CAISO's original stakeholder-based governing board, the Federal Energy Regulatory Commission (FERC) in 2005 authorized the CAISO's proposal to organize a representative group of stakeholders into a Board Nominee Review Committee responsible for nominating candidates for the CAISO Governing Board. The Board Nominee Review Committee includes stakeholders representing Transmission Owners, Transmission-Dependent Utilities, Public Interest Groups, End-Users & Retail Energy Providers, Alternative Energy Providers, and Generators and Marketers. The initial list of names presented to this committee is compiled by an independent search firm. The Board is responsible for governance and stewardship of the CAISO, while day-to-day operations are the responsibility of the President and Chief Executive Officer. The Board meets at least every six weeks.

The CAISO does not buy or sell electrical power, but operates the state's wholesale transmission grid. The CAISO board is responsible for setting electrical transmission access tariffs and has fiduciary responsibilities to oversee the CAISO's annual operating budget.

FERC Order 888 (April 24, 1996) states that because an ISO is a public utility subject to its jurisdiction, the ISO's operating standards and procedures must be approved by the FERC. The CAISO's policy decisions are developed through an iterative process involving input from stakeholders and experts (through the Market Survey Committee), and reviewed by FERC. Disputes over these decisions are resolved under federal law.

Northern Colorado Water Conservancy District

The Northern Colorado Water Conservancy District was established in 1937 as the local agency to contract with the U.S. Bureau of Reclamation to build the Colorado-Big Thompson Project, which transports water from the headwaters of the Colorado River to the District's seven-county service area on the East Slope. Today, the NCWCD and the Bureau of Reclamation jointly operate and maintain the Project.

The NCWCD is a quasi-municipal entity and a political subdivision of the State of Colorado, with its legal authority outlined in the Colorado Water Conservancy District Act, CRS 37-405-101 et seq.

The NCWCD is governed by a 12-member Board of Directors, which is appointed by the presiding District Court Judges of four of the five judicial districts located wholly or partially within NCWCD boundaries. Board members are appointed to four-year terms, which are staggered so that three Board seats are up for appointment each year.

Under Colorado law, water conservancy districts are empowered to levy ad valorem taxes to finance projects, exercise eminent domain, contract with the United States to construct projects, and acquire water to serve district customers.

Central Utah Water Conservancy District

The Central Utah Water Conservancy District (CUWCD), a political subdivision of the State of Utah, was formally established in 1964 to act as the local entity to contract with the U.S. Bureau of Reclamation in connection with the construction, operation, and financing of the Central Utah Project (CUP). The purpose of the CUP is to enable the State of Utah to beneficially use a substantial portion of its allotted share of the Colorado River water under the Colorado River Compact.

The Central Utah Project was authorized under The Colorado River Storage Project Act (P.L. 84-485) on April 11, 1956. In 1964, the Central Utah Water Conservancy District was organized by Utah's Fourth District Court. Seven counties were originally represented within the district: Uintah, Duchesne, Wasatch, Utah, Salt Lake, Summit, and Juab. Later, five more counties joined: Sanpete, Garfield, Piute, Millard and Sevier. Today, the district represents ten counties. Among its many provisions, the Central Utah Project Completion Act of 1992 (P.L. 102-575): (1) transferred responsibility from the Bureau of Reclamation to the District to plan, construct, and operate the Central Utah Project; (2) created the Utah Reclamation Mitigation and Conservation Commission, a federal entity charged with designing, funding and implementing projects to offset the impacts to fish, wildlife and related recreation resources caused by CUP and other federal reclamation projects in Utah; and (3) created the Utah Water Conservation Advisory Board,

The District is governed by a board of 18 trustees representing 10 central Utah counties, designed to provide a check and balance between rural and urban representation. The appointed citizen board governs the affairs of the District and establishes policy.

The District sponsors the CUP, which includes dams, pipelines, reservoirs, tunnels, and aqueducts to serve its member counties. The District operates as a wholesaler of water to other cities and agencies, and has the responsibility to plan, design,

construct, operate and maintain project facilities, administer the sale and delivery of project water, and repay the federal government the reimbursable costs of the CUP. The District is required to levy a property tax sufficient to cover all operating costs operating costs and debt, and is authorized to issue revenue bonds secured by net water revenues.

Central Arizona Water Conservation District

The state legislature created the Central Arizona Water Conservation District (CAWCD) in 1971 to provide a means for Arizona to repay the federal government for the reimbursable costs of construction and to manage and operate the federally constructed Central Arizona Project. In 1993, the legislature expanded the CAWCD's responsibilities to include groundwater replenishment operations through the Central Arizona Groundwater Replenishment District (CAGRD). Membership in CAGRD provides a mechanism for landowners and water providers to demonstrate an assured water supply, as mandated by the Arizona Groundwater Management Code of 1980.

ARS 48-3702 describes the multi-county water conservation district as "a tax-levying public improvement district of the state and a municipal corporation to the extent of the powers and privileges conferred by this chapter or granted generally to municipal corporations by the constitution and statutes of the state, including the immunities and exemptions provided by article 13, section 7, of the Constitution of Arizona."

The 15-member Board serves staggered six-year terms without pay. Every two years, as part of the general election ballot, the public elects one-third of the 15-member CAWCD Board. Nonpartisan candidates are drawn from CAP's three-county service area, and the composition of the Board is based on population: 10 members are residents of Maricopa County; four live in Pima County; and one represents Pinal County. The directors have weighted votes, determined by the population of the county each represents and spelled out in ARS 48-3708. Regarding the 2006 CAWCD election, the Arizona Republic observed, "The board serves in virtual anonymity without pay, but its importance in managing the Central Arizona Project canals and controlling most of our Colorado River entitlement cannot be overstated. . . . With minimal (if any) paid advertising, low name identification, and a very long ballot full of federal and state candidates and complex propositions, the CAWCD board election easily could fly well below the radar screen. It must not, because this board's responsibilities affect every one of us."

Financial Authority: The CAWCD is authorized to charge for power and water delivery, issue bonds, and levy ad valorem taxes on property within District's three-county boundaries. Revenues may be used for operations, repayment to the federal government for construction costs of the CAP, and water storage. In 2008 the ad

valorem tax was 6 cents per $100 of assessed valuation. Current law authorizes the CAWCD to issue up to $250 million in revenue bonds.

[The table on the following page will be formatted for more accessible review in the final draft.]