

Management Partners



To: Volunteer Citizen-Based Charter Committee

From: Cathy Standiford, Partner

Subject: Water and Wastewater Utility Functions and Boards

Date: October 27, 2015

The Charter Committee is considering elements that should be included in the Charter “skeleton.” On September 15 the Committee approved a preliminary recommendation that, “no departments be specifically mentioned in the Charter except as otherwise provided or delineated.” In other words, the preference is to avoid mentioning specific departments (or in some cases commissions) in the Charter unless there is a compelling reason to do so. The Committee is reviewing each of the departments, boards and commissions currently referenced in the Charter to determine whether such compelling reasons exist. The Committee is scheduled to discuss possible charter provisions regarding the Water Department at its October 27, 2015 meeting.

In anticipation of the Committee’s discussions, Management Partners has conducted interviews with some of the potentially affected stakeholders and has researched the practices of 17 comparable peer agencies. We also have examined the practices of independently operated public water and wastewater utilities (i.e., not operated by a city). The purpose of this memorandum is to summarize the input received and provide additional information Committee members may wish to consider in developing specific recommendations.

Background

San Bernardino Charter Article XI establishes the Water Department, governed by a five-member Board of Water Commissioners (Water Commission). Members of the Water Commission are appointed by the Mayor and confirmed by the Common Council. Section 163 of the Charter gives the Water Commission the authority to:

- Establish and collect all water rates, rentals from water bearing lands, and generally regulate, control, manage, renew, repair and extend San Bernardino’s entire water system;
- Employ personnel, including the general manager of the department and any other employees required to operate the enterprise;
- Regulate, control, manage, renew, repair and extend the City’s wastewater treatment (i.e., sewage disposal) plants, as directed by the Mayor and Common Council;

- Incur debt or liability so long as it does not exceed the department's annual income and revenue provisions or exceed debt limitations as established by the State of California;
- Make rules and regulations regarding the conduct of members of the Water Commission; and
- Control and order the expenditure of monies received from the sale or use of water.

These Charter provisions enable the Water Department to operate somewhat independently from the rest of the City organization.

Interview Results

Stakeholder interviews were conducted with the city manager, Mayor, Water Department general manager, Water Commission President, and a former Mayor who also had prior service on the Water Commission. The purpose of the interviews was to hear various perspectives about the extent to which a new charter should retain any of the existing provisions related to the Water Department. The interviews generated widely varying opinions, which tended to fall into one of two themes:

1. The Charter should contain provisions that allow the Water Department to maintain its operational independence from the rest of the City, or
2. The Water Department should be treated the same as any other department and be accountable to the city manager and Common Council under a council-manager form of government.

All of the opinions expressed during the interviews are represented below.

The Charter should contain provisions that allow the Water Department to continue operating independently from the City under the governance of the Water Commission.

Reasons given for this perspective include the following.

- The Water Department is one of San Bernardino's most successfully managed and efficiently operated departments. "If it's not broken, it shouldn't be fixed."
- The Water Commission's authority to set water rates and charges allows such decisions to be made based on the needs of the system and the community it serves, without the influences of politics. This also provides political benefit to the Common Council, which can shift blame to the Water Commission when customers are unhappy. There is a "profound" difference in the time and effort required to raise water rates compared to the process for adjusting sewer/wastewater rates, which are under the control of the Common Council. We were told one reason the City's sewer/wastewater system is deficient is the consistent reluctance of the Common Council to raise the fees necessary to ensure adequate maintenance.
- The independent ability to set water rates and charges and issue debt allows the Water Department to maintain and improve the water system infrastructure and provide high quality customer service consistent with best practices. This is critical to the City's economic development efforts. The same cannot be said for the maintenance and improvement of San Bernardino's other infrastructure systems.



- The Water Department has completely separate and far superior internal support systems and personnel. It has separate finance and procurement systems, uses a different method of accounting than the City, and has independent information technology and human resources functions and staff. It was necessary to develop these separate systems to comply with highly technical rules and regulations governing water/wastewater operations, as well as the requirements of a consent decree the City was under for remediation of groundwater contamination. Some might consider these systems redundant and therefore inefficient. However, forcing the department to use the City's internal support systems and staff would severely impair its ability to operate efficiently and effectively. The City's internal support departments lack the capacity or expertise to handle the demands of the water/wastewater operation and would likely be overwhelmed.
- The independence of the Water Commission and Water Department allows more rapid, nimble response to changing water service delivery needs. For example, the Water Department was able to meet state-mandated water conservation targets quickly by being able to create and deploy its own community outreach and education programs.
- The Charter provides better protection than the municipal code or other policy documents against potentially harmful interference by the Mayor, Common Council or city manager. Such protection is important, given the history of San Bernardino's leadership and management. This has protected the Water Department against the negative effects of the City's bankruptcy.
- Because it must function as a public utility, the Water Department is unique and substantially different from the other City operating departments. Giving it special protection in the Charter recognizes this difference.
- The relative independence of the Water Department has allowed it to recruit and retain quality employees who may otherwise be concerned about working for San Bernardino. It was pointed out that unlike the rest of the City, Water Department employees are not unionized, and operate under labor agreements negotiated and approved by the Water Commission. They also have different benefits provisions than other City employees.
- The effective and efficient provision of water services to the community is an important consideration, even if the Water Department's existing governance structure and authority is different from that commonly found in municipal water utilities.

The Water Department should receive no special Charter provisions or protection. Instead, the Water Board should be accountable to the Common Council and the general manager should be accountable to the city manager, consistent with the council-manager form of government. In a democratic republic, rate setting, employment and debt issuance powers are more appropriately assigned to an elected body, in this case the Common Council.

Reasons given for this perspective include the following.

- The Common Council should be able to determine whether the Water Department should be an independent entity and what the powers and authorities of the Water Commission are. The City's municipal code is a more appropriate place for specific reference to the Water Department, Water Commission and their delegated powers.



- Efficiency should never trump democracy. Those responsible for setting fees and charges paid by the public should be accountable to the public. As an appointed body, the San Bernardino Water Commission is accountable only to itself, even though it has a history of serving the interests of the community well. A public utility, whether operated by a city or as an independent special district, typically places rate setting authority with elected officials who are accountable to the voters.
- The general manager is accountable only to the Water Commission because s/he is hired by the Water Commission. This is inconsistent with best practices for municipal water departments, which typically have the general manager or department director reporting to the city manager. San Bernardino is fortunate to have had highly competent, professional management overseeing the Water Department. But what if this were not the case? The current charter provisions preclude the Mayor, the Common Council or the city manager from holding the general manager and other Water Department staff accountable. Like rate setting authority, the authority to hire and remove public employees should be given to someone other than an appointed body. The common practice is for this to be the city manager.
- Although the internal support systems of the Water Department may be more effective than the City's, they are redundant with the City's, creating inefficiencies for the public being served. In other words, the public is paying for two finance operations, two information technology operations, etc., when it would be more efficient to pay for one. Centralized internal support services create greater efficiency through economies of scale and foster data sharing by multiple departments. The charter should not limit San Bernardino's ability to consolidate such systems in the future
- Even though the Water Department may operate as a public utility, it is still part of the City organization, not an independent special district. When the Water Department has disagreed with something the City wanted to do (e.g., a cost allocation plan for City administrative services provided to the department), it has used its independent resources to fight City Hall. This illustrates potential problems with accountability.
- San Bernardino needs to operate as one team to effectively serve the community. It isn't a true council-manager form of government if certain departments are excluded from being within the City's control.

These two divergent perspectives, i.e., practical efficiency and effectiveness vs. democratic governance and accountability, are difficult to reconcile. However, the practices of comparable peer agencies indicate an emphasis on governance and accountability, followed by efficiency and effectiveness.

Comparison with Peer Agencies

Management Partners reviewed the charters, municipal codes and websites of 17 peer agencies to gather information on municipally operated water utilities and their governance. A summary of the water service providers for the 17 peer agencies is provided in Table 1. It shows 12 out of 17 peer agencies operate a water utility. The other five communities receive water service through either a private water company, an independent special district, or a county.



Some peer agencies include water services as part of a larger Public Utilities Department. A table providing the details for each peer agency is provided as an attachment.

Table 1. Summary of Peer Agency Water Service Providers

| Population | City Operated Water Utility | Water Provided by Another Entity | Comments |
|--------------------|-----------------------------|----------------------------------|--|
| 200,000 to 299,000 | 2 | 2 | Modesto and Stockton administer a water utility. Chula Vista is served by a joint powers agency led by National City and an independent special district. Irvine is served by the Irvine Ranch Water District, an independent special district. |
| 300,000 to 399,000 | 4 | 0 | Bakersfield administers a water department. Anaheim, Riverside, and Santa Ana have public utilities departments that include water provision. |
| 150,000 to 199,000 | 6 | 3* | Glendale, Santa Rosa, Oceanside, Hayward, Pomona, and Torrance administer water functions. A portion of Torrance receives water services from a private water company. Salinas receives water from two private water companies, Lancaster receives water from Los Angeles County, and Palmdale receives water services from an independent special district. |
| TOTAL | 12 | 5 | |

Source: Peer agency charters, municipal codes and websites.

*Although a portion of the City of Torrance receives water service from a private company, the City has been counted as a City-operated water department for purposes of this analysis.

Table 2 provides information on the peer agencies with established water or utilities boards or commissions. Of the 12 agencies providing water/wastewater utility services, eight have a water or public utility board or commission.

Table 2. Summary of Peer Agency Water Boards and Commissions

| Population | City Operated Water Department* | City Water Board | Comments |
|--------------------|---------------------------------|------------------|---|
| 200,000 to 299,000 | 2 | 1 | Stockton has a Water Advisory Group, which is advisory to a City Council Water Subcommittee. Modesto does not have a water board. |
| 300,000 to 399,000 | 4 | 3 | Anaheim, Bakersfield, and Riverside water or public utilities boards. Santa Ana does not have a water board or commission. |
| 150,000 to 199,000 | 6 | 4 | Glendale, Santa Rosa, Oceanside, and Torrance have water boards. Hayward and Pomona do not have water boards. |
| TOTAL | 12 | 8 | |

Source: Peer agency charters, websites and municipal codes

* More specific city-operated water department information was previously provided in Table 1 above.

Management Partners examined the charters of the 12 agencies having a water utility to determine whether the departments providing the service and/or associated boards or



commissions are specifically referenced in the charter. Table 3 shows that only two of the cities (Riverside and Glendale) have specific charter provisions regarding a water or public utilities department. Three cities (Anaheim, Riverside and Santa Rosa) have charter provisions for the establishment of a Water or Public Utilities Board.

Table 3. Summary of Water Utility and Water Board Charter References

| Population | Water Department Referenced in Charter | Charter-Established Water Utility Board | Comments |
|---------------------------|--|---|--|
| 200,000 to 299,000 | 0 | 0 | Stockton's Water Advisory Group is appointed by the City Council, but it is not specifically identified in either the City's charter or municipal code. |
| 300,000 to 399,000 | 1 | 2 | Anaheim's charter establishes a Public Utilities Board (Article IX), but does not specifically reference a utilities department. Riverside's charter describes the Public Utilities Department and the Board of Public Utilities (Article XII). Bakersfield's charter discusses general city management of public utilities but does not specifically reference a water department or a water board (Article IX). The Santa Ana charter does not mention public works, water services, or a water board. |
| 150,000 to 199,000 | 1 | 1 | Santa Rosa's charter describes the water board, water utility, and the water rate setting process (Section 25 and Section 26), but makes no reference to specific departments. Glendale's charter mentions a Water and Power Department but does not mention a water board (Article XXII). The Hayward, Oceanside, and Torrance charters provide general information about public works but they do not specifically reference a water department, utility or board. Pomona's Charter does not mention public works, water services, or a water board. |
| TOTAL | 2 | 3 | |

Source: Peer agency charters, websites and municipal codes

Our research indicates specific references to water or public utilities departments and/or water boards or commissions are more commonly found in a municipal code.

Table 4 summarizes how members of the water/public utilities board are appointed in the eight agencies having them. It shows that five boards are appointed by the City Council as a whole. In two cases (Riverside and Bakersfield) the members are appointed by a Mayor or Vice Mayor, subject to confirmation by the City Council. The Torrance Mayor has independent authority to appoint members of that city's water board.



Table 4. Appointment of City Water Utility Boards

| Population | Appointment by City Council | Appointment by Mayor | Comments |
|--------------------|-----------------------------|----------------------|---|
| 200,000 to 299,000 | 1 | 0 | Stockton's Water Advisory Group members are nominated by individual Council members but appointed by the whole City Council. |
| 300,000 to 399,000 | 1 | 2 | Anaheim's Public Utilities Board members are appointed by the City Council as a whole. Riverside's Board of Public Utilities members are appointed by the Mayor and confirmed by the City Council. Bakersfield's Water Board members are appointed by the Vice Mayor and confirmed by the City Council. |
| 150,000 to 199,000 | 3 | 1 | Glendale and Santa Rosa water board members are appointed by the City Council. Oceanside Utilities Commission members are nominated by the mayor, but approved by the City Council. Torrance Water Commission members are appointed by the Mayor. |
| TOTAL | 5 | 3 | |

Source: Peer agency charters, websites and municipal codes

Table 5 summarizes the common powers of peer agency water utility boards. It shows that all of the boards are advisory in nature when it comes to rate setting. One board, Stockton's Water Advisory Group, reports to a City Council subcommittee and appears to have no involvement setting rates. None of the water boards or commissions have independent rate setting authority, and none of them have the power to hire or remove their own staff.

Table 5. Rate Setting and Staff Appointment Powers of Peer Water Utility Boards

| Population | Rate Setting Advisory Powers | Rate Setting Authority | Staff Appointment Authority | Comments |
|--------------------|------------------------------|------------------------|-----------------------------|--|
| 200,000 to 299,000 | 0 ¹ | 0 | 0 | Stockton's Water Advisory Group (WAG) is advisory to a City Council Water Subcommittee. It does not appear to have any role in rate setting. |
| 300,000 to 399,000 | 3 | 0 | 0 ² | Anaheim's City Council sets rates with advice from the Public Utilities Board. Bakersfield and Riverside water boards establish rates that require approval by City Council. |
| 150,000 to 199,000 | 4 | 0 | 0 | Glendale, Oceanside, and Torrance water rates are established by City Council. Santa Rosa City Council establishes rates, but the Water Board may establish other fees and charges associated with operations. |
| TOTAL | 7 | 0 | 0 | |

Source: Peer agency websites, charters and municipal codes

¹Stockton's Water Advisory Group is focused on "current and future issues impacting water, wastewater and storm water utilities" and reviews the Department of Municipal Utilities' monthly operations and maintenance report. Advisory powers related to rate setting appear to be delegated to the City Council Water Subcommittee.

²Riverside's Public Utilities director is appointed by the city manager, subject to approval by the Public Utilities Board.



Conclusion

The following conclusions can be made from the interviews and peer agency research.

- There are two divergent points of view regarding the San Bernardino Water Department. One is that the Charter references the Water Department to protect its independence and existing powers. The other is that the department should not receive special Charter protections. There are compelling rationales for both.
- Most peer agencies make no reference to a water department or water board or commission in their charter.
- Of the agencies that have water boards, none have independent rate setting authority. Instead, rates are established by an elected governing body that is accountable to the public. In fact, Management Partners could not find a single public water/wastewater utility in California that does not vest rate setting authority in an elected body.
- None of the peer agency water boards or commissions have the independent ability to retain or remove department staff. The executive responsible for water/wastewater operations (i.e., director or general manager) is appointed by and reports to a city manager.



Attachment – Water Utility Provisions by Peer Agency

Table 6 contains more specific information about water utility boards and systems for each of the 17 peer agencies.

Table 6. Summary of Peer Water Utility Provisions – Charter and Municipal Code

| Peer Agency | Water Utility System Described in Charter | Water Utility Board | Comments |
|---------------------------|---|---------------------|--|
| 200,000 to 299,000 | | | |
| Chula Vista | No | No | Chula Vista does not administer a water utility. There are two water agencies operating in Chula Vista. The first is The Sweetwater Authority which is a JPA that operates out of the City of National City. Sweetwater Authority has a seven-member water utility board. Five board members are publicly elected by the citizens of each of five voting districts. The Mayor of National City also appoints two board members. The second water service provider is Otay Water District, a private water company. |
| Irvine | No | No | Irvine does not administer water utilities. The Irvine Ranch Water District is the water service provider. Irvine Ranch Water District has a five-member Board of Directors that are publicly elected by the residents in the water district. Elections are general and not based on districts. |
| Modesto | No | No | Modesto does not have a water board. Title 11, Chapter 1, section 1.01 of the municipal code authorizes the management, control and care of the municipal water system of the City to be vested in the Public Works director under the general direction of the city manager. |
| Stockton | No | Yes | Stockton has a water advisory group that made up of seven members. One member is appointed by each Council member and the Mayor. |
| 300,000 to 399,000 | | | |
| Anaheim | No | Yes | Anaheim’s Charter establishes a Public Utilities Board (Section 909). The Public Utilities Board has seven members. Board members are appointed by City Council. |
| Bakersfield | No | Yes | Bakersfield’s Charter discusses city management of public utilities but does not specifically reference a water utility or a water board (Article IX). Bakersfield’s Vice Mayor appoints board members who are confirmed by City Council. |
| Riverside | Yes | Yes | Article XII of the Riverside charter describes the Department of Public Utilities and the Board of Public Utilities. Board of Public Utilities members are appointed by City Council and the Mayor. Each of the nine members represent one of the nine wards in the city. |



| Peer Agency | Water Utility System Described in Charter | Water Utility Board | Comments |
|---------------------------|---|---------------------|--|
| Santa Ana | No | No | Santa Ana administers its water utility but does not have a water board. |
| 150,000 to 199,000 | | | |
| Glendale | Yes | Yes | Article XXII of Glendale's Charter provides a general definition of the Glendale Water and Power Department. Glendale Water and Power Commission has eight members who are appointed by the City Council. |
| Hayward | No | No | Hayward administers its water utility but does not have a water board. |
| Lancaster | No | No | Lancaster does not administer its water utilities. Los Angeles County Water District No.40 provides water services to Lancaster. This water district is governed by the County Board of Supervisors. |
| Oceanside | No | Yes | Oceanside Utilities Commission has nine members who are nominated by the Mayor and approved by City Council. |
| Palmdale | No | No | Palmdale does not administer water utilities. Palmdale Water District provides water services to Palmdale. The Palmdale Water District is governed by a water board made up of five members who are publicly elected by districts. |
| Pomona | No | No | Pomona administers its water utility but does not have a water board. |
| Salinas | No | No | Salinas does not administer a water utility. Water services are provided by two private water companies. |
| Santa Rosa | Yes | Yes | Section 25 of Santa Rosa's Charter details the Board of Public Utilities. Board is appointed by City Council and has the authority to establish other fees and charges associated with water operations. However, the City Council has authority to set water rates. |
| Torrance | No | Yes | Torrance administers a water utility but part of the city is serviced by a private water. The Torrance water utility has a Water Commission made up of seven members appointed by the Mayor. |
| Total | 2 | 8 | |

Source: Peer agency websites, charters and municipal codes

