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California Water Institute

GETTING WATER INFRASTRUCTURE GOVERNANCE RIGHT:

Recommendations Regarding The Organization And
Process Of Regional Public Agency Governance



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Images courtesy of California Department of Water Resources Photo Library.

Introduction

The problems faced by the public in states like California, including the building of water infrastructure, are increasingly of a regional nature, not easily met by city and county governments alone, and not even by irrigation districts or flood control districts. This has led policy-makers to consider other forms of public agencies that can encompass whole regions able to solve problems common to those regions. However, since rivalries often exist between cities, counties, and special districts that would be the members of these regional entities, it is critical to create a governance system that directs efforts to the greatest public good. Getting this wrong creates a potential system where certain member-governments of the regional agency can “tyrannize” others by imposing a greater tax-burden while denying the constituents of other agencies the benefits of any public infrastructure projects. As California’s water problems become more intensely felt, and are recognized as regional water problems (usually involving whole watersheds), regional public entities will become the norm, so it is worth considering what might be the optimal governing structure.



General Structures

Arguably, the best way for multiple government agencies to pool resources and political leverage to solve regional water problems is by creating a Joint Powers Authority

(JPA). The JPA would probably also need to create an Enhanced Infrastructure Finance District (EIFD) since EIFDs were designed to replace the local redevelopment agencies eliminated by Governor Brown. Specifically, EIFDs are able to receive the tax increment financing (additional tax revenue generated by infrastructure development to repay the bonds issued to pay for that infrastructure) that redevelopment agencies used to receive. They also have a number of other powers regarding the raising of revenue for infrastructure projects that makes them an attractive means for solving regional problems. While any California city or county can create an EIFD, they are generally believed to be best used by combinations of local governments to address regional concerns¹. For that reason, cities and counties often find it useful to first form a JPA, which can then establish an EIFD, including other special districts such as irrigation districts as needed.

Cities and counties, along with other special districts, form the JPA with a governing board, and in turn the city and county members can initiate the formation of an EIFD by creating a Public Finance Authority (PFA) and financial infrastructure plan under the auspices of the JPA. The plan must formally identify the revenue streams that the EIFD will be able to collect and use, including tax increment financing. Other forms of financing can also be contributed by the JPA’s and PFA’s members, such as city and county revenue streams. Almost any financing stream is available with the specific exception of money from school district and community college bonds. Deciding on what revenue streams to use, and what to use the revenue for, can be contentious, so it is crucial that the JPA and the EIFD have governing boards that can function without too much turmoil. Counties and cities in California have not always trusted each other enough to engage in long-term projects together, and irrigation and water districts have not always worked well with municipalities, which may have different constituencies and priorities. Since the most effective JPA and EIFD hoping to solve a regional problem will require all three kinds of public agencies to work together, creators need to carefully consider how to structure their governing boards.

¹A good primer on EIFDs can be found at <https://icma.org/blog-posts/enhanced-infrastructure-financing-districts-revitalize-communities-california>. Also see the recent report from the California Water Institute at <http://www.californiawater.org/wp-content/uploads/2019/11/Funding-a-Future-for-Water-in-the-SJV.pdf>.

Broad Considerations

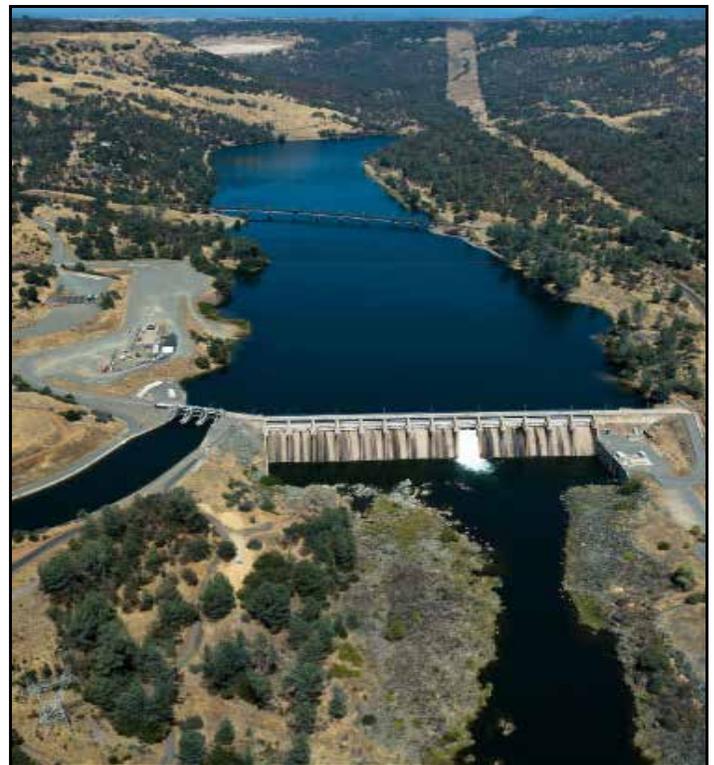
A JPA is typically run by a governing body made up of individuals appointed by its member-governments: cities, counties, and special districts. This board of directors, in turn, forms the board of the Public Finance Authority (PFA) overseeing the EIFD. Both boards have the responsibility for defining the services, and revenue streams to pay for those services within a specific geographic region. The involved cities and counties begin the formation of the EIFD, but ultimately all public agencies with taxing powers can, and likely will, be involved in its ongoing operations. Therefore, both the JPA and PFA should, in some manner, represent all of these member-governments and the people who live within their jurisdictions.

Given that any special tax the governing boards of the EIFD might wish to levy to pay for infrastructure, the revenues of which can be directed towards specific projects, must be approved by two-thirds of voters (by contrast general tax revenue only requires majority support but it is harder to use it for specific purposes), the governing board should be designed with an eye towards building political support. In other words, the board membership should reflect a strategic political calculation designed to make it as easy as possible to gain super-majority support, which may be hardest in cities where the need for, and benefits of, water infrastructure may be less immediately obvious. This is important since EIFDs require 55% voter approval to issue bonds (though this is less than the two-thirds required by other governing entities). This requires all members to work together to decide how to use the money raised, within the parameters set by law. The governing board may also be advised by lower committees of experts in different programmatic areas where committees are staffed by program and policy experts (see below).

JPA Governing Boards

According to Section 6508 of the California Code, the board of directors of a JPA is to “be composed exclusively of officials elected to one or more of the governing bodies of the parties,” meaning the member-governments of the

JPA. The law requires that one representative at least must be designated as a treasurer and another as auditor / controller, along with the typical positions of chair, vice chair, and recording secretary. The law, however, does not provide for any particular size, combination, or ratio of representation from member cities, counties, and other special districts. As a general rule, though, no governing board should be larger than necessary, or it will be harder to achieve quorum and gain enough of a consensus to form voting majorities (and super-majorities are preferable for wide-spread constituent by-in).



Quorum, the minimum number of directors required for the JPA to hold a formal meeting of directors and transact business, is set in the Joint Powers Agreement legally creating the agency. The threshold should never be set for less than a majority of all directors, and an even higher threshold might be desirable. The reason is that one of the most important resources a board can have is its credibility, not just with its member-governments, but also with their voting constituencies, whose votes will probably be needed for raising revenue. A high quorum threshold

goes a long way towards achieving this credibility because it makes real stakeholders out of board directors. Having said that, quorum should never be set so high that a board has trouble achieving it and transacting business when business needs to be done.



The next question, then, is what might be an appropriate ratio of members from different kinds of member-governments? The simplest answer is to give every member-government the right to appoint a single member, or at least each member appoints an equal number of directors, with equal voting power (one person, one vote). Yet this is not necessarily the best choice, either from the standpoint of fair political representation or the practical standpoint of building public support for the JPA's financial and policy activities, though it may be the quickest and easiest solution in the short-run. The problem with equal numbers of representatives from all member agencies is that not all jurisdictions represent the same number of people, do not contribute the same financial resources to the JPA, and may not have the same level of need for the services the JPA is designed to provide. To an extent, an organizational system broadly similar to the distribution of congressional seats and presidential election delegates to the electoral college is a system worth considering.

A ratio of representatives based on the number of people or registered voters living in each member-government's jurisdiction may be the best approach since the JPA

will oversee the EIFD, which can issue bonds and levy taxes requiring public votes. From the standpoint of representative democracy, it makes sense that member-governments representing more voters, who will shoulder the greater burden, should have greater representation on the JPA's governing board. Thus membership balance on the board should be weighted by the number of people, or at least the number of voters, living in each member-government's jurisdiction. This helps build political support for bond issues and tax levies because those who would have the burden placed on them are more likely to feel that it was not being imposed on them by politically weaker jurisdictions with disproportionately greater power on the JPA's governing board. It would also be easier for voters to hold the JPA's board accountable because more directors would be individually accountable to more people.

Alternatively, a population weight could be added in a different manner, weighting votes rather than weighted board membership. Specifically, a member appointed by a city may have as many votes as the number of people (or voters) living in the city, with the same being true from the county. Weighting votes this way has the advantage of keeping the board relatively small, making it easier to achieve quorum and negotiate agreements. Yet there are two potential disadvantages. One is that cities in a JPA may have populations so much larger than counties, that the former dominate all board decisions. Since cities and counties often have different concerns, as well as ideas regarding solutions, this can leave county residents, many of whom are rural and involved in agriculture, effectively disenfranchised. The other problem is that it is not clear how to incorporate special district populations into a vote weight because entities like irrigation districts and water districts cover much of the same geography as counties.

It is also worth pointing out that this approach means the JPA board would not be determined by the amount of private property in ownership in each jurisdiction, the number of landowners, the value of that land, or even a system weighted towards the number of acres held by landowners. California has in the past experienced tensions between different forms of special districts

designed for water infrastructure based on how political power is distributed, most notably the difference between irrigation districts and water districts. The former are formed by and governed by the votes of everyone in the district; a more populist form of governance. Water districts, on the other hand, distribute political power based on the number of acres owned by each landowner, and one has to be a landowner to have a vote at all, which is based on the notion that those paying property taxes and receiving the benefits of the infrastructure should have the voting power.

Weighted board representation also does not provide any role for expertise in water, infrastructure, and the environment, or expertise in the needs of the people living in the JPA's service area. Expertise, however, can be incorporated in other ways described below. Finally, it should be pointed out that there may be other ways to weight representation on the governing board, such as the level of need for infrastructure and service within the jurisdictions of the member-governments, though measuring such need could be fraught with political difficulty. For that reason, arguably the best way to compose a governing board is based on the number of people or voters living within a political jurisdiction.

EIFD Governing Board

If a JPA decides to establish an EIFD, then Section 53398.51 of the California Code says it must first create a Public Finance Authority containing its own governing board. State law is more specific about the PFA's board membership than a JPA's. Assuming that two or more of the public agencies making up the JPA wishing to create the EIFD themselves have taxation power, then the PFA's board must be composed of a majority of the governing legislative bodies (city council, county boards of supervisors, etc.) of every participating government. That is, a majority of the members of the legislative bodies of the cities, counties, and special districts comprising the board must also serve on the PFA (and it is uncompensated service, though reimbursement is allowed). Also at least

two members representing the general public must also be chosen by the member governments' legislative bodies.

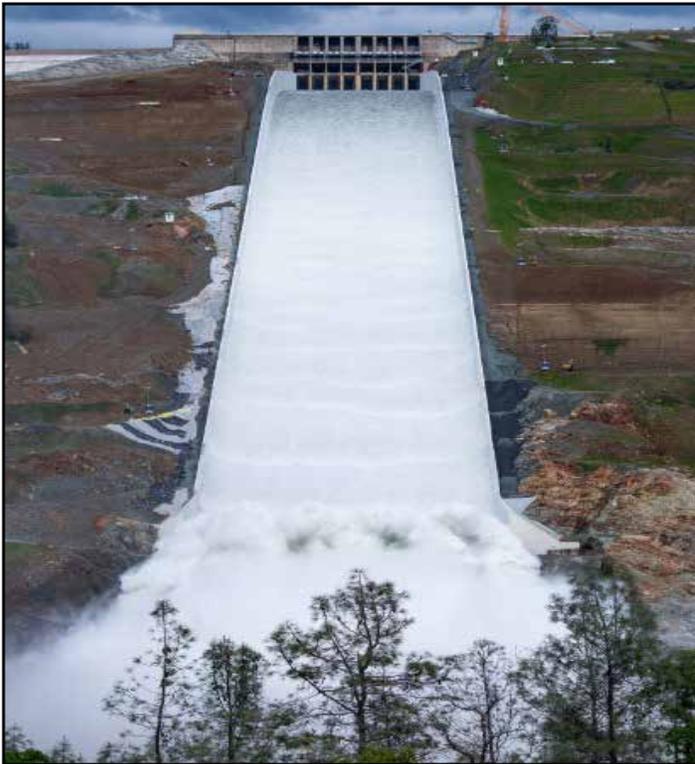


Since a PFA's governing board membership is prescribed, and thus cannot be easily altered to build political support, it is even more important that the structure of the parent JPA's board should reflect broad constituencies because of the public process used to approve the required public financing plan. Every city council, board of supervisors, and the legislative body of each special district in the proposed service area, is required to hold a public hearing on the PFA's proposed infrastructure plan, solicit feedback from the general public, and seriously consider concerns raised by the public in these hearings before taking final action to approve the plan. After all input has been taken into consideration from people within its jurisdiction, the legislative body of each government can adopt a resolution approving the plan and the EIFD. While a general vote is not required, public opinion is to be considered, and a broadly representative board would help gain public confidence.

Structure and organization of advisory committees

Section 6508 of the California Code says that JPAs "shall be empowered to delegate its functions to an advisory body or administrative entity for the purposes of program development, policy formulation, or program

implementation, provided, however, that any annual budget of the agency to which the delegation is made must be approved by the governing body of the [JPA].” While the board of the Public Finance Agency overseeing the EIFD is largely responsible for raising revenue for the JPA’s programs, as well as finding ways to pay back money borrowed through the issuing of bonds and loans, it is good practice to have expertise available to decide how best to make use of the revenue raised. This, in turn, is probably best done through the establishment of a series of advisory committees, each specializing in a program the JPA’s board wants to spend money.



A JPA trying to improve water services to a region such as the San Joaquin Valley, for instance, might create a series of programs on which money can be spent. These might include improvements in rural drinking water systems, groundwater banking, habitat creation and restoration, wastewater treatment, agricultural efficiency improvement, and so forth. Subcommittees can even be created if there are specialty topics related to one of the more general topics of an advisory committee. What

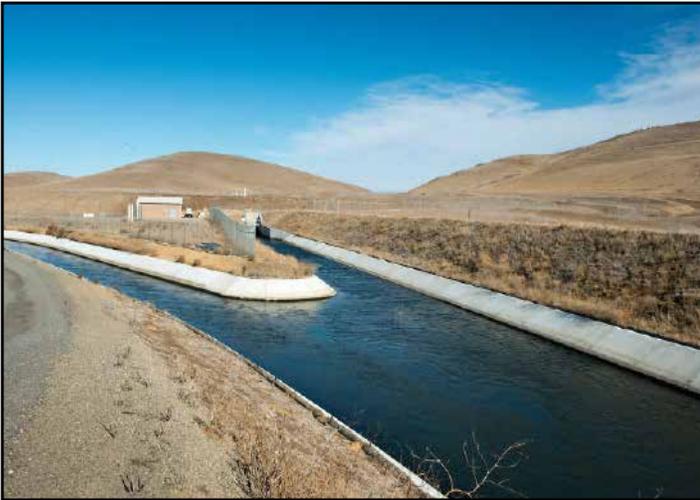
is similar about all advisory committees is that they are advisory, they propose plans and ideas to the JPA’s board, backed by evidence of need and best practices, but it is the board that has the authority to actually make priority spending decisions. For that reason, the make-up of the advisory committees is not as crucially important as the board of directors, and can take on other aspects not permissible for the board of directors.

Specifically, advisory committees are roles to be filled by experts and community liaisons. Program experts may be individuals with a long history of professional experience working in the design, construction, and maintenance of water drinking systems or desalination facilities. They may also be academic specialists in those areas. Both are advisable. What the board of directors or the legislative bodies of government-members should stay away from when deciding whom to appoint are politicians, or those close to politicians in those member-governments. Since these are committees responsible for coming up with proposals for using revenue on projects, their primary responsibilities are assessing need and then proposing efficient and cost-effective solutions. Need can be assessed by community liaisons, and solutions can be best assessed by professionals and experts who are not driven to see solutions through an exclusively political lens, which can lead to the apportionment of resources in terms of political power rather than efficiency. Advisory committee votes can therefore be a simple system of one person, one vote. Again, final decisions are made by the JPA’s board of directors.

A Possible Model

The schematic presented here is a model of how a water infrastructure governing structure aimed at handling regional problems might be put together in a Joint Powers Authority structure. While it arguably has much to recommend, it is not presented as the single best organizational structure. Regional needs and concerns should dictate the ideal structure in particular cases. The model here proposes a JPA board where the number of directors for each of the member-governments in the region

are weighted by population with each entity's geographic jurisdiction. The members then, led by cities and counties, propose an EIFD which is, in turn, governed by a Public Finance Authority board made of up representatives from the member-governments, even though its operations are subject to the authority of the JPA board. It is the PFA board that creates, proposes, and ultimately advocates for ratification of the public finance plan governing the EIFD's operations.



The rest of the JPA is largely advisory committees made up of experts and community liaisons drafting plans and providing recommendations to the JPA board of directors regarding actions it should take on building infrastructure that efficiently and fairly serves the needs of the people residing within the jurisdiction of the JPA. The advisory committee members are appointed by the JPA board at the requests of the member-governments and may be dissolved at any time upon a majority vote of the JPA board.

Finally, it is important that after a set period of time, say five or seven years, the entire JPA mission and structure should be reviewed by the member-governments to see if it is functioning as intended and continues to serve the public need for which it was brought into existence. Of course the JPA board must comply with all of the requirements of the Brown Act open meeting law of the state of California.



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