

## **Governance of Midway Heights County Water District**

Director's Report

March 18, 2021

Craig Stone

Mr. President and fellow directors, through this Director's Report I am expressing serious concern about the state of Midway Heights County Water District (Midway Heights) governance. I believe we are faltering at our responsibilities and creating risk to the district.

Midway Heights currently has a tactical approach to governance. There is a fine line between oversight and operations. A tactical governance posture risks shifting the board too much towards operations. Loss of objectivity is the great concern here. Loss of objectivity means we focus on the wrong things and we fail in our oversight responsibility.

Loss of board objectivity can happen in several ways. More serious examples are policy discussions, and decisions being made by a majority of directors outside public meetings. One director polling other directors on how they will vote on a matter is also a serious example. Each of these is also a violation of the Brown Act. An individual director involved with district operations or administration can also lead to a loss of objectivity. As mentioned before, our board adopting a tactical approach to governance is my greatest concern about the loss of objectivity.

Midway Heights experienced loss of board objectivity once before. About 20 years ago, the Midway Heights board became involved in making inappropriate decisions behind the scenes, away from the public. At least one director became deeply involved in such things as architecting the electrical power system for a Midway Heights pumping station. That director was prosecuted by the Fair Political Practices Commission over a matter related to that project. I am concerned we as a board will be on that path unless we step back, change our board operations, and individually as directors change our demeanor, and our interaction with operations.

Let me provide examples of our overly tactical approach to governance.

### Meeting Minutes

Recently, our board reviewed minutes of a previous meeting. Individual directors began ordering the Board Secretary to change approaches to defining the content of public comments. We operate as a board, as a single voice. However, directors were individually making demands. This is a lapse in governance because the changes in approach were being dictated by individuals, not by board action. To further exacerbate the matter, the agenda item was about reviewing and approving minutes. Venturing into a discussion about the structure of and processes for assembling the minutes risked a Brown Act violation because we did not properly notice the public about what we were discussing. I raised the matter as a point of order and the discussion did stop but the event suggests we as a board are not being mindful of our duties.

### Strategic Planning

The matter of strategic planning has been butchered by this board, the result of endless discussion. We have evolved from creating a framework for overhauling governance, to proposing things that should be

part of a strategic plan. We have failed as a board on this matter. Nowhere did we step back and ask the question who should own a strategic plan. There are implications for ownership. The National Association of Corporate Directors (NACD) has long said the board does not own the strategic plan. They recommend the board review and approve the strategic plan, but they recommend it should be owned by the Chief Executive Officer. I am aware of this position because I used to be an NACD Faculty and I facilitated meetings of public company boards on the role of the board in corporate strategy. I am not suggesting here my position on strategic planning ownership. I am only stating our tactical approach to governance led us to fail at looking at the broader implications.

Consider a simple aspect of this failure. I previously told the board that in recent years I reviewed strategic plans of some 400 water districts and other utilities. Most could be classified as marketing material or tactical documents, ones that list tasks and projects. Few were truly strategic documents. I told the board a marketing strategic plan is pointless, and we should not develop a tactical strategic plan. Why does this matter? Tonight's board packet contains suggestions for components and content for tactical strategic plans. Developing a tactical strategic plan that is owned by the board means we will list projects and tasks, and, in the process, we will create a conflict-of-interest minefield. Why? A tactical strategic plan that addresses the entire district will contain projects for which directors will have a conflict of interest. With such a tactical strategic plan, no director will be able to vote on its adoption! Our experience with the strategic plan topic clearly illustrates the need for us to change our attitude towards governance.

#### Midway Heights Elections

The matter of the proposed resolution to interfere with elections is quite troubling. Tonight's board packet contains sharp language from District Council that Midway Heights lacks jurisdiction, and it speaks of our proposed resolution as being discriminatory. This venture cost the district about \$2k. Let us ignore that the proposal was trying to solve a problem which did not exist. We as a board and as individual directors need to step back and ask how we faltered by even allowing the matter to reach the level of legal review. Part of the problem may have been our board was presented with a drafted resolution leading us to approach the matter as a fait accompli. The larger problem is likely the author of the resolution and the rest of us directors did not step back and do our due diligence, a simple step like talking with Placer County Elections. Our not taking this simple step is likely a result of our tactical approach to governing this district.