

BOARD AGENDA MEMORANDUM

SUBJECT:

Response to Santa Clara County Civil Grand Jury's October 7, 2022, Final Report.

RECOMMENDATION:

- A. Review proposed response to Santa Clara County Civil Grand Jury October 7, 2022, Final Report Finding 1 and Recommendations 1b, 1c, and 1e; and
- B. Approve the response or provide additional direction and feedback as necessary.

SUMMARY:

Background

On October 7, 2022, the Santa Clara County Civil Grand Jury (Civil Grand Jury) issued a report that took issue with the choice of wording used in local ballot measure questions. Specifically, the Civil Grand Jury argues that some local governing entities present ballot questions that are purposefully misleading so they may obtain their desired result. Among other measures, the Civil Grand Jury took issue with the wording of Santa Clara Valley Water District's (Valley Water) 2022 Measure A ballot question.

On October 10, 2022, Valley Water received a letter from James Renalds, Foreperson of the 2022 Civil Grand Jury, providing its report entitled, If You Only Read the Ballot, You're Being Duped (Report) (Attachment 1). The Report included Findings and Recommendations. In the letter, Valley Water was asked to comment on the Report's Finding 1 and Recommendations 1b, 1c, and 1e. The following is the staff's recommended response. The draft response is also included in the District's Draft Response Letter (Attachment 2).

Under Penal Code section 933.05, Valley Water must respond to the Report by January 5, 2023. Specifically, Valley Water must state whether it agrees or disagrees with Finding 1 and to respond with one of four possible actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented but will be implemented in the future, with a timeframe for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when

applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

District Response

Finding 1:

The Civil Grand Jury finds that in the current environment, which is unregulated at the local level, it is easy for the author of a ballot measure question to write the question in a way that is confusing or misleading to voters.

Proposed Response:

Valley Water disagrees with the finding that local ballot measure questions are unregulated and may be easily written in a way that is confusing or misleading to voters.

Local ballot measures are regulated by legal standards set forth in the California Elections Code and oversight by California's courts. The California Elections Code already requires, with respect to the ballot question for a measure placed on the ballot by a local governing body, that the statement of the measure shall be a true and impartial synopsis of the purpose of the proposed measure and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure.

The Elections Code further mandates that there be an impartial analysis of the measure prepared by counsel for the agency or by the County Counsel of the County in which the agency sits. Even when counsel for the local agency prepares the impartial analysis, the County Counsel may amend or substitute its own analysis. The impartial analysis, regardless of whether it is prepared by counsel for the agency or County Counsel, is included in the voter information guide that accompanies the ballot. This serves as an additional "check and balance" against potentially misleading language in the ballot measure.

Further still, the Elections Code requires either that the entire text of the measure be included in the ballot or the voter information guide or that the impartial analysis state that the text is available to voters upon request.

Neither of these requirements is even mentioned in the Report. Thus, the Civil Grand Jury's premise that if one only reads "the ballot" one is being duped ignores the reality that "the ballot" is accompanied by not only the text of the ballot question but also the impartial analysis of a lawfully appointed attorney and the text of the measure itself.

Beyond the requirements for what must be included in “the ballot,” the California Elections Code also establishes a process to modify ballot questions that are determined to be false, misleading, or “partial.” Any person who feels that a ballot question is deficient may file a court action seeking a writ of mandate to have the ballot language changed.

Courts recognize that ballot titles need not be perfectly worded to comply with election statutes and will defer to the language drafted by the agency. As the Report acknowledges, to comply with the election statutes, the ballot title need not be the “most accurate,” “most comprehensive,” or “fairest” that a skilled wordsmith might imagine. Report at p.13.

With respect to Valley Water’s 2022 Measure A, as directed by the Board in its resolution approving the measure, District Counsel prepared a thorough and impartial analysis of the Measure A ballot measure language. The impartial analysis was submitted to Santa Clara County Counsel as required by the Elections Code. The County Counsel, as is its right under the Elections Code, revised the District Counsel’s analysis and issued the final analysis in its own name. Further, the ballot measure question was accompanied by the full ballot measure text in the voter information guide to provide voters with a comprehensive, clear understanding of the ballot measure beyond the ballot measure question itself. In every respect, Valley Water’s 2022 Measure A complied with the law as the Legislature deemed appropriate for ballot measures.

Recommendation 1b:

Governing entities within Santa Clara County should voluntarily submit their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until Recommendation 1d is implemented.

Proposed Response:

The recommendation will not be implemented because it is not warranted. The California Legislature has already determined, via the Elections Code, that local agencies are properly vested with the power to write their own ballot questions. As checks and balances against that power, the Legislature requires that (1) local agency ballot measures be subject to an impartial analysis by the agency’s counsel which is then submitted to County Counsel for review; and (2) the entire text of the measure itself be included in the ballot or election guide or be made available upon request.

Valley Water will continue to comply with these Elections Code requirements for any future ballot measures initiated by the agency.

Furthermore, the Report does not indicate whether the County Counsel's Office has the budget, staffing, or desire to accept this additional burden on its workload.

Recommendation 1c:

Governing entities within Santa Clara County should, by March 31, 2023, adopt their own resolution or ordinance to require submission of their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until Recommendations 1d and 1e are implemented.

Proposed Response:

The recommendation will not be implemented because the adoption of a resolution or ordinance requiring submission of Valley Water-initiated ballot measure questions to County Counsel is not warranted. For further details, see response to Recommendation 1b, which is incorporated into this response as though fully set forth herein.

Recommendation 1e:

Governing entities within Santa Clara County should submit their ballot questions for review by the Good Governance in Ballots Commission pursuant to Recommendation 1d.

Proposed Response:

Recommendation 1d of the Grand Jury Report states: The County should create an independent, citizen-led oversight commission like the recommended Good Governance in Ballots Commission as described in the "Solutions" section of this report. The Commission should be implemented by August 1, 2024.

Recommendation 1e, which depends on the implementation of Recommendation 1d, will not be implemented because the establishment of an independent oversight commission (Good Governance in Ballots Commission) to review ballot questions is not warranted as a "solution" to ensure ballot questions are being monitored for clarity, truthfulness, fairness, and impartiality. There are checks and balances in the existing statutes that establish standards for both the language and the impartial review of local ballot measure questions. For further details, see response to Recommendation 1b, which is incorporated into this response as though fully set forth herein.

ENVIRONMENTAL JUSTICE IMPACT:

There are no Environmental Justice impacts associated with this item.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

Attachment 1: Civil Grand Jury Report

Attachment 2: Draft Response Letter

*Handout 4.1-A: Draft 2 Letter

UNCLASSIFIED MANAGER:

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