El Dorado Irrigation District

In reply refer to: M0818-019

August 20, 2018

Honorable Suzanne N. Kingsbury Via email: courtadmin@eldoradocourt.org
Presiding Judge of the El Dorado County Superior Court
Department 3
1354 Johnson Blvd., Suite 2
South Lake Tahoe, CA 96150

Re: Responses to Grand Jury Report Findings and Recommendations
Name of Grand Jury Report: El Dorado County 2017-2018 Grand Jury, El Dorado Irrigation District California Public Records Act Compliance, Case 17-09, June 30, 2018
Name and Title of Respondent: El Dorado Irrigation District Board of Directors

In accordance with California Penal Code sections 933 and 933.05, the following responses are provided on behalf of the respondent, the El Dorado Irrigation District Board of Directors.

On June 8, 2018, the El Dorado County Grand Jury issued a report titled, El Dorado County 2017-2018 Grand Jury, El Dorado Irrigation District California Public Records Act Compliance, Case 17-09 (hereinafter, "Grand Jury Report," or "Report"). The Report contains findings and recommendations directed to the El Dorado Irrigation District ("District" or "EID"). The Report requests responses to the findings and recommendations from the District Board of Directors. The purpose of this letter is to respond to the findings and recommendations contained in the Report, on behalf of the District Board of Directors.

The Grand Jury Report makes the following two findings:

1. EID Director Greg Prada did not comply with EID Board Policy 3075 and Administrative Regulation 3075.

2. EID Director Greg Prada inappropriately followed his own interpretation of the proper application of the Supreme Court's decision in [*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608)] rather than the official interpretation by the EID Board.

The Grand Jury Report also makes two recommendations:

1. The EID Board of Directors should consider censure of Director Prada advising him that future violations of BP 3075 and AR 3075 would be considered willful misconduct in office.

2. The EID Board of Directors should consider formally requesting Director Prada to fully comply with Board Policy 3075 and Administrative Regulation 3075 by supplying a properly executed declaration in response to the November 2017 Public Records Act Request.

Please be informed that on June 25, 2018, the EID Board of Directors adopted, during its regular Board meeting, Resolution 2018-009, which is attached to this letter, as Attachment 1. By Resolution 2018-009, the EID Board of Directors took the following actions:

1. Agreed with the Grand Jury Report's findings.

2. Directed the General Manager to respond to the Report within 90 days of its publication indicating that the Board agrees with the Report's findings.

3. Implemented the Report's recommendations.

4. Censured Director Prada for violating the California Public Records Act ("CPRA") and District Board Policy 3075 and Administrative Regulation 3075, and advised Director Prada that future violations will be considered willful misconduct in office.

5. Directed Director Prada to fully comply with Board Policy 3075 and Administrative Regulation 3075 by supplying a properly executed declaration in response to the November 8, 2017 CPRA request within ten (10) days.

6. Directed the General Manager to respond to the Report within 90 days of its publication indicating that the Board has implemented the Report's recommendations and reporting on whether Director Prada has supplied a properly executed declaration in response to the November 8, 2017 CPRA request.

In accordance with Penal Code sections 933 and 933.05, the EID Board of Directors must respond to the Grand Jury Report findings and recommendations. As noted above, Resolution 2018-009 directs me, the General Manager, to respond to the Grand Jury Report's findings and recommendations on behalf of the respondent Board of Directors. Accordingly, consistent with Resolution 2018-009, the following are the EID Board of Directors' responses to the Report's findings and recommendations:

Response to Grand Jury Report Findings:

Finding F1. Director Prada did not comply with EID Board Policy 3075 and Administrative Regulation 3075.

Response: Respondent EID Board of Directors agrees with the finding.

Finding F2. Director Prada inappropriately followed his own interpretation of the proper application of the Supreme Court's decision in *San Jose* rather than the official interpretation by the EID Board.

Response: Respondent EID Board of Directors agrees with the finding.

Response to Grand Jury Report Recommendations:

Recommendation R1. The EID Board of Directors should consider censure of Director Prada advising him that future violations of BP3075 and AR3075 would be considered willful misconduct in office.

Response: The recommendation has been implemented. On June 25, 2018, the EID Board of Directors adopted Resolution 2018-009. By Resolution 2018-009, the EID Board of Directors censured Director Prada for violating the California Public Records Act and District Board Policy 3075 and Administrative Regulation 3075, and advised Director Prada that future violations will be considered willful misconduct in office.

Recommendation R2. The EID Board of Directors should consider formally requesting Director Prada to fully comply with Board Policy 3075 and Administrative Regulation 3075 by supplying a properly executed declaration in response to the November 2017 Public Records Act request.

Response: The recommendation has been implemented. On June 25, 2018, the EID Board of Directors adopted Resolution 2018-009. By Resolution 2018-009, the EID Board of Directors directed Director Prada to fully comply with Board Policy 3075 and

Administrative Regulation 3075 by supplying a properly executed declaration in response to the November 8, 2017 CPRA request within ten (10) days.

Resolution 2018-009 also directs me to report to the Grand Jury on whether Director Prada has supplied a properly executed declaration in response to the November 8, 2017 CPRA request. Concurrently with this letter, I have submitted a separate letter to the Grand Jury with my findings.

On behalf of the EID Board of Directors, through my delegated authority, I respectfully submit these responses to the Grand Jury Report's findings and recommendations.

Sincerely,

Jim Abercrombie
General Manager, El Dorado Irrigation District
On Behalf of Respondent, El Dorado Irrigation District Board of Directors

Attachments:

1) El Dorado Irrigation District, Resolution of the Board of Directors, Resolution 2018-009

cc: Michael Raffety, President of the Board of Directors, El Dorado Irrigation District
Alan Day, Vice President of the Board of Directors, El Dorado Irrigation District
Dale Coco, Board Member, El Dorado Irrigation District
George Osborne, Board Member, El Dorado Irrigation District
Greg Prada, Board Member, El Dorado Irrigation District
Brian Poulsen, General Counsel, El Dorado Irrigation District
Shawne M. Corley, Assistant CAO, County of El Dorado shawne.corley@edcgov.us

RESOLUTION OF THE BOARD OF DIRECTORS OF EL DORADO IRRIGATION DISTRICT AGREEING WITH THE FINDINGS AND IMPLEMENTING THE RECOMMENDATIONS OF THE GRAND JURY

WHEREAS, in March of 2017, the California Supreme Court ruled in *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, that written communications concerning the conduct of public business contained on personal accounts or devices of public employees may be considered public records subject to disclosure under the California Public Records Act ("CPRA"); and

WHEREAS, on March 9, 2017, the District received a CPRA request seeking all public records sent or received on the private electronic devices and accounts owned or used by Director Greg Prada; and

WHEREAS, on March 9, 2017, the District provided Director Prada with a copy of the request along with guidance on how to conduct a reasonable search of his private electronic devices and accounts and identify public records which were potentially responsive to the request; and

WHEREAS, on March 18, 2017, Director Prada informed the District that, "I have searched my personal computer and based on my interpretation of the Court's ruling have found no communications involving conduct of the El Dorado Irrigation District's official business[;]" and

WHEREAS, on March 31, 2017, in response to the CPRA request the District provided 267 pages of public records not otherwise determined to be exempt from disclosure, located on the District's electronic mail database, all of which were sent or received by Director Prada's private accounts or devices; and

WHEREAS, on September 11, 2017, the District's Board of Directors adopted Board Policy 3075, which requires that the District respond to requests for public records in accordance to the CPRA and the case law interpreting that law; and

WHEREAS, on October 24, 2017, the District adopted Administrative Regulation 3075, which includes specific procedures for responding to CPRA requests regarding personal accounts and devices and requires that the subject of a request perform a reasonable search of his/her personal accounts and/or devices, document his/her search methodologies, criteria, and terms, and complete and sign a declaration attesting that the employee or officer completed a reasonable search and provided all potentially responsive records to the District; and

WHEREAS, on November 8, 2017, the District received a CPRA request renewing the request first received on March 9, 2017, seeking all public records sent or received on the private electronic devices and accounts owned or used by Director Greg Prada; and

WHEREAS, on November 8, 2017, the District provided Director Prada with a copy of the request along with CPRA training materials developed pursuant to Administrative Regulation 3075; and

WHEREAS, on November 8, 2017, the District also requested that Director Prada, in accordance with Administrative Regulation 3075, sign a declaration attesting that he completed a reasonable search and provided all potentially responsive records to the District; and

WHEREAS, in response to the November 8, 2017 CPRA request, Director Prada declined to sign the declaration and provided the District with no records in response; and

WHEREAS, on November 29, 2017, and January 2, 2018, the Board of Directors, including Director Prada, received legal guidance from an outside law firm retained by the District regarding the CPRA and the Directors' obligations under the CPRA; and

WHEREAS, on January 8, 2018, the Board of Directors directed District staff to file a complaint with the El Dorado County Grand Jury, requesting that the Grand Jury investigate whether Director Prada violated the CPRA; and

WHEREAS, on January 10, 2018, the District submitted a complaint to the El Dorado County Grand Jury requesting that the Grand Jury investigate whether Director Prada violated the CPRA; and

WHEREAS, on June 8, 2018, the El Dorado County Grand Jury published a report titled, El Dorado County 2017-2018 Grand Jury, El Dorado Irrigation District California Public Records Act Compliance, Case 17-09, June 30, 2018 ("Grand Jury Report"); and

WHEREAS, the Grand Jury Report including the following two findings:

1. Director Prada did not comply with EID Board Policy 3075 and Administrative Regulation 3075.
2. Director Prada inappropriately followed his own interpretation of the proper application of the Supreme Court's decision in [*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608)] rather than the official interpretation by the EID Board; and

WHEREAS, the Grand Jury Report makes the following two recommendations:

1. The EID Board of Directors should consider censure of Director Prada advising him that future violations of BP 3075 and AR 3075 would be considered willful misconduct in office.
2. The EID Board of Directors should consider formally requesting Director Prada to fully comply with Board Policy 3075 and Administrative Regulation 3075 by supplying a properly executed declaration in response to the November 2017 Public Records Act request.

WHEREAS, Penal Code sections 933 and 933.05 require the Board of Directors to respond to the Grand Jury Report's findings and recommendations within 90 days from the date of its publication; and

WHEREAS, In responding to the Grand Jury Report's findings, the Board of Directors must either agree with the findings or disagree with the findings in whole or in part and if it disagrees with the findings, must provide an explanation; and

WHEREAS, In responding to the Grand Jury Report's recommendations, the Board of Directors must indicate one of the following options: first, that the District has implemented the Grand Jury's recommendations; second, that the District has not yet implemented the recommendations but will do so, indicating a timeline for implementation; third, that the Grand Jury's recommendations require further analysis or study for a period of not to exceed six months; or fourth, that the District will not implement the Grand Jury's recommendations because the recommendations are not warranted or reasonable, along with an explanation.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the Board of Directors of the EL DORADO IRRIGATION DISTRICT as follows:

1. The District's Board of Directors agrees with the two findings in the Grand Jury Report, that (a) Director Prada did not comply with EID Board Policy 3075 and Administrative Regulation 3075; and (b) Director Prada inappropriately followed his own interpretation of the proper application of the Supreme Court's decision in [*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608)] rather than the official interpretation by the EID Board.

2. The District's General Manager shall, within 90 days of the publication of the Grand Jury Report, respond to the Grand Jury Report indicating that the District's Board of Directors agrees with the report's findings.
3. The District will implement the Grand Jury Report's recommendations.
4. Director Prada is hereby censured by the District's Board of Directors for his conduct, as described herein, and in the Grand Jury Report, and is hereby advised that future violations of the District's Board Policy 3075 and Administrative Regulation 3075 will be considered willful misconduct in office.
5. Director Prada is hereby directed to fully comply with Board Policy 3075 and Administrative Regulation 3075 by supplying a properly executed declaration in response to the November 8, 2017 CPRA request within ten (10) days of the adoption of this Resolution.
6. The District's General Manager shall, within 90 days of the publication of the Grand Jury Report, respond to the Grand Jury Report indicating (a) that the District's Board of Directors has fully implemented the report's recommendations and (b) whether Director Prada has supplied a properly executed declaration in response to the November 8, 2017 CPRA request.

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The foregoing Resolution was introduced at a regular meeting of the Board of Directors of EL DORADO IRRIGATION DISTRICT, held on the 25th day of June 2018, by Director Osborne, who moved its adoption. The motion was seconded by Director Coco and a poll vote taken which stood as follows:

AYES Directors Osborne, Coco and Raffety

NOES: Director Day

ABSENT: Director Prada

ABSTAIN:

The motion having a majority of votes "Aye", the resolution was declared to have been adopted, and it was so ordered.

Michael Raffety
Board of Directors
EL DORADO IRRIGATION DISTRICT

ATTEST:

Jennifer Sullivan
Clerk to the Board
EL DORADO IRRIGATION DISTRICT

(SEAL)

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I, the undersigned, Clerk to the Board of EL DORADO IRRIGATION DISTRICT hereby certify that the foregoing resolution is a full, true and correct copy of a Resolution of the Board of Directors of EL DORADO IRRIGATION DISTRICT entered into and adopted at a regular meeting of the Board of Directors held on the 25th day of June 2018.

Jennifer Sullivan
Clerk to the Board
EL DORADO IRRIGATION DISTRICT

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