



LEGAL REFERENCE GUIDE

Part 2 - Legal Requirements for Specific Types of Water Providers

While the water quality laws contained in the federal and state Safe Drinking Water Acts apply uniformly to all drinking water providers, other types of laws, such as those concerning who can control the actions taken by the provider, vary according to the water provider's governing structure. Many different types of local entities can supply drinking water in California, but loosely speaking, drinking water providers can be divided into three major categories: governmental water providers, private water utilities, and other nongovernmental water providers. Governmental water providers are public in nature and therefore are subject to a number of laws that regulate and restrict governmental action by public agencies. Private water utilities are subject to regulation by the California Public Utilities Commission (PUC). Other nongovernmental water providers are not subject to the PUC's jurisdiction or laws governing public agencies and therefore have a great deal more flexibility to establish their own governing structures in their articles of incorporation and bylaws.

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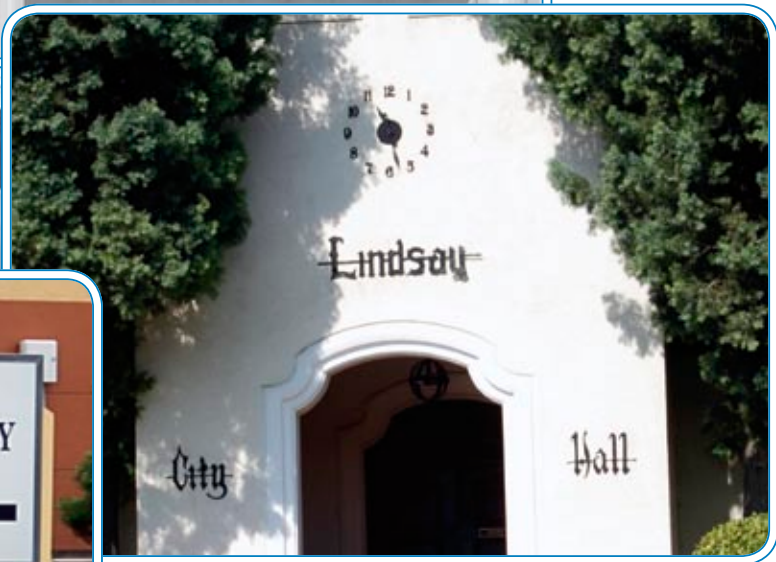
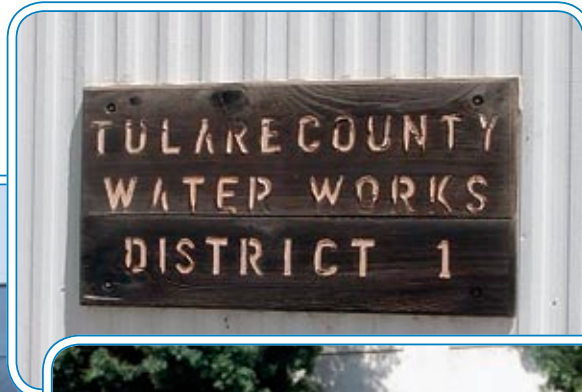
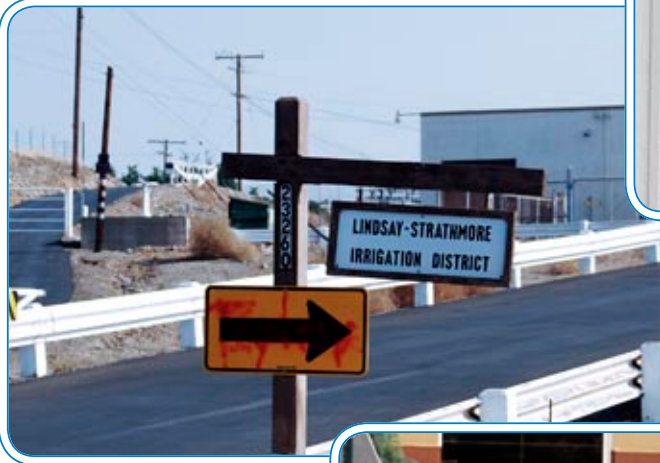
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Governmental Water Providers

Governmental water providers include cities, municipal utilities, and all special districts, including irrigation districts, community services districts, public utility districts, municipal water districts, and county water districts.



Features Common to All Governmental Water Providers

Governmental water providers are public entities, and therefore, a number of state laws regulate their actions. In particular, state laws guarantee members of the public the rights to access information and to participate in decision making processes. State laws also set out procedures for resolving injury-related disputes between a member of the public and a provider, as well as procedures that providers must follow in order to increase the rate consumers pay for drinking water.

Access to Information (The Public Records Act)

As public entities, governmental water providers are subject to the Public Records Act.²⁸⁶ This law requires the water provider to make all public records available for inspection at all times during the water provider's office hours.²⁸⁷ The Public Records Act provides that every member of the public has a right to inspect any public record, with some exceptions, and has a right to receive an exact copy of an identifiable record, unless impracticable.²⁸⁸ For a handout on the Public Records Act, see *Appendix 2.4*.

Who can access public records?

The Public Records Act applies to all local and state governmental agencies, not just water providers.²⁸⁹ Any member of the public has a right to make a request for information or records, regardless of whether a person is a customer, a citizen, or a homeowner.

How must a request be made?

While technically requests do not have to be in writing, requests should be in writing whenever possible so that there is clear documentation regarding what was requested and when it was requested. Not only is it easier for the agency to respond to written requests, but it is easier to pursue in court, should that be necessary. Sometimes agencies have their own Public Records Act request forms, which allow the agency to direct it to the appropriate person more quickly.

Requests do not have to cite the Public Records Act, however it often helps to show the agency that you know your rights by including the following in your request:

“Pursuant to the Public Records Act, Government Code § 6250, *et seq.*, I request __[insert your request here]_____.”

Clearly state all records that you would like to review as specifically as possible. You do not have to know the exact name of a document or report, but you should give a clear sense of the type of information that you want to review. The agency may contact you to help narrow down your request if it is too vague and voluminous. (See *Appendix 3.1* for a Public Records Act request template.)

What information can I request?

Any information related to the public business of the agency should be made available, regardless of the form it takes (*i.e.*, written documents, pictures, audio records, symbols, electronic data).²⁹⁰

Keep in mind, however, that the agency does not have to create a record for you that does not already exist. For example, if you want a graph showing water contamination levels over the past 10 years, the agency does not have to create that graph just for you. However, if the agency has already made that graph, it must produce it for you. Additionally, the agency would need to provide any reports or data showing contamination levels over the past 10 years.

Exceptions to the Public Records Act generally involve issues around confidentiality and privacy.²⁹¹ For example, the public does not generally have the right to see employee files or personal information of clients, such as home addresses and social security numbers. Employment contracts, however, are

generally available. Additionally, concerns around homeland security have made water providers and state and local agencies withhold exact information on well locations, in most cases. Other exceptions include attorney-client discussions, certain information regarding pending litigation or contract negotiations, and preliminary drafts and notes if they are not normally kept and the public interest in withholding the drafts clearly outweighs the public interest in disclosure.²⁹² However, the presumption is that the agency should disclose information to the public unless there is a strong overriding conflicting right or need (*i.e.*, privacy, security, etc.).

When and how can I have access to the information I requested?

If the information is readily available, the agency should respond immediately by allowing for inspection at the office during regular business hours. While agencies should respond as promptly as possible, the agency is allowed up to 10 days to respond if necessary, and may take an additional 14 days if the request is voluminous or complex.²⁹³

The agency cannot charge a fee for inspection of public information, however, it may charge a copy fee if copies are needed.²⁹⁴ The agency cannot charge for the time spent finding or compiling documents, nor for time spent present in a room while you are viewing documents.²⁹⁵

What happens if I am denied access to public information?

The agency can be forced to comply with a Public Records Act request by filing suit in state court. If you do have to file suit in court, and as a result the agency is forced to disclose the information, the agency must pay your attorney fees and court costs.

How can I get more information on the Public Records Act?

A handout on the Public Records Act can be found in *Appendix 2.3* and a template for Public Records Act requests can be found in *Appendix 3.1*. You can also get more information on the Public Records Act from the following organizations that specialize in ensuring public access to information:

- The California First Amendment Coalition, at <http://www.cfac.org/content/index.php/cfac-records/index/> or by calling (415) 460-5060
- The First Amendment Project at <http://www.thefirstamendment.org/> or by calling (510) 208-7744

Participation in Governance (The Brown Act)

Governmental water providers are also subject to the Brown Act,²⁹⁶ which requires that members of the public be allowed to attend all board meetings and be allowed a public comment period during each meeting to speak on any issue within the board's jurisdiction. The Brown Act also requires that a board post a notice of its meetings and the agenda showing what subjects will be discussed. The Brown Act was created with the intent of ensuring that local governmental bodies remain transparent and open to public participation. Therefore, these boards cannot discuss related business or make decisions outside of a public meeting. Certain limited issues may be discussed in a "closed session" where no member of the public is present; however an agenda must show the topics being discussed.²⁹⁷ For a handout on the Brown Act, see *Appendix 2.3*.

Who is covered by the Brown Act and when is it triggered?

In general, all local governmental agency boards or councils that make policy decisions are covered by the Brown Act.²⁹⁸ In practice, this means city councils and boards of supervisors, as well as the boards of governmental entities such as community services districts and public utility districts.

The Brown Act applies to any "meeting," in which a majority of members are present or included, as long as any issue within the board's jurisdiction is discussed. In other words, if a majority of members of a board attended a baseball game, it would not necessarily trigger the Brown Act. However, if two members at the game discussed their positions on an issue coming before the board next week and then one member spoke to another member and that member discussed it with another member, and ultimately a majority of members had discussed the issue before the public meeting, those discussions may be considered a "serial meeting" that is prohibited by the Brown Act.²⁹⁹ Basically, the law tries to ensure that decisions are made in an open fashion and not "rigged" beforehand.

How can I find out what will be discussed at a meeting?

The Brown Act requires that local governmental agencies post an agenda in a location that is freely accessible to the public at least 72 hours before regular meetings,³⁰⁰ 24 hours before special meetings, and one hour before emergency meetings. Stronger notice requirements and hearing procedures are required before an agency can impose new taxes or assessments.³⁰¹ The agenda must include a brief description of the subjects to be discussed (both in open and closed sessions), as well as the time and location of the meeting. Often the agenda is posted outside the agency's office. Any member of the public may also request that a notice be sent to them by mail, however the agency can charge a reasonable annual fee for this service.³⁰² Additionally, the public must have access to materials furnished to the board at the time that those materials are furnished to the board. Each agenda must indicate where the public can review those materials if they are provided as part of the board's agenda packet.³⁰³

Special & Emergency Meetings

Special meetings can be called outside of regular meetings if there is a pressing issue or special need, such as a matter that may take more time or attention.

Emergency meetings can only be called in certain extreme circumstances, such as a work stoppage or a crippling disaster or other activity which severely impairs public health or safety.

How can I participate in a meeting?

The Brown Act requires that meetings be held locally and in an accessible location where any member of the public may attend without having to pay a fee or fulfill any other requirement.³⁰⁴ It is common to have sign-in sheets at meetings, however the agency cannot require any member of the public to sign-in or provide any personal information in order to attend or participate in a public meeting.³⁰⁵

If any document is distributed to the board, the public has a right to see that document without delay. Additionally, any member of the public has the right to record the proceedings and show or distribute those recordings to the public.



All members of the public have the right to address the board on any issue on the agenda before action is taken. Additionally, at all regular meetings the board must give any member of the public the opportunity to address the board on any issue under the jurisdiction of that board, whether or not that issue is on the agenda.³⁰⁶ Generally, this opportunity is given during a “public comment period” at the beginning or end of a meeting.³⁰⁷ Boards may make rules limiting the length of public comments, however those rules must be reasonable and evenhanded, meaning for example that it cannot limit one side of a controversy and not the other.

If individuals of the public are willfully disruptive and make it impossible to run an orderly meeting, those individuals may be removed. Additionally, if order cannot be restored by only removing the willfully disruptive group, the board can clear the room and continue the meeting, however it must allow journalists to remain in the room.³⁰⁸

What can be decided in a closed session?

All items must be discussed in an open, public meeting unless it falls into certain specified exceptions for closed sessions. Exceptions include pending litigation, contract negotiations, and some personnel issues. The agenda must briefly describe any issues that will be discussed in closed session, and generally, the board should report any action taken during closed session to the public when the meeting is re-opened. Exceptions to this rule, however, include decisions on pending contract negotiations or litigation that is not yet resolved in which disclosure might endanger the outcome.³⁰⁹

Can board members talk informally and decide what they will do before the public meeting?

Any attempt to communicate directly or indirectly by a majority of the board to decide an issue informally outside of a public meeting is prohibited. However, a member of the public can meet individually with board members outside of public meetings to discuss an issue so long as there is not communication between members to agree on how to vote on an issue. There are exceptions which do allow a majority of board members to meet outside a publicly noticed meeting (like social occasions), but they are prohibited from discussing agency matters.

What can I do if an agency has not followed the Brown Act?

If an agency has violated the Brown Act, a number of remedies are available in court. A member of the public can sue to force the agency to comply with the Brown Act or declare an action void. However, a person must give notice in writing to the agency asking it to correct the action within 90 days of the violation, or 30 days if the violation was because of inadequacies on the agenda. The agency then has 30 days to take action. If the agency does nothing or refuses to take action at the end of the 30 days, the person must file in court within 15 days to void the action. Generally attorney fees are awarded if you prevail in court. Often the local District Attorney will contact the board if a Brown Act complaint is made because the Brown Act includes criminal penalties.

How can I get more information on the Brown Act?

A handout on the Brown Act can be found in *Appendix 2.2*. You can also get more information on the Brown Act from the following organizations that specialize in ensuring public access to information:

- The California First Amendment Coalition, at <http://www.cfac.org/content/index.php/cfac-meetings/index/> or by calling (415) 460-5060.
- The First Amendment Project at <http://www.thefirstamendment.org/> or by calling (510) 208-7744.

Initiatives

The initiative process allows voters to circumvent a water board and adopt an ordinance on their own. Specifically, any person can circulate a petition within the water district or municipality, and if the petition receives enough signatures from registered voters, then the water board or municipal council must either adopt the proposed ordinance or submit it to the voters at a special election.³¹⁰ If the ordinance receives a majority vote at the special election, or if the water board or municipal council adopts the proposed ordinance without submitting it to an election, then the board or council cannot later amend or repeal the ordinance without submitting the proposed amendment or repeal to the voters.³¹¹ In other words, once voters pass a law governing a water provider's practices or policies, the provider cannot change the law after that without the voters' permission. For information on the process to get an initiative on the ballot, contact your local elections office. Often your county or city elections office will have a user-friendly guide showing the forms and technical requirements in your local jurisdiction.

The Initiative Process

The initiative process is **not** available to consumers whose water providers are irrigation districts, or in water districts that do not permit elections or pass ordinances, or in water districts that violate the democratic principle of one-person-one-vote (that is, weigh the votes of some people more heavily than others).³¹²

Grievance Procedures

If you have general complaints about the way your governmental water provider conducts its business, you may want to start by attending meetings and/or reviewing relevant business records at the provider's district office. In addition, the following methods may be used to challenge or dispute an action taken by the water provider.

Writs

If a governmental entity (such as a water board) has acted in violation of the law, you may be able to bring a civil proceeding in court challenging the action or decision. These civil proceedings are called Extraordinary Writs, and there are a number of different kinds that may be used depending on the type of challenge. Writs of Mandate (or mandamus) are used to challenge a local or state agency's decision if it failed to act or acted in violation of legal duties.³¹³ For example, if a local water board adopted a policy that conflicted with a state or federal law, any person or organization that may be affected by that policy could challenge that decision in court through a writ. Additionally, a writ could be used to challenge a local water board decision in court if a board failed to follow the process required by state or federal law (e.g. proceedings required under the Brown Act or Prop. 218). In general, to bring a writ, you must be affected by the decision,³¹⁴ and have "exhausted administrative remedies," which means you must have tried to resolve the issue through any proceedings available to you with the board or agency before bringing the issue to the court.³¹⁵ If you think that a water board acted in violation of the law, you should contact an attorney immediately since in some cases there are short time limits (e.g. 30 days) on when a decision may be challenged in court.

Challenging Ordinances by Referendum

The referendum process allows voters to prevent a recently-adopted ordinance from going into effect. Specifically, if a water board or municipal council adopts an ordinance, then, within 30 days after the water board's secretary or the city clerk attests the ordinance, any person who is eligible to vote within the water district or municipality can circulate a petition among registered voters of the district or municipality.³¹⁶ If the petition receives enough signatures, then the water board or municipal council must either repeal the ordinance or submit it to the voters at the next regularly-scheduled election or a special election.³¹⁷ If the water board or municipal council repeals the ordinance, or if a majority of voters do not vote in favor of the ordinance, then the board or council may not attempt to readopt the same ordinance for at least one year.³¹⁸ In other words, if voters reject a law passed by the water board, the water provider cannot attempt to reenact that law for at least a year.



The Tort Claims Act

As a general rule, an entity of state or local government cannot be sued in a court of law for monetary compensation (referred to as “damages”) without the state government’s permission. In California, that permission comes in the form of the state Tort Claims Act,³¹⁹ which specifies the limited situations in which a public entity, such as a governmental water provider, can be held financially liable for injuries caused by the entity’s action or inaction. The situations in which liability may be imposed that are most relevant to governmental water providers are: 1) the existence of a dangerous condition on a water provider’s property,³²⁰ and 2) a water provider’s failure to fulfill a duty imposed upon it by statute.³²¹

In addition, the Tort Claims Act establishes the procedures that both a potential claimant (the person with the grievance) and the water provider must follow if a grievance involving monetary damages arises.³²² In particular, before a claimant can file a lawsuit in court seeking money damages from a governmental water provider, the claimant must first present the claim to the provider, thereby giving the provider an opportunity to pay the claim out of court if the provider so chooses.³²³

What is a tort?

In the United States, a “tort” refers to the kind of civil lawsuit brought when someone is injured by an action or inaction, *e.g.*, someone gets sick from a water system’s failure to chlorinate. Some other foreign countries categorize this kind of lawsuit as a “civil wrong,” “civil responsibility,” “delict,” or the “law of obligations.” Generally, the lawsuit is seeking monetary damages, although it may also seek that a defendant take a certain action, such as installing a chlorinator.

The California State Tort Claims Act

only applies to lawsuits against governmental water providers in which a claimant seeks monetary compensation. The Act does not limit other kinds of legal action, such as seeking a declaration or a court order demanding the provider to perform or cease performing some action.

Limits on Power to Increase Water Rates

Governmental water providers do not have unlimited power to increase water rates or impose new fees and charges related to water service. Specifically, Proposition 218 requires all governmental water providers (including all special districts) to follow a set process before they can raise rates. It also sets limits on why the rates can be increased. While there are a number of cases that have tried using other legal tools to challenge rate increases in court, Proposition 218 remains the most useful. Below is more detailed information on these tools and requirements.

Proposition 218 (Article XIID of the California Constitution)

Article XIID of the California Constitution (commonly referred to as “Prop. 218”) requires the provider to first satisfy a number of procedural and substantive requirements before it can raise rates. Procedurally, the provider must satisfy the following steps:³²⁴

1. Identify the parcels of land within its jurisdiction that will be affected by the rate increase.
2. Notify the affected landowners in writing of the proposed rate increase, specifying the following information:
 - the amount of the rate increase;
 - why the increase is needed;
 - how the provider calculated the amount of the needed increase; and
 - when and where the provider will conduct a public hearing on the proposed increase.
3. Conduct a public hearing on the proposed rate increase and consider all protests by property owners.

Check for updates in Prop. 218 case law

Court interpretations of Proposition 218 are continually evolving and changing. Make sure you check with an attorney to find out if new cases have changed the interpretations presented here.

If a majority of property owners within the service district submit written protests at the hearing, the provider must withdraw its proposal.³²⁵

Box 2.9 - Prop. 218 - Do *Tenants* Have Veto Power?

As the list of procedural steps demonstrates, the language of Article XIID clearly gives **landowners** the power to veto a governmental water provider’s proposed water rate increase by majority protest. The question remains whether residential tenants wield similar power. No court has decided this issue, but Article XIID defines property ownership expansively to include tenants, at least in situations where tenants are directly liable to pay for fees or charges.³²⁶ Therefore, it is probably not unreasonable to construe Article XIID extending veto power to those tenants who pay water bills directly to the water provider; however, those tenants whose water use charges are included in the monthly rent paid to the landlord probably do not qualify for veto power.

Even if a majority of property owners do not veto the proposed rate increase, the increase must still satisfy the following substantive requirements to be valid:³²⁷

1. The provider must tie the rate increase to a particular targeted service enhancement (for example, augmenting water supplies or improving delivery system infrastructure). That purpose may **not** include funding “general governmental services” that are available to the general public

as well as to property owners. (In other words, the provider cannot impose a water rate increase to pay for unrelated services, such as police, fire, ambulance, or library services.)

2. The provider may not use the revenue generated by the rate increase for any other purpose than the one for which the increase is targeted. (In other words, after identifying a particular purpose for the rate increase, the water provider may not subsequently divert the funds elsewhere.)
3. The provider must calculate the amount of the rate increase precisely to cover the cost of the funds needed to provide the service. (In other words, the agency cannot generate a profit from increased water rates.)
4. The cost imposed on each property owner must be proportional to that property owner's water use. (Increases in consumption-based water use charges would appear to satisfy this requirement.)
5. The provider must base the rate increase on actual use, not estimated use or potential future use. (Again, increases in consumption-based water use charges would appear to satisfy this requirement.)

Other Limitations on Water Rate Increases

The fees and charges a governmental water provider imposes on its users must be reasonable, fair, and equitable in nature.³²⁸ However, when a governmental water provider passes an ordinance fixing water rates, this constitutes a legislative function, and courts therefore accord substantial deference to the provider's decision.³²⁹ Historically, the court will presume that the ordinance is valid, and the person challenging the rate increase bears the burden of proving otherwise.³³⁰ This is an extremely difficult standard to meet.³³¹

On the other hand, in the wake of Proposition 218 and the adoption of Article XIID of the Constitution, it appears that a governmental water provider no longer has a right to earn a reasonable rate of return (profit) from an increase in water rates.³³² Instead, water charges must remain closely tied to the cost of delivering the water and maintaining the system.³³³ This suggests that, if challenged in court, perhaps a provider might need to produce some evidence after all of the linkage between the revenues generated by its rate increase and the operational costs toward which those funds are disbursed.

Finally, in contrast to private water utilities, which are governed by the PUC, governmental water providers are not required to pass along any cost savings to customers.³³⁵ The theory is that, unlike privately-owned corporations that are in the business of earning a profit, "the electoral process is a sufficient check on [the] functioning" of governmental water providers.³³⁶

Discriminatory Rates

California courts have consistently held that in order to challenge a rate increase as being discriminatory in violation of the Equal Protection Clause, "a showing that rates lack uniformity is by itself insufficient to establish that they are unreasonable and hence unlawful. To be objectionable, discrimination must draw an unfair line or strike an unfair balance between those in like circumstances having equal rights and privileges. It is only unjust or unreasonable discrimination which renders a rate or charge unreasonable."³³⁴ Therefore, even if a rate increase impacts some users more heavily than others, or is not the same amount for all users, that fact alone does not establish unlawful discrimination. Rather, the differences in rates or impacts must also be unjust or unreasonable in order for that rate increase to be illegal.

Types of Governmental Entities that Provide Drinking Water

In addition to the laws that govern all local governmental entities in California, each type of governmental water provider has its own set of laws that set out specific structural issues, such as the purpose of the entity, who can serve on the governing board, and how board members are elected. Below is an overview of the laws governing the most common types of governmental water providers.

Special Districts

Special districts are local public agencies that provide many of the same services as a city government. In most unincorporated communities, special districts are the only local governmental entities. While there are many different types of special districts, the discussion below is limited to some of the most common types of special districts that act as local water providers: irrigation districts, community services districts, public utility districts, and municipal water districts.

There are over twelve different types of water districts in the California Water Code alone, each with their own set of laws governing the formation, powers, and other rules of the district. However, most of these water districts, such as County Water Districts, Water Conservation Districts, California Water Districts, California Water Storage Districts, Reclamation Districts, and County Waterworks Districts, generally focus on providing water supply for irrigation or flood control and often do not provide potable water directly to residents. Additionally, there are many other types of districts in other parts of the California Code that can provide drinking water, such as County Sanitation Districts, but whose primary purpose may be broader. In short, if your PWS is a special district that is not discussed in this Guide, ask your water provider or your Local Agency Formation Commission (LAFCO) for a copy of the laws governing that district.

LAFCOs

Each of California's 58 counties has a Local Agency Formation Commission (LAFCO), which, among other things, oversees the formation of special districts within the county. One of the primary purposes of each county's LAFCO is to encourage the "orderly formation and development of local agencies" within the county.³³⁷

Box 2.10 - Other County Water Districts

There are a number of different types of county districts that may provide drinking water.

County Sanitation Districts may provide potable water, although often they are formed to provide sewer or waste disposal services regionally.³³⁸ The boards of these districts are composed of representatives of any cities or sanitation districts within these regional districts, as well as a member of the county board of supervisors if the district includes unincorporated areas.³³⁹

County Service Areas (CSAs) are assessment districts formed by the county to provide specific services to unincorporated areas that it does not perform on a county-wide basis.³⁴⁰ Often counties use these CSAs to provide water to communities in unincorporated areas. CSAs are administered by county staff (traditionally Public Works or the Resource Management Agency) under the direction of the county board of supervisors.

County Water Districts (CWDs) are regional districts whose purpose is to control water for any present or future beneficial use within the district.³⁴¹ CWDs often do not provide potable water directly. A CWD is governed by an elected board of five directors. Any person registered to vote within the district is eligible to serve on the board of directors.³⁴²

County Waterworks Districts are special districts with the power to provide water for irrigation, domestic, industrial, or fire protection purposes.³⁴³ They are governed by the board of supervisors of the county, unless a board of directors has been appointed by the board of supervisors.³⁴⁴

Irrigation Districts

Overview

Purpose of Irrigation Districts

As the name would suggest, an irrigation district's primary function is to provide irrigation water to landowners within the district.³⁴⁵ However, irrigation is broadly defined to include both commercial, agricultural uses **and** domestic, residential uses.³⁴⁶ Other district powers include land drainage,³⁴⁷ flood control,³⁴⁸ distribution of electrical power,³⁴⁹ sewage disposal (if district voters assent),³⁵⁰ and the operation of public recreational facilities on dams and reservoirs as a source of revenue.³⁵¹

Laws Governing Irrigation Districts

Irrigation districts are governed by Division 11 of the California Water Code, comprising Sections 20500-29978. The laws governing irrigation districts are vast and span significantly more sections of code than the laws regulating the other types of special district water providers.

Irrigation Districts

In irrigation districts where water use is primarily agricultural, the water quality requirements for PWSs specified in California's Safe Drinking Water Act may not apply. An irrigation district may supply non-potable water, so long as the district and its water consumers take reasonable precautions to ensure a supply of safe drinking water for domestic users.³⁵² See the previous section on Exemptions in the first part of the *Legal Reference Guide*.

Caution!! This section contains a description of the default laws that apply to **most** irrigation districts. However, many sections of the Water Code apply only to individual, specifically-named irrigation districts. (For example, an entire chapter is devoted only to the El Dorado Irrigation District.) Therefore, be sure to review the Water Code (available at <http://www.leginfo.ca.gov/cgi-bin/calawque?codesection=wat&codebody=&hits=20>) or check with your local district to see whether there are particular laws that apply specifically to your irrigation district.



Governance

Governing Structure

In general, each irrigation district is governed by a five-member board of directors, which manages the district's affairs.³⁵³ An irrigation district must also maintain a district office at a fixed place, although the office does not need to be located within the district.³⁵⁴

Who can serve on the board?

A district is generally divided into five geographic divisions, each of which elects one member to the board of directors.³⁵⁵ In order to become a member of the board, you must be a voter and a landowner in the district, as well as a resident of the division you wish to represent, both when nominated or appointed and during the entire term.³⁵⁶ Districts are given wide latitude to change their election procedures,³⁵⁷ however, so check with your local office for possible differences.

Who has the right to vote?

Any registered voter living in the district is eligible to vote in any district election.³⁵⁸

Box 2.11 - Exceptions to Universal Voting for Irrigation Districts

In the following irrigation districts, only landowners may vote, and they do not have to reside in the district.³⁵⁹

Big Springs Irrigation District	Glenn Colusa Irrigation District	Princeton-Codora-Glenn Irrigation District
Camp Far West Irrigation District	Jackson Valley Irrigation District	Provent Irrigation District
Corcoran Irrigation District	James Irrigation District	Richvale Irrigation District
Cordua Irrigation District	Montague Water Conservation District	

How can a board member be removed?

If a board member willfully violates a legal duty, any person who pays assessments to the irrigation district can file a lawsuit in the local superior court seeking to remove that member from the board.³⁶⁰ Unfortunately, the court can take a long time to resolve the matter, and it is difficult to prove that a board member's misconduct was intentional.

Alternatively, you may also contact the local county elections office for more information on the recall process for special district elected offices.

Public Participation & Access to Information

Meetings

The Water Code requires that all meetings of the irrigation district board be open to the public.³⁶¹ While exceptions may apply, in general, the board is supposed to hold a regular meeting on the first Tuesday of each month at the district office.³⁶² In addition, as public entities, the Brown Act requires irrigation districts to give members of the public an opportunity to comment at each meeting. See the previous section on the Brown Act in this part of the *Legal Reference Guide* for more information.

Public Information

The Water Code allows, but does not require an irrigation district to inform the public about its activities.³⁶³ However, in addition to the Public Records Act, the Water Code obligates an irrigation district to make all of its records available to the public at the district office during regular business hours.³⁶⁴ For more information, see the previous section on the Public Records Act in this part of the *Legal Reference Guide*.

Direct Democracy

District voters cannot circumvent the irrigation district's board of directors to adopt ordinances by initiative, as the California Elections Code specifically exempts irrigation districts from this particular form of participatory governance.

Grievance Procedures

If you have general complaints about the way your irrigation district conducts its business, you may want to start by attending meetings and/or reviewing relevant business records at the district office.

Challenging Ordinances

As irrigation districts are public entities, voters can use the referendum process to veto any ordinance passed by the board, and individuals or community groups can challenge the legality of any ordinance by petitioning a court for a writ of mandamus. See the previous section on Writs and Challenging Ordinances by Referendum in this part of the *Legal Reference Guide* for more information on this process.

Tort Lawsuits

Individuals can sue an irrigation district or one of its employees in tort, although, because irrigation districts are public entities, the Government Code places certain limitations on a victim's ability to receive monetary compensation from an irrigation district for the injuries it causes. See the previous section on the Tort Claims Act in this part of the *Legal Reference Guide* for more information.

Injunctions

The Water Code provides specific recourse for an individual whose legal entitlement to water is violated by the district. Much of the routine, daily work of the irrigation district is carried out by a “watermaster,” the official charged with regulating water use within the district.³⁶⁵ If the watermaster injures someone who has an express legal right to water by failing to distribute that water, the injured person may file a lawsuit with the local superior court requesting an injunction.³⁶⁶

Injunction

An injunction is a court order that can be used to stop the district’s improper actions or compel it to perform a specific duty. The individual who requests the injunction cannot receive monetary compensation from the district through this procedure.

Administrative Oversight

The California Department of Water Resources (DWR), a statewide agency, has the authority to inspect the affairs of an irrigation district and request reports or other information from the members of the board.³⁶⁷ A private citizen cannot force DWR to act upon this authority, but bringing an irrigation district’s seemingly improper actions to DWR’s attention could influence a decision by the agency to exercise this power.

Community Services Districts

Overview

Purpose of Community Services Districts

Community services districts (CSDs) function much like a city government for unincorporated areas, providing a wide range of what are traditionally considered municipal services. In addition to supplying water in the same manner as a municipal water district, CSDs have the power to dispose of sewage, wastewater, storm water, and solid waste, to maintain roads, parks, libraries, cemeteries, and community centers, to provide services such as fire and police protection, law enforcement, flood protection, transportation, hydroelectric power, snow removal, animal and pest control, mail delivery, environmental protection, and ambulance services,³⁶⁸ and even to supply electricity in some circumstances.³⁶⁹

Community Services Districts (CSDs)

primarily serve unincorporated areas, although they do not automatically lose their powers if some or all of the land they serve gets annexed into a city or is incorporated (*i.e.*, if a city is formed).

Laws Governing CSDs

CSDs are governed by Title 6, Division 3 of the California Government Code, comprising Sections 61000 – 61226.5. The statutory provisions governing CSDs are less extensive than the laws governing other types of special districts that supply water. CSDs thus have wide latitude in their functioning, and individual districts may vary significantly from one another in their operations.

Governance

Governing Structure

In general, each CSD is governed by a five-member board of directors, which establishes policies to govern the district's operations.³⁷⁰ The board appoints a treasurer and a general manager, who implements the board's policies.³⁷¹ As cost-saving measures, the board may appoint the county treasurer to serve as a treasurer for the CSD; if the board so chooses, that same individual may also serve as the general manager.³⁷²

Who can serve on the board?

Generally, every qualified voter is eligible to become a member of the board of directors.³⁷³ Board members are selected by election,³⁷⁴ and hold office for a term of four years.³⁷⁵ Some CSDs elect board members at large (meaning, every voter in the district can vote on every candidate for the board of directors), while other CSDs divide themselves into geographical divisions, each of which elects one resident to the board of directors.³⁷⁶

However, if the CSD consists only of unincorporated territory in a single county and has less than 100 voters, the county board of supervisors must also serve as the board of the CSD until voters within the district approve a transition to an elected board of directors (usually within five years after the district's formation or when the number of voters in the district reaches 500).³⁷⁷

Who has the right to vote?

All registered voters residing in district can vote in district elections.³⁷⁸

How can a board member be removed?

The provisions of the Government Code pertaining to CSDs do not provide a standardized method for removing members of the board for misconduct. Therefore, contact your county elections office for more information on the recall process for special district elected offices. This office will have information on who can be recalled, who initiates and conducts a recall, how to start the recall process, petition and signature requirements, how to file recall petitions, the rules governing recall elections, and more. The county may also provide you with examples and templates for you to use.

Public Participation & Access to Information

The Government Code does not contain any provisions specifically obligating a CSD to include the public in its decision making processes or notify the public about its activities. However, CSDs are public entities and therefore subject to the Public Records Act (requiring CSDs to make most records available to members of public), the Brown Act (requiring CSDs to hold board meetings open to the public and receive public comments), and the initiative process (which empowers voters in a district to adopt ordinances regarding water provision without the consent of a CSD's governing board).

Grievance Procedures

If you have general complaints about the way your CSD conducts its business, you may want to start by attending meetings and/or reviewing relevant business records at the district office.

The provisions of the Government Code concerning CSDs do not provide any specific grievance procedures for individuals or community groups who are unhappy with actions taken by their district. However, the standard procedures for lodging grievances against public entities are available against CSDs (*i.e.*, challenging a district ordinance by referendum or writ of mandamus, or suing a district or one of its employees in tort). See the previous section on Grievance Procedures common to all governmental entities in this part of the *Legal Reference Guide* for more information.

Public Utility Districts

Overview

Purpose of Public Utility Districts

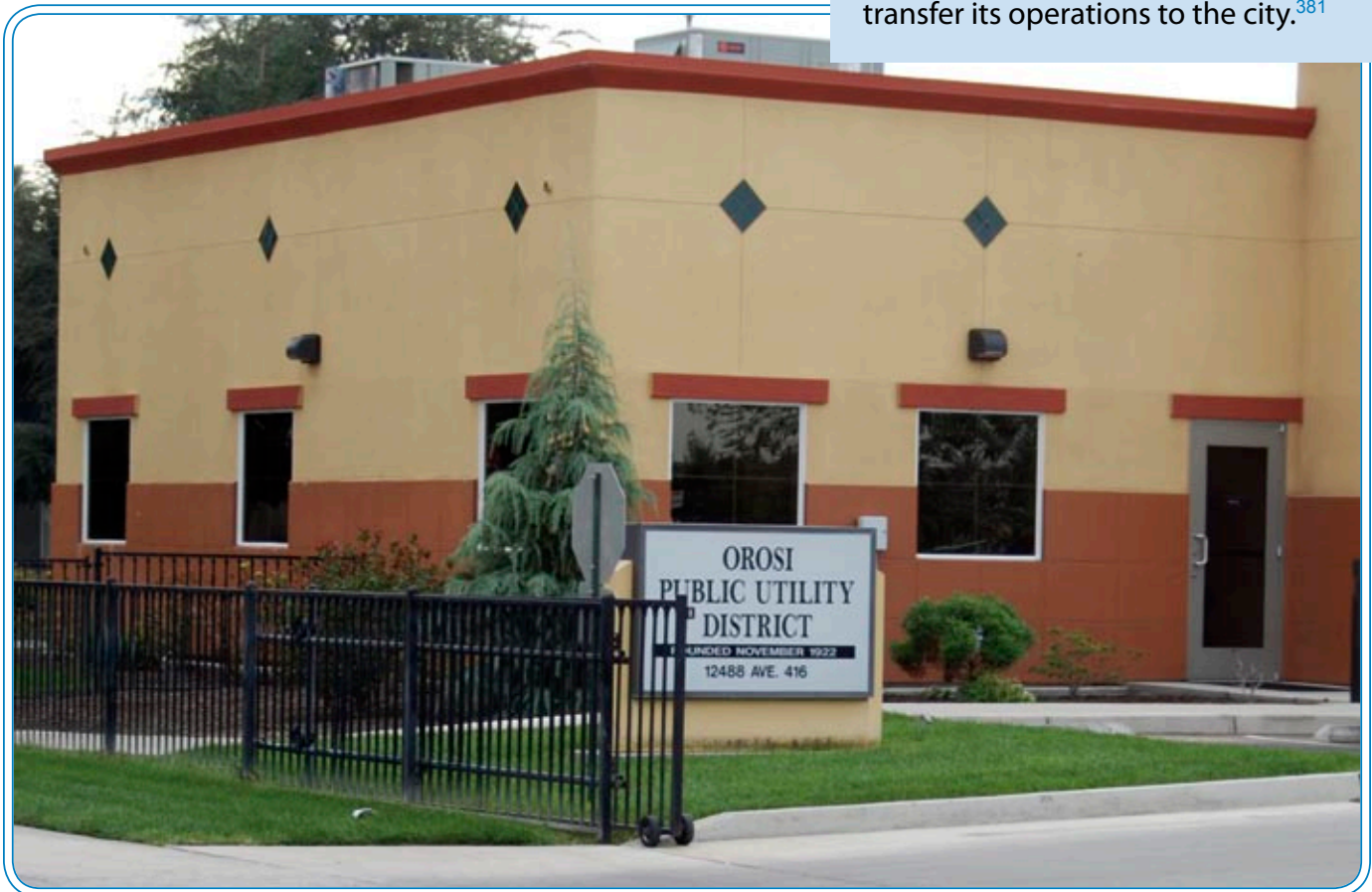
Public utility districts (PUDs) are publicly-owned corporations³⁷⁹ authorized to provide a range of utility services to their residents, such as electricity, water, heat, transportation, communications, garbage collection, sewage disposal, emergency services, street lighting, and drainage. PUDs are also authorized to operate recreational facilities, such as public parks and swimming pools, as well as fire department.³⁸⁰

Laws Governing Public Utility Districts

PUDs are governed by Division 7 of the California Public Utilities Code, comprising Sections 15501-18055.

PUDs

PUDs provide services to specific unincorporated areas. If the PUD's entire area of coverage gets annexed or incorporated into a city, the PUD must transfer its operations to the city.³⁸¹



Governance

Governing Structure

Each PUD is governed by an elected board of directors, which exercises the powers of the district.³⁸² Generally, the board consists of three directors, who serve staggered, four-year terms.³⁸³ The board can only act by motion, resolution, or ordinance, and its decisions are made by a majority vote among the directors.³⁸⁴ Ordinances passed by the board do not take effect until 30 days after passage.³⁸⁵

The board selects a president from among its members and also appoints four additional officers: a clerk, an accountant, a general manager, and a treasurer.³⁸⁶ The general manager controls the construction, operation, and maintenance of the PUD's water system.³⁸⁷ The clerk acts as a secretary to the board and must work fulltime for the PUD during office hours.³⁸⁸ The accountant must maintain a system of auditing and accounting for the PUD at all times.³⁸⁹ As cost-saving measures, a single person may hold more than one of these appointed offices,³⁹⁰ and the board may assign the county treasurer to perform the treasury duties for the PUD.³⁹¹

Who can serve on the board?

Any person who is registered to vote and resides in the district is eligible for nomination as a board member.³⁹²

Box 2.12 - Composition of PUD Board of Directors

The requirements governing the composition of a PUD's board of directors is relatively more complicated than in other special district water providers. Each PUD is made up of at least one "territorial unit," which is defined as all of the unincorporated area within the boundaries of a single county.³⁹³ Each territorial unit that has a population of at least 5,000 may elect one director to the board.³⁹⁴ If the PUD consists of less than three territorial units eligible to elect directors, the remaining positions on the board must be filled at-large (meaning, every eligible voter in the district can vote on the candidates for those remaining positions on the board).³⁹⁵ If the entire PUD resides within the boundaries of a single county, elections for all three directors must be at-large. Elections for the board of directors must take place every two years (specifically, on the first Tuesday after the first Monday in November on odd-numbered years.)³⁹⁶

If a PUD lies entirely within the boundaries of one county, the voters may approve an ordinance to increase the number of board members to five, all of whom must be elected at-large. (The proposed ordinance may be submitted to the voters either as a voter-driven initiative or as a proposition by the board.)³⁹⁷

Who has the right to vote?

Any registered voter residing in the district can vote in district elections.³⁹⁸

How can a board member be removed?

Although the Public Utilities Code does not specify the procedures by which board members can be removed from office, the code does specify a number of grounds for removal.³⁹⁹ These include:

1. **Conflicts of Interest:** Entering into a contract that will create a conflict of interest for one or more of the board members (such as a contract from which board member(s) will profit).⁴⁰⁰
2. **Improper Accounting Procedures:** Failure to follow proper accounting procedures (*i.e.*, making unauthorized appropriations from the PUD's various funds, or failing to either 1) pay the PUD's operating receipts into the PUD treasury on a daily basis, 2) maintain the PUD's accounting books accurately, or 3) provide for an audit of those books).⁴⁰¹

3. **Avoiding Due Diligence:** Failure, when requested by 15% of the voters, to hire a qualified consultant selected by the California Public Utilities Commission to inspect the PUD's management and operations for a reasonable fee, in time for the consultant's completed report to be filed in the district office within thirty days of the next district election.⁴⁰²
4. **Improper Rate-Setting:** Failing to charge customers for the PUD's services at a rate sufficient to enable the PUD to generate enough revenue to remain self-sustaining (*i.e.*, at a rate sufficient to cover the PUD's operating expenses and administrative expenses, its principal and interest due on any debt incurred for the construction or purchase of the utility, and a fund for future system maintenance and repairs).⁴⁰³
5. **Improper Taxation:** Failing to utilize the PUD's property tax power appropriately (*i.e.*, failing to either 1) levy an additional tax if the PUD's revenues are inadequate to cover its expenses, 2) pass an ordinance stating the total amount that needs to be raised by the tax and the purpose for which the tax is necessary, 3) provide a manner to equalize assessments on taxable property within the district, or 4) collect delinquent taxes and bring legal proceedings against the delinquent property owners in the district).⁴⁰⁴
6. **Improper Tax Delegation:** If choosing to delegate the PUD's property tax collection to the county assessor, failing to 1) pass an ordinance declaring this decision, 2) fix the property tax before September 1 at a rate sufficient to raise the necessary amount, and immediately thereafter, 3) inform the county auditor of the rate.⁴⁰⁵

Contact your County Elections Office for more information on the recall process for special district elected officials in your jurisdiction.

Public Participation & Access to Information

Meetings

The Public Utilities Code requires the board to hold all of its legislative sessions open to the public. In addition, as public entities, the Brown Act requires a PUD to give members of the public an opportunity to comment at each meeting.⁴⁰⁶ See the previous section on the Brown Act in this part of the *Legal Reference Guide* for more information.

Public Information

The Public Utilities Code requires the board to record votes on all of its proceedings in a journal,⁴⁰⁷ and at the end of each fiscal year, it must publish a statement describing the PUD's financial condition in a newspaper of general circulation within the district.⁴⁰⁸ This statement must show all the receipts and disbursements made during the past year and explain their source and purpose.⁴⁰⁹ The board must also notify district residents of a recently-passed ordinance no less than a week before an ordinance is scheduled to take effect. Specifically, the clerk must post copies of the ordinance in three public places in the district and publish a copy in a local newspaper of general circulation.⁴¹⁰ Additionally, the Public Records Act requires a PUD to make most of its records available to members of the public. See the previous section on the Public Records Act in this part of the *Legal Reference Guide* for more information.

Direct Democracy

As public entities, PUDs are subject to the initiative process, which empowers voters in the district to adopt ordinances regarding water provision without the consent of the PUD's governing board. See the previous section on Initiatives in this part of the *Legal Reference Guide* for more information.

Grievance Procedures

If you have general complaints about the way your PUD conducts its business, you may want to start by attending meetings and/or reviewing relevant business records at the district office.

Challenging Ordinances

The Public Utilities Code authorizes members of the public to challenge certain ordinances passed by the PUD involving tax levies by filing a petition during the 30-day window before an ordinance takes effect. This petition suspends operation of the ordinance and forces the board either to repeal the ordinance or submit it to the voters in the district.⁴¹¹ Likewise, because PUDs are public entities, voters can use the referendum process to veto any ordinance passed by a PUD, and individuals or community groups can challenge the legality of any ordinance by petitioning a court for a writ of mandamus. See the previous sections on Writs and Challenging Ordinances by Referendum in this part of the *Legal Reference Guide* for more information.

Tort Lawsuits

Individuals can sue a PUD or one of its employees in tort, although, because PUDs are public entities, the Government Code places certain limitations on a victim's ability to receive monetary compensation from a PUD for the injuries it causes. See the previous section on the Tort Claims Act in this part of the *Legal Reference Guide* for more information.

Municipal Water Districts

Overview

Purpose of Municipal Water Districts

The primary function of a municipal water district (MWD) is to control water for the beneficial use of the district.⁴¹² This includes supplying potable and non-potable water, as well as disposing of or recycling wastewater.⁴¹³ In addition, an MWD has the authority to generate and distribute electric power, to provide fire protection and waste disposal services, and to use its existing facilities for public recreation (for example, boating and fishing).⁴¹⁴

Laws Governing Municipal Water Districts

MWDs are governed by Division 20 of the California Water Code, comprising Sections 71000-73001.

Governance

Governing Structure

An MWD is governed by an elected board of directors, which exercises the powers of the district.⁴¹⁵ The board consists of five directors, who serve staggered, four-year terms.⁴¹⁶ The board can only act by motion, resolution, or ordinance, and its decisions are made by a majority vote among the directors.⁴¹⁷

The board selects a president (and has the option of also selecting a vice president) from among its members.⁴¹⁸ It also appoints at least five additional officers: a secretary, a treasurer, an attorney, an auditor, and a general manager.⁴¹⁹ The general manager controls the construction, operation, and maintenance of the MWD's water system.⁴²⁰

Who can serve on the board?

An MWD is divided into five geographic divisions, and each division elects one director to the board.⁴²¹ To serve on the board of directors, a person must be a resident of the division from which he or she is elected.⁴²²

Who has the right to vote?

Any registered voter living in the district is eligible to vote in any district election.⁴²³

How can a board member be removed?

The provisions of the Water Code pertaining to MWDs do not provide a standardized method for removing members of the board for misconduct. Contact your local elections office for more information on the recall process for special district elected officials.

Public Participation & Access to Information

Meetings

MWDs are public entities and therefore subject to the Brown Act, which requires an MWD to hold its meetings open to members of the public and receive public comments. See the previous section on the Brown Act in this part of the *Legal Reference Guide* for more information.

Public Information

The Water Code requires the board to record votes on all ordinances in a journal.⁴²⁴ In addition, the Public Records Act requires an MWD to make most of its records available to members of public. See the previous section on the Public Records Act in this part of the *Legal Reference Guide* for more information.

Direct Democracy

The Water Code specifically empowers district voters to use the initiative process, as codified in the Elections Code, for the purpose of adopting ordinances regarding water provision with or without the consent of the MWD's governing board.⁴²⁵ See the previous section on Initiatives in this part of the *Legal Reference Guide* for more information.

Grievance Procedures

If you have general complaints about the way your MWD conducts its business, you may want to start by attending meetings and/or reviewing relevant business records at the district office.

Challenging Ordinances

The Water Code specifically empowers district voters to use the referendum process, as codified in the Elections Code, for the purpose of vetoing an ordinance passed by the board.⁴²⁶ In addition, because MWDs are public entities, individuals or community groups can challenge the legality of an ordinance by petitioning a court for a writ of mandamus. See the previous sections on Writs and Challenging Ordinances by Referendum in this part of the *Legal Reference Guide* for more information.

Tort Lawsuits

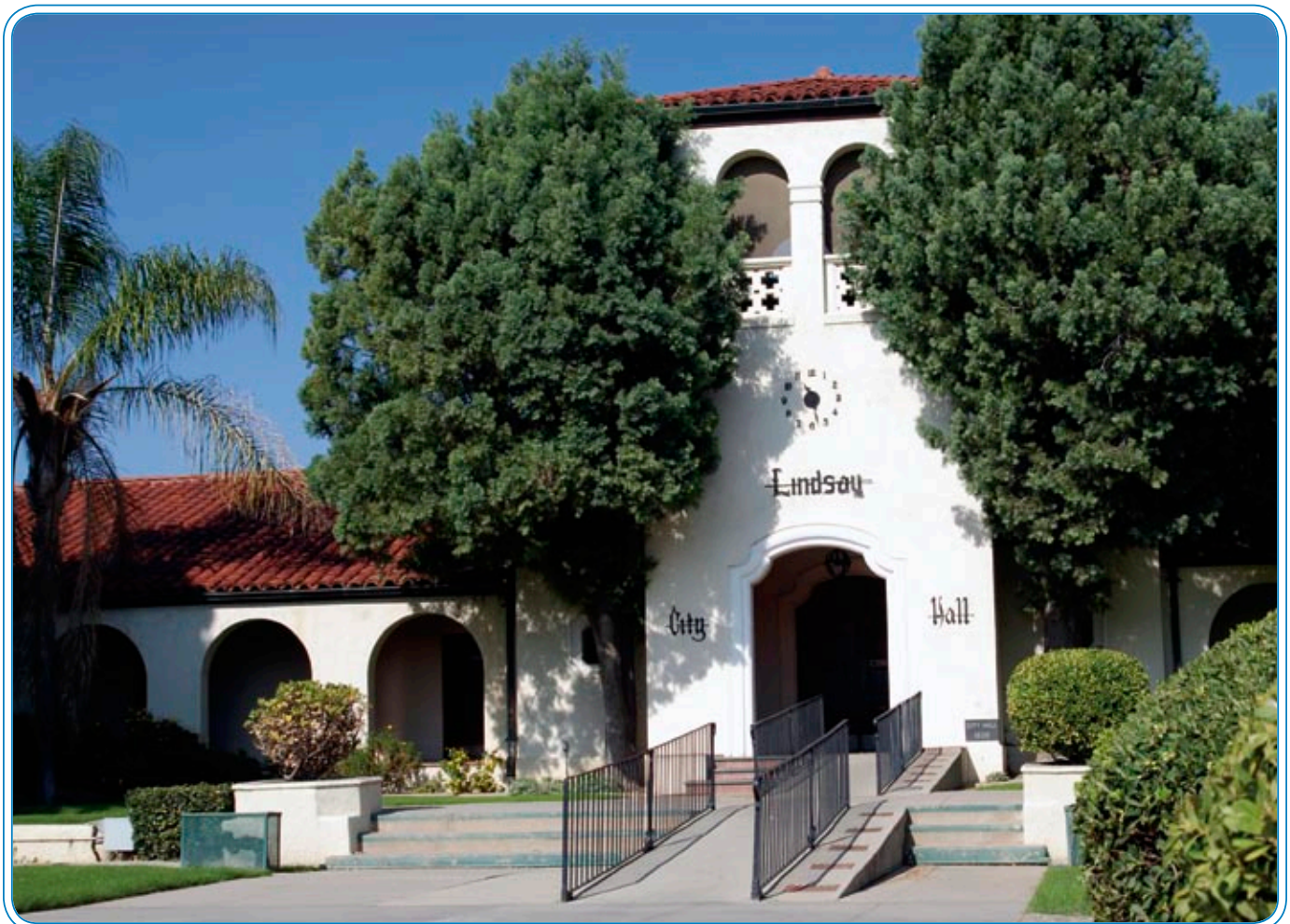
The Water Code specifies that MWDs can be sued in a court of law, including for torts committed by an MWD or one of its employees.⁴²⁷ However, because MWDs are public entities, the Government Code places certain limitations on a grievant's ability to receive monetary compensation from an MWD for the injuries it causes. See the previous section on the Tort Claims Act in this part of the *Legal Reference Guide* for more information.

Cities

Cities are areas that have incorporated to form a semi-autonomous local government, which has the power to make rules for the general welfare and provide a wide array of services within its boundaries. Cities can provide water directly or allow another entity to provide water, including private companies. A city does not have to provide water,⁴²⁸ but if it does it cannot discriminate. Therefore, if a city does choose to provide water directly, it must make that service available to all areas of the jurisdiction under reasonable rules and regulations.⁴²⁹

If a city does provide water, it is common for a city to have a public works department to oversee the water system; however each city can create its own structure. Ultimately the city council and mayor oversee city policies and operations. Therefore, if a city does provide water directly, the city council is often where policy decisions are made and can be challenged. Because each city is different and can enact its own laws and structure, it best to check with your city directly to determine the structure and rules regarding water service.

The Brown Act, Public Records Act, and Prop. 218 do apply to city governments, and decisions can be challenged through writs in court or through referendums. Cities may also be sued for damages in court under tort law, with some limitations. See the previous section on Features Common to All Governmental Water Providers in this part of the *Legal Reference Guide* for more information on these laws and tools.



Nongovernmental Water Providers

Private Water Utilities

Private water utilities are private companies that provide water as commercial, for-profit enterprises and are regulated by the California Public Utilities Commission (PUC). They can also be referred to as “public utilities” or “investor-owned utilities.”

Box 2.13 - The Public Utilities Commission (PUC)

The California Public Utilities Commission (PUC) is a state agency with regulatory authority over private companies that provide public utility services directly to consumers.⁴³⁰ Regulated utilities include but are not limited to water, electricity, natural gas, telephones, and certain forms of public transportation.⁴³¹ The PUC’s stated mission includes “protecting consumers and ensuring the provision of safe, reliable utility service and infrastructure at reasonable rates[.]”⁴³²

Which Water Providers are Regulated by the PUC?

According to the California Public Utilities Code, any corporation (or person) that owns, controls, operates, or manages water for compensation, and delivers some water to, or provides some water-related service for, members of the public, and receives payment in return, is a public utility subject to regulation by the PUC.⁴³³ It does not matter whether the water is for irrigation, reclamation, manufacturing, power generation, or municipal or domestic use.⁴³⁴

The Code carves out certain exceptions for water providers who do not classify as public utilities subject to PUC oversight, including mutual water companies, water wholesalers, and certain providers that only supply water to water conservation districts, mobile home parks, and residential apartment complexes.⁴³⁵ Mutual water companies may supply water **at cost** to their members, to their members’ tenants, to other mutual water companies, and to governmental entities for the purpose of providing fire protection or operating park facilities, without becoming subject to PUC regulation. However, if a mutual supplies water **for compensation** to anyone besides its members, including governmental entities, other mutuals, or individual consumers, it classifies as a public utility and becomes subject to PUC regulation.⁴³⁶

If there is any question regarding whether a water provider qualifies as a public utility, the PUC will conduct a hearing on the matter, and its determination will be final.⁴³⁷ (This means that neither the water provider nor the water consumers can petition a court of law to review the PUC’s decision.)

The PUC also does not have jurisdiction over municipal utilities or special water districts, presumably because these are governmental entities over which water users can exert voting power. At least in theory, the political process provides an adequate substitute for public utility regulation.

A full list of all regulated water utilities in California is available from the PUC at :
<http://docs.cpuc.ca.gov/published/REPORT/48786.htm>
or by calling (415) 703-1818.

Private Utility Regulation

The Public Utilities Code places various restrictions on private water utilities (meaning, water providers regulated by the PUC).⁴³⁸ Some of the requirements include maintaining a physical office in the county⁴³⁹ and adequate water system infrastructure,⁴⁴⁰ keeping proper accounting records,⁴⁴¹ submitting various reports to the PUC,⁴⁴² and paying an annual fee for the commission's oversight.⁴⁴³ Of primary importance, however, is the PUC's oversight role in setting the water rates that a utility charges its customers.

Caution!!

The PUC does not govern PUDs.

Remember, Public Utility Districts (PUDs) are special districts and not governed by the Public Utility Commission (PUC). See the previous section on Public Utility Districts in this part of the *Legal Reference Guide* for an overview of the laws governing PUDs.

Water Rates

The Public Utilities Code requires that rates be just and reasonable,⁴⁴⁴ balancing the utility's need to earn a reasonable return on its investment with water customers' need for affordable, reliable water service, among other factors.⁴⁴⁵ The PUC is responsible for enforcing these standards.⁴⁴⁶ Accordingly, a utility that desires to change its rate structure in a manner that will increase the utility's revenue must follow specific procedures established by the PUC. These include, at a minimum, filing a rate increase request with the PUC and providing a notice to customers in their next monthly water bill, which must include the amount of and reason for the proposed increase and contact information for customers who wish to inquire about the scheduling of a hearing before the PUC.⁴⁴⁷ If the PUC holds a hearing on the proposal, it must allow an opportunity for individual utility customers and civil society organizations representing those customers to testify.⁴⁴⁸

The PUC also has to consider and "may implement" programs to provide rate relief for low income ratepayers.⁴⁴⁹ For more information, see <http://www.cpuc.ca.gov/PUC/Water/CurrentClassAPrgms.htm> or call (415) 703-1818.

Grievance Procedures for Customers of Regulated Utilities

For those water providers that are regulated by the PUC, consumers can bring complaints to the PUC if they feel that water rates are not "just and reasonable."⁴⁵⁰ To file a complaint against a private water utility, call (800) 649-7570 or go to <http://www.cpuc.ca.gov/PUC/forms/Complaints/>.

Other Nongovernmental Water Providers

There are a number of types of other nongovernmental water providers that have much fewer requirements on issues like public access to information, governance, and rates increases. The most common ones are listed below.

Mutual Water Companies (Nonprofit Mutual Benefit Corporations)

Overview

Purpose of Mutual Water Companies

A mutual water company (mutual) is a nonprofit mutual benefit corporation that is organized to sell, distribute, supply or deliver water for irrigation purposes or domestic use.⁴⁵¹ Mutuals are essentially cooperatives formed by landowners in small communities to provide for the water needs of their properties. In that sense, a mutual is a customer-owned water provider.

Laws Governing Mutual Water Companies

Mutual water companies

can also be referred to as mutuals, mutual benefit corporations, nonprofit mutual benefit corporations, and nonprofit mutual water associations. These are all the same thing.

A nonprofit mutual benefit corporation

is an organization (a corporation) formed to provide for the mutual benefit of its members.

Mutuals are governed by assorted provisions of the California Corporations Code, including: Title 1, Division 2, Parts 1 and 3, comprising Sections 5002 – 5080 and 7110 – 8910 and Title 1, Division 3, Part 7, Chapter 1, comprising Sections 14300 – 14303.



Box 2.14 - Additional Laws Governing Specialized Kinds of Mutuals

Mutuals Eligible for State Assistance:

Some small mutual water companies (particularly those started by female, minority, and/or disabled entrepreneurs and those whose mission includes local economic development in economically disadvantaged areas) may qualify for incorporation as “small business development corporations.”⁴⁵² Small business development corporations, which are also referred to as “small business financial development corporations,”⁴⁵³ are eligible for state assistance (including loans and grants, management assistance, and business education)⁴⁵⁴ and are subject to additional statutory requirements in the Corporations Code, namely, Title 1, Division 3, Part 5, Chapter 1, comprising Sections 14000 – 14091.⁴⁵⁵ Of particular importance for mutual water companies considering this option is Article 6, comprising Sections 14045 – 14052, which describes the specific organizational requirements imposed on eligible corporations.

Mutuals Serving Cities, Towns, or Counties:

Mutual water companies that supply water to cities, towns, and/or counties are subject to additional statutory requirements in the Corporations Code, namely, Title 1, Division 3, Part 10, comprising Sections 14450 – 14452.

Mutuals Serving Residential Subdivisions:

Mutual water companies that are formed to supply water to new residential subdivisions are subject to additional statutory requirements in the Corporations Code, namely, Title 1, Division 3, Part 7, Chapter 2, comprising Sections 14310 – 14318.⁴⁵⁶

Governance

Governing Structure

A mutual is governed by a board of directors, which is responsible for conducting the activities and affairs of the mutual and exercising all of the mutual’s corporate powers.⁴⁵⁷ A mutual’s articles of incorporation (articles) and bylaws determine the number of directors on the board.⁴⁵⁸

A mutual must also have either a chairman of the board or a president (or both). If the mutual has a chairman, he or she serves as the mutual’s general manager and chief executive officer; otherwise, the president must fulfill this role. Other required officers include a secretary and a chief financial officer.⁴⁵⁹ Unless the articles or bylaws specify otherwise, the board appoints all of the officers, and one person can hold any number of offices.⁴⁶⁰

Who can serve on the board?

The articles and bylaws of each mutual establish the qualifications for who can serve on the board of directors.⁴⁶¹ Most mutuals require that directors be landowners that live within the boundaries of the mutual service area.

A mutual's articles and bylaws also determine whether board members are elected or appointed.⁴⁶² If elected, then the length of their terms will again depend on the articles or bylaws but cannot exceed four years.⁴⁶³ If the articles and bylaws do not specify term lengths, then the default term length is one year.⁴⁶⁴

Election Monitoring

If a member requests, the chairman of the board must appoint one or three election inspector(s) to monitor the fairness and validity of a mutual's election process, determine the results, and resolve disputes about voting procedure.⁴⁶⁵

Who has the right to vote?

Generally, only members of the mutual can vote.⁴⁶⁶ The articles and bylaws define who can be a member.⁴⁶⁷ These documents can also create different classes of membership with different voting rights.⁴⁶⁸ Often, members of mutuals are allotted one vote for each property or parcel owned.⁴⁶⁹

Box 2.15 - Members vs. Shareholders

Members are people who can vote on major organizational decisions. The specific types of decisions on which members will be permitted to vote depends on the mutual's articles and bylaws, but some examples include the election of directors, amendments to articles or bylaws, or dissolution of the corporation.⁴⁷⁰ Not all nonprofit mutual benefit corporations have members; in fact, as a default, a mutual will not have any members unless the articles or bylaws provide for them.⁴⁷¹

Shareholders, in contrast, are people who hold units of proprietary interest in the mutual, which units are called "shares" or "shares of stock."⁴⁷² The terms stockholder and shareholder are used interchangeably.

In mutual water companies, members and shareholders are frequently one and the same, as each share of stock in the mutual equates to a right to purchase a specific quantity of water ("water stock"). Shares of water stock are usually linked to a particular parcel of land, or, in legal terminology, each share is appurtenant to the land, such that when a property owner sells the land to someone else, the new owner also acquires the water stock and becomes a shareholder of the mutual water company that supplies the water. Likewise, membership in the mutual water company is usually linked to ownership of the underlying land to which the water stock is appurtenant.⁴⁷³

Additionally, a share of water stock is equivalent to a right to **purchase** a specified quantity of water from the mutual, not an unqualified right to the water itself. The mutual may charge a reasonable rate for water use (usually actual cost plus necessary expenses), and is permitted to levy assessments on shareholders or members for this purpose. If delinquent shareholders or members refuse to pay, they may forfeit their membership or stock in the mutual, and thus, their right to water.⁴⁷⁴

Because, in practice, members or shareholders essentially have the same rights, this Guide uses the term "members" to mean both members and shareholders.

How can a board member be removed?

There are three ways to replace a member of the board:

1. **Majority Rule (Members):** Members of the mutual can remove a director without cause (meaning, even if the director did not technically do something wrong) if a majority votes in favor of removing him or her. The calculation of “majority” depends on the size of the mutual, however. For small mutuals with fewer than 50 members, a majority of all the votes **entitled to be cast** must vote affirmatively to remove the director.⁴⁷⁵ For large mutuals with 50 or more members, only a majority of the votes **actually cast** need to vote affirmatively to remove the director, although at least one third of the eligible voting power must be present at the time of the vote.⁴⁷⁶ (Note that removal procedures become more complicated if the articles or bylaws create different classes of membership and voting rights,⁴⁷⁷ or if the director was designated rather than elected.)⁴⁷⁸ This election can take place at a regular or special meeting of the members or by written ballot.⁴⁷⁹
2. **Declaration of the Board:** The board can remove one of its directors for cause (meaning, because the director has done something wrong or is no longer qualified) in four situations:⁴⁸⁰
 - if a court declares the director is “of unsound mind;”
 - if the director is convicted of a felony;
 - if the bylaws provide that a director can be removed for missing a specified number of meetings, and the director misses the specified number of meetings; or
 - if the articles or bylaws provide certain prerequisite qualifications (for example, owning land within the mutual’s jurisdiction), and a majority of the qualified directors determines that a director no longer meets those qualifications (for example, if the director sells his or her property).
3. **Court Order (Derivative Lawsuit):** A director or a group of members can file a lawsuit against the mutual in superior court seeking an order removing a director from the board if the director has (a) performed fraudulent or dishonest acts or (b) grossly abused his or her discretion or authority. To initiate a lawsuit, the group of members must constitute at least 10% of the voting members or 20 members, whichever is less.⁴⁸¹ (Note that this minimum number of voting members is different for extremely large corporations where there are 1,000 or more votes entitled to be cast for a director.)⁴⁸² However, this method is costly and may be difficult to prove.

Public Participation & Access to Information

Meetings

Access to a mutual’s board meetings may be limited because mutuals are not governmental entities and thus not subject to the Brown Act. Instead, the articles and bylaws will determine who may attend meetings.⁴⁸³

Public Information

Similarly, access to information about a mutual's operations may be limited since the Public Records Act does not apply to mutuals either. The Corporations Code provides that all **members** have a right to inspect the mutual's records and reports,⁴⁸⁴ but whether non-members are granted similar access will depend on the articles and bylaws.⁴⁸⁵

Members have a right to view the mutual's accounting books, records, and minutes from meetings, as well as a list of the mutual's individual members and their addresses, so long as the member intends to use this information for a proper purpose.⁴⁸⁶ Members also have the right to inspect the mutual's articles and bylaws at the mutual's principal office and to request the mutual to inform them of the results of a vote within 60 days of an election.⁴⁸⁷

Additionally, those mutuals that receive US\$10,000 or more a year in gross revenue or receipts must prepare an annual report on the financial affairs of the corporation, showing in detail the mutual's assets and liabilities. The mutual must notify members annually of their right to receive this report and must submit the report to a member upon request.⁴⁸⁸ Finally, the mutual must supply members annually with a report detailing any of the mutual's transactions in which one of the directors or other officers or at least 10% of the members had a substantial financial interest.⁴⁸⁹

Limitations on Water Rates

Articles of incorporation for mutuals often require that the company provide water at actual cost plus necessary expenses. However, necessary expenses generally include reserves for maintenance and upgrades, so there is a lot of room for deference to the water provider. Therefore, in mutuals, water users generally must fight rate abuses by pressuring their local board or electing new board members.

Grievance Procedures

The Corporations Code permits mutuals to be sued in a court of law, pursuant to the California Code of Civil Procedure.⁴⁹⁰ Therefore, an aggrieved member may file a lawsuit against the mutual in the local superior court under the following circumstances:

1. **Information Requests:** Any member can file a lawsuit to compel his or her mutual to provide information to which the member is legally entitled, such as financial records or membership lists.⁴⁹¹ However, if the mutual is reasonably concerned that the member intends to use this information for an improper purpose (meaning, for a purpose that does not relate to membership in the mutual), it can offer the requesting member an alternative method to satisfy the member's stated purpose for requesting the information.⁴⁹² If the member rejects this offer, the mutual can file a lawsuit in the local superior court requesting a protective order, which, if granted, permits the mutual to withhold the information from the member.⁴⁹³ Similarly, the mutual or any of the members can petition the court to limit another member's inspection rights if the inspection would violate any member's constitutional rights.⁴⁹⁴
2. **Election Challenges:** Second, any member or director can file a lawsuit to challenge the validity of an election or the appointment or removal of a director.⁴⁹⁵ To resolve the case, the superior court may apply the mutual's articles and bylaws to determine the winner or order a new election, or the court may determine the validity of someone's membership status or right to vote.⁴⁹⁶

Other Private Companies

Other private companies that provide drinking water but are often not “private water utilities” include some mobile home properties, restaurants, and some apartment complexes. The Public Records Act, Brown Act, Prop. 218, writs, referendum, and initiative law do not apply to these corporations, nor does the public utilities commission generally have jurisdiction. Therefore, your only recourse for problems often lies in the courts, either through tort, landlord tenant or contract law, or through enforcement of the Safe Drinking Water Act or local and state health ordinances. If you are served water by this other kind of private company, start by contacting the company directly. If the problem involves the quality of the water, monitoring, or the information provided, you should contact the regulatory agency (either DPH or local primacy agency). In the case of mobile home parks, customers may file a complaint with the PUC on the rates charged or service provided, even though mobile home parks are not generally regulated by the PUC. To file a complaint with the PUC, call (800) 649-7570 or go to <http://www.cpuc.ca.gov/PUC/forms/Complaints/>. If the issue is not resolved, contact an attorney or your local legal services organization.