

AD HOC COMMITTEE
NORTH OF THE RIVER MUNICIPAL
WATER DISTRICT
AND
OILDALE MUTUAL WATER COMPANY

MISSION STATEMENT

The North of the River Municipal Water District and Oildale Mutual Water Company Ad Hoc Committee was appointed to investigate and respond to the 2012-2013 Kern County Grand Jury Report and responses from North of the River Municipal Water District and Oildale Mutual Water Company. Both agencies sent a written response with concerns over the 2012-2013 Report.

AD HOC COMMITTEE MEMBERS:



Dennis “Mike” Elliott, Chair
Ella Abrams
Marla Dike
Elizabeth Fowler-Tavares
Patricia Golembefskie
Jerald Palmateer

NORTH OF THE RIVER MUNICIPAL WATER DISTRICT
And
OILDALE MUTUAL WATER COMPANY

PREFACE:

The 2013-2014 Kern County Grand Jury (Grand Jury) appointed a North of the River Municipal Water District Ad Hoc Committee (Committee) to investigate and respond to the 2012-2013 Grand Jury Report and the responses. North of the River Municipal Water District (NORMWD) and Oildale Mutual Water Company (OMWC) both submitted responses to the Report pointing out inaccuracies and concerns. The most recent lawsuit filed by OMWC against NORMWD is for inaccuracies in billing and accounting of many funded accounts. The Court placed the case on hold with a Tolling Agreement in September 2012.

PURPOSE OF INQUIRY:

Pursuant to California Penal Code §§ 925, 933.5 and 919 (c) the Committee has the authority to investigate and file a report on the operations, accounts and records of the officers, departments, or functions of any special district. Since the private company OMWC made a formal response to the 2012-2013 Grand Jury Report, the Committee was given the authority to investigate and report on the transactions between the two agencies.

PROCESS:

The Committee obtained information from interviews with the General Managers (GM) of both agencies, current Board Members of both agencies and members of the public. Other first-hand information was received by attending NORMWD monthly board meetings, reading the minutes of the board meetings, internet research, newspaper and newsletter articles, documents obtained from County of Kern Elections Office and subpoenaed documents. Access to information and interviews was limited to the Committee so as to maintain strict confidentiality.

BACKGROUND:

Mutual water services began in the Oildale community in 1919 with the formation of Oildale Mutual Water Company which is a private, not-for-profit corporation which was founded by the area citizens to represent the interests of the customers/stockholders. Each property owner is a shareholder of the company and elects a board of directors annually. A general manager and other employees are hired as needed. Today OMWC provides water to over 8,000 connections. The service area encompasses approximately ten square miles north of the City of Bakersfield in Kern County. The OMWC also owns and operates several groundwater wells which are presently used for periods of high demand, emergency back-up supply and customers that can't receive treated water from the Kern County Water Agency (KCWA).

In 1969 North of the River Municipal Water District was formed to provide wholesale water from the State Water Project (SWP) to retail companies in the Oildale community. The NORMWD receives water from the KCWA and wholesales water to OMWC. In 1982 Highland Park Public Utility District (HP) consolidated all retail customers to NORMWD. Currently NORMWD operates both retail and wholesale accounts for the Oildale community.

The California State Water Project is a water storage and delivery system of reservoirs, aqueducts, power plants and pumping plants that delivers water from Northern California via the Feather River and is routed by way of the San Francisco Bay-Delta through the SWP Aqueduct. The KCWA purchases and supplies SWP water for all Kern County. Improvement District Number Four of KCWA serves most of the urban Bakersfield area. The KCWA was formed to alleviate groundwater depletion in the metropolitan Bakersfield area. It provides both treated and untreated water to local water wholesalers, including NORMWD.

FACTS:

- A. The Mission Statement for NORMWD is: *“...to provide high quality and reliable drinking water to our constituents at a reasonable cost.”*
- B. The Mission Statement for OMWC is: *“...a private, not-for-profit corporation which was founded by area citizens to represent the interests of its customers/stockholders. Each of the 8,000+ retail customers is also a stockholder, having a personal interest in the company. Since its foundation in 1919, the Company has been committed to providing the best quality water available at the least cost to its customers/stockholders.”*
- C. In November 2012 there were three open seats for the Board of Directors for the NORMWD. The OMWC sponsored and financially supported three candidates through the “Concerned Citizens for Tyack, Etcheverry and Meier for NOR Municipal Water District Board 2012” (aka CONCITZNNOR).

CONCITZNNOR	CA FORM 460	Total to December 31, 2012
Contributions	Received	\$ 19,779.00
Expenditures		\$ 18,444.00
Current Balance		\$ 0.00
Contributions:		
	Cash	\$ 500.00
	Cash	\$ 500.00
	Cash	\$ 500.00
	Cash	\$ 250.00
	Cash	\$ 250.00
	Cash	\$ 200.00
OMWC	Cash	\$ 9,900.00
OMWC	Loan, forgiven	\$ 5,500.00
OMWC	Nonmonetary	\$ 135.00
Attorneys	Nonmonetary	\$ 1,200.00

Expenditures:		
	Candidate filing fees	\$ 1,132.00
	Campaign Emails	\$ 27.00
	Literature	\$ 553.41
	Literature	\$ 178.04
	Slate Ads	\$ 750.00
	Slate Ads	\$ 750.00
	Slate Ads	\$ 300.00
	Slate Ads	\$ 300.00
	Slate Ads	\$ 402.00
	Slate Ads	\$ 344.00
	Slate Ads	\$ 350.00
	Slate Ads	\$ 300.00
	Campaign Signs	\$ 2,619.10
	Campaign Consulting	\$ 2,500.00
	Campaign Website	\$ 250.00
	Postage	\$ 29.75
	Campaign Mailings	\$ 1,991.43
	Campaign Robo Calls	\$ 869.84
	Campaign Consulting	\$ 1,250.00
	Campaign Mailings	\$ 2,267.43

- D. To satisfy the requirements of the Tolling Agreement of September of 2012 NORMWD appointed an Ad-Hoc Tolling Agreement Committee of two Board Members and the General Manager to meet with two Board Members and the General Manager of OMWC under the leadership of the “Kern Citizens for a Sustainable Government Committee”. The original purpose of the meetings was for “Good Faith Settlement Negotiations” as spelled out in the Tolling Agreement.
- E. The NORMWD wholesales approximately 80% of the KCWA water it receives to OMWC and retails the remainder to former HP retail customers.
- F. The NORMWD applied for and received a Grant of \$398,570 plus a zero percent interest loan of \$99,642 for 20 years to install water meters to existing flat-rate retail customers. The application process took over two years. The work and the Grant must be completed by November 2015.
- G. According to the Treasurer’s Report of NORMWD contained in the January 2014 Board Agenda, Total Assets for the month ending December 31, 2013, was \$24,838,469.
- H. According to the Comparative Statement of Financial Condition dated June 30, 2013, OMWC has Total Assets of \$12,969,368.

FINDINGS:

- F1. At the January 2013 Board of Directors Regular Meeting for NORMWD, the Directors voted to place on hold the purchasing and installation of water meters needed to complete the Grant. At the February 2014 meeting the Board again voted to delay the purchase of meters for another month.
- F2. The friction between the two entities goes back several decades and continues to the present. At question is the billing of wholesale water and the lack of accountability for all funded accounts. The inaccuracies in the Depreciation Cost Recovery Fund, the Major Repair and Replacement Fund and the Expendable and Minor Equipment Fund are being questioned by OMWC. A complaint was filed by OMWC with the State Board of Accountants for funds being transferred, without justification, in and out of NORMWD's restricted accounts during the 2006-2007 fiscal years.
- F3. The current signed contract between NORMWD and OMWC, ARTICLE 13: Disputes Over Charges, spells out the process to resolve disputes within 120 days.
- F4. According to citizensutilityboard.org/ciLiveWire_RI_MeterSave.html: *“Water charges in non-metered homes are tied to factors such as building size, lot size and the number of plumbing fixtures. However, metered homes are billed according to actual water usage. This means that with minimal effort, participating homeowners could save money on their water bills. Because customers with metered homes pay only for the water they use, they can save money while at the same time helping to protect Lake Michigan and save water.”*
- F5. According to the GM of OMWC, the infrastructure of the Company is sound but varies with age. There are over 80 miles of pipeline and 8,000 connections. Breaks and leaks in the main line are down to four or five occurrences a year.
- F6. The “First Amended Water Service Agreement” was a result of the 1993 lawsuit between OMWC and NORMWD. The settlement stated in part:
- *“As to future retail customers: they would be served by OMWC”*
 - *“As to existing NORMWD retail customers: the parties agreed to use their best efforts in cooperation with one another to meet regularly, at the manager, committee and board level, to discuss and hopefully reach agreement”*
 - *“OMWC agreed to pay a percentage share of NORMWD's employee costs”*
- F7. In April 2010 the former GM of NORMWD announced his retirement and the current GM began his tenure in August 2010. Discussion and communications between the entities became limited.

- F8. The November 2012 election added three new NORMWD Directors. The Directors will not violate Government Code §1090 if they vote on any consolidation or agreements with OMWC.
- F9. The Field Superintendent for OMWC is the son of a NORMWD Director; no conflict of interest appears to exist.
- F10. All Directors of NORMWD have completed AB 1234 and Sexual Harassment Training and filed a California FORM 700.
- F11. All Directors of OMWC have completed AB 54 Leadership Training within the past five years.
- F12. All fees for water service connections are paid directly to Oildale Mutual Water Company's office. The Committee has no jurisdiction to review or verify the payment(s) of water application fees to OMWC.
- F13. Excerpts from the **APPLICATION FOR WATER SERVICE** from the OMWC's web-site states: "...Applicant agrees that all easements as required by the Company to complete said application shall be conveyed to the Company without expense to the Company prior to start of water service.... Applicant shall make a deposit of \$100.00, to be applied to the cost of service installation, to be made at the time of submitting the application."
- F14. Excerpts from the **APPLICABLE FEES, APPLICATION FOR WATER SERVICE** from the OMWC's web-site states:
"A. The cost of the meter and the fire standby line (if requested) will be billed on a time and material basis. All other applicable fees listed below are in addition to these charges.
B. Water Stock: \$580.00 per acre, exclusive of dedicated streets and alleys, due upon receipt of application
C. Water Development Charge: (To be paid prior to receiving water service)
1. Residential
a. Single Residence: \$3,000
b. Multiple Units (R-2, R-3, etc.): \$1,750 per unit.
2. Commercial and Industrial \$3,500 per acre-foot of maximum annual water demand (one time fee)/minimum allocation is one (1) acre-foot per acre and one (1) acre-foot for any fraction of an acre. Parcels in excess of 10 acres = 10 acre-feet minimum allocation...
3. Line Charge: A line charge may be applicable if main service line was extended to the area at Company expense. Charges to be determined at the time the application is approved."

- F15. California Governor Jerry Brown spoke to reporters on Friday, January 19, 2014, to declare a drought emergency for the State, which had its driest year in recorded history in 2013. *"Today I'm declaring a drought in the State of California. We're facing perhaps the worst drought California has ever seen since records began being kept about 100 years ago."* The Governor called for a 20 percent voluntary reduction in water use for all citizens *"...in both rural areas and cities."*
- F16. Each OMWC Director is paid \$400 per month plus an additional \$50 to attend committee meetings. The President receives an additional \$100 per month. Board Members work one to twenty hours a month. The most senior Board Member's service to the Company is 45 years; other Members have served 40, 28, 16 and 12 years.
- F17. The OMWC Board Members and GM stated they are not in a hurry to install water meters to their customers. They would like to wait until 2024 to deal with the issue. "Leave it as is... Don't think meters will save water", "Have plenty of time...", "If you put them in now... they will be 11 years old or half worn out by 2025...", and "Meters cost money...Flat rate is cheaper" are some statements from Directors.
- F18. Each NORMWD Director is paid \$117 per meeting. The Board President works on District business as much as 20 hours per week; other members attend one to two meetings per month.
- F19. The most senior Board Member of the NORMWD Board has served eight years; all others were elected in 2008 and 2012.

COMMENTS:

The Committee would like to thank everyone from NORMWD and OMWC for their patience in the completion of this report. While the Committee acknowledges the facts and findings of the 2012-2013 Kern County Grand Jury Ad Hoc Committee Report may not be entirely correct, it is hoped the facts and findings of this Report are an accurate reflection of the position of NORMWD and OMWC. The Committee did not address rumors, speculations, or past history which would have been difficult to prove and would not benefit the facts, findings, and/or recommendations contained within this report.

The Committee believes the best resolution for these two entities' conflicts is to meet with a sincere desire to work out the differences and leave personalities behind. The residents of Oildale are the losing party by paying thousands of dollars for attorney and consultant fees through higher water rates.

RECOMMENDATIONS:

- R1. The Grand Jury strongly recommends NORMWD continue the work on the retail water meters in order to meet the requirements of the Grant and meet the 20 percent voluntary reduction in water usage as declared by the Governor. (Findings 1 and 4)
- R2. The two entities **MUST** meet and confer in good faith to resolve the current disputes and differences, as per the contract. (Findings 3, 6 and 8)
- R3. An independent auditing company without bias must review all Funded and Restricted Accounts of NORMWD to settle any disagreements with OMWC about such accounts. From that date forward, all accounts must be reconciled and errors rectified annually. Both entities must set aside differences and conduct business as two separate companies. (Findings 2, 3 and 6)

NOTES:

The North of the River Municipal Water District and Oildale Mutual Water Company should post a copy of this report where it will be available for public review.

Persons wishing to receive an email notification of newly released reports may sign up at: www.co.kern.ca.us/grandjury, click on: Sign up for early releases.

Present and past Kern County Grand Jury Final Reports and Responses can be accessed through the Kern County Library system and the Kern County Grand Jury website: www.co.kern.ca.us/grandjury.

RESPONSE REQUIRED WITHIN 90 DAYS TO:

**PRESIDING JUDGE
KERN COUNTY SUPERIOR COURT
1415 TRUXTUN AVENUE, 2ND FLOOR
BAKERSFIELD, CA 93301**

**cc: FOREPERSON
KERN COUNTY GRAND JURY
1415 TRUXTUN AVENUE, SUITE 600
BAKERSFIELD, CA 93301**



North of the River Municipal Water District

4000 Rio Del Norte Street • Bakersfield, CA 93308 • Office (661) 393-5411 • FAX (661) 399-8911

June 19, 2014

Mahlon L. Keel, Foreman
2013-14 Kern County Grand Jury
1415 Truxtun Avenue, Suite 600
Bakersfield, CA 93301

The response below is from and has been approved by the North of the River Municipal Water District's Board of Directors. The Board has attempted to address the specific recommendations as made in both the March 24, 2014 cover letter and the May 1, 2014 cover letter. We have not attempted to correct, add or comment on the facts, findings or other portions of both reports.

March 24, 2014 Recommendations:


- R1. Please see our more detailed comment below regarding the Metering Grant Program. Please understand the both the North of the River Municipal Water District and Oildale Mutual Water Company are committed to water conservation and water use reduction.
- R2. The two entities, the North of the River Municipal Water District and Oildale Mutual Water Company, have met and have entered into agreements that will resolve the past disputes and differences. Should Your Honor or the Grand Jury wish to review the agreements that have been executed, that being the Retail Transfer Agreement, Operation & Maintenance Wholesale Agreement and Third Amended Agreement, please contact the North of the River Municipal Water District for copies.
- R3. Brown Armstrong was retained an independent auditing firm that reviewed the accounts of both the North of the River Municipal Water District and Oildale Mutual Water Company in connection with investigation of the integration of services now being implemented. In conjunction with that review, the auditor for the North of the River Municipal Water District has reviewed the accounts of the North of the River Municipal Water District and is in agreement with the assets and monies that will be transferred to Oildale Mutual Water Company in accordance with the above referenced agreements.

May 1, 2014 Recommendations:

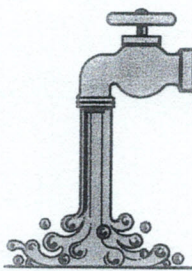
- R1. The agreements that have been completed between the North of the River Municipal Water District and Oildale Mutual Water Company will provide all retail water customers with the same quality of service. The agreements have eliminated all pending or stayed litigation between the two entities.
- R2. The North of the River Municipal Water District and Oildale Mutual Water Company has had conference calls with the State of California in regard to transferring the Metering Grant to OMWC, for completion prior to the November 2015 date. The State is in agreement with the transfer and North of the River Municipal Water District and Oildale Mutual Water Company have provided the necessary documentation to the State. The State has approved the transfer of the Metering Grant.
- R3. See R2.

Should there be additional information needed in regard to the Grand Jury Recommendations, please contact us at the number listed on the letterhead.

Respectfully,



James Tyack, IV
Board President



**Oildale
Mutual
Water
Company**

INCORPORATED OCTOBER 30, 1919

Phone (661) 399-5516

Fax (661) 399-5598

2836 McCray

P.O. Box 5638

BAKERSFIELD, CA 93388

July 3, 2014

PRESIDING JUDGE
KERN COUNTY SUPERIOR COURT
1415 Truxtun Avenue, 2nd Floor
Bakersfield, California 93301

**Re: Response to Grand Jury Report (released April 7, 2014)
Oildale Mutual Water Company/NOR Municipal Water District**

Dear Judge:

Oildale Mutual Water Company (OMWC or Company) takes this opportunity to respond to that portion of the Grand Jury Report released April 7, 2014 referring to NORTH OF THE RIVER MUNICIPAL WATER DISTRICT and OILDALE MUTUAL WATER COMPANY. Our response is as follows:

1. Jurisdiction:

Jurisdiction for the subject report is premised on California Penal Code §§ 925, 933.5 and 919(c). It is noted that none of these code provisions confer jurisdiction on the Grand Jury with respect to the activities of OMWC.¹ To fill this jurisdictional gap, the grand jury opines, without reference to any supporting authority, that the authority to investigate and report was given when OMWC made a formal response to the 2012-2013 Grand Jury Report. We disagree.

¹ California Penal Code § 925 authorizes the grand jury "to investigate and report on the operations, accounts, and records of ... any special legislative district or other district in the county created pursuant to state law for which the officers of the county are serving in their ex officio capacity as officers of the districts". California Penal Code § 933.5 authorizes the grand jury to "examine the books and records of any special-purpose assessing or taxing district located wholly or partly in the county" and to "investigate and report upon the method or system of performing the duties of such district...." California Penal Code § 919(c) authorizes the grand jury to "inquire into the willful or corrupt misconduct in office of public officers of every description within the county." Clearly, none of these provisions apply to a private entity or individual.

In the first place, the 2012-2013 grand jury acknowledged its lack of jurisdiction over OMWC.² Notwithstanding such lack of jurisdiction, the 2012-2013 grand jury issued a report which, among other things, misstated OMWC's financial condition (finding 2), erroneously described its infrastructure as deteriorating and/or unsound (finding 3), and implied wrongdoing on the part of its staff and directors (finding 13). OMWC had no choice but to respond to these horrendous and irresponsible allegations. It would be a strange state of affairs, to say the least, if the grand jury can make false accusations against private entities and individuals over which it admittedly has no jurisdiction and then, when such entity or individual is forced to respond to protect their good name and reputation, claim that such response generates the very jurisdiction that was originally lacking. The grand jury cites no authority for this proposition and we believe that none exists.

In the second place, the formal response submitted by OMWC to the 2012-2013 Grand Jury Report began with an express objection to the entire report for lack of jurisdiction. This objection was repeated throughout the response and never waived. For example, every response to the report's recommendations was prefaced with statements preserving the objection such as the following:

Since the Grand Jury lacks jurisdiction to issue its Report in the first instance, no response is required with respect to any of its recommendations. However, assuming for the moment that the Grand Jury did have jurisdiction to review the proposed reorganization, OMWC understands that it would be the duty of NOR to respond with particularity to each of the recommendations contained in the Grand Jury Report....In accordance with this directive, again assuming jurisdiction over the subject matter, OMWC proposes the following response to each recommendation:....

Finally, OMWC expressly denied that its response could or should confer jurisdiction. In this regard it was noted that in an editorial published in the Bakersfield Californian Lois Henry had suggested that the 2013-2014 grand jury should revoke the prior report and either redo it properly or can it entirely. OMWC's response to this suggestion was: "[s]ince the Grand Jury lacks jurisdiction in the first instance, a 'redo' is not proper".

2. Procedure:

OMWC believes that the 2012-2013 grand jury report pertaining to the integration of operations between the Company and NOR should be withdrawn for lack of jurisdiction as well as gross inaccuracies. OMWC continues to believe that a "redo" of that report is not proper.

² The Grand Jury acknowledges that it has no jurisdiction over OMWC stating: "The extent of the investigation was limited as the Grand Jury does not have authority to investigate a private company."

However, having chosen to move in that direction, rightly or wrongly, the 2013-2014 grand jury is to be commended for at least conducting a fair and thorough investigation. Notwithstanding that fact, the Company believes that full and fair disclosure requires the following additions and/or corrections.

3. **Corrections/Additions:**

FACT C.

Fact C states that OMWC sponsored and financially supported three candidates for the office of director of NOR. Fact C includes a recitation of campaign contributions and expenditures as reported by "Concerned Citizens for Tyack, Etcheverry and Meier for NOR Municipal Water District Board 2012" (CA FORM 460). What is not mentioned is that complaints were filed with the Fair Political Practices Commission (FPPC) against the Company and the campaign committee alleging violations of the law with respect to such support, contributions and/or reporting.³ The FPPC issued a "Closure letter" with respect to such complaints describing its investigation and findings and concluding: "Therefore, after a full investigation, the Enforcement Division has found insufficient evidence to find a violation of the Act, and we have closed our file on this matter."

FACT G. AND FACT H.

Fact G. reports the total assets for NOR as of the month ending December 31, 2013 as \$24,838,469. Fact H. reports the total assets of OMWC as of June 30, 2013 as \$12,969,368. Fact G. is derived from an unaudited Treasurer's Report contained in the "January, 2014 Board Agenda". The Company is not certain how this number was generated but it appears to overstate the NOR condition. The audited financial statement for NOR as of June 30, 2013 (comparable to the report used for OMWC) shows total asset value for NOR to be \$15,820,477.

FINDING F12 AND RELATED COMMENT

The report issued by the 2012-2013 grand jury included a finding (F11) which read:

It was reported to the Grand Jury some OMWC Directors do not pay "hook-up" fees for homes built in Oildale. Hook-up fees on the OMWC website for single homes are \$3,000 and \$1,750 for multiple residences.

The staff and directors of OMWC took particular exception to this "finding" stating that it is totally, absolutely and completely false. The Company demanded a full retraction of the untrue

³ OMWC is informed and believes that the complaints were filed by one of the incumbent directors defeated in the subject election.

accusations and that the person or persons "reporting" this information be identified so that they could be prosecuted for perjury and/or sued for libel and slander. Neither demand has been satisfied.

With respect to this subject the current report includes the following finding (F12):

All fees for water service connections are paid directly to Oildale Mutual Water Company's office. The Committee has no jurisdiction to review or verify the payment(s) of water application fees to OMWC.

This less than satisfactory finding is accompanied by the following COMMENT:

The Committee did not address rumors, speculations, or past history which would have been difficult to prove and would not benefit the facts, findings, and/or recommendations contained within this report.

On behalf of the Company, as well as its staff and directors, we reiterate that (1) the "reported" accusation is false and libelous; (2) a full retraction is warranted; and (3) the person or persons responsible should be identified so that they can be made to account for their actions.

COMMENTS

The comment section includes the following statement:

While the Committee acknowledges the facts and findings of the 2012-2013 Kern County Grand Jury Ad Hoc Committee Report may not be entirely correct, it is hoped the facts and findings of this Report are an accurate reflection of the position of NORMWD and OMWC.

As pointed out in our response to the 2012-2013 Ad Hoc Committee report, that document was riddled with inaccuracies. Saying that it "may not be entirely correct" is a gross understatement. However, the current report is a much improved product. With the exceptions noted above, OMWC acknowledges that the facts and findings of the current report are an accurate reflection of the position of NORMWD and OMWC.

4. Response to Recommendations:

Since the Grand Jury lacks jurisdiction with respect to OMWC, no response is required with respect to any of its recommendations. However, assuming for the moment that the Grand Jury did have jurisdiction over OMWC and/or the proposed integration, the Company would make the following response to recommendations contained in the report:

R1. Since this recommendation is addressed solely to NOR, OMWC makes no response thereto.

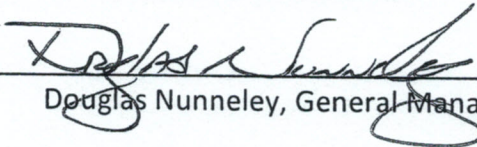
R2. NOR and OMWC have met and continue to meet to resolve differences. Such meetings have resulted in an agreement for integration of operations such that OMWC will provide all retail water service within the NOR service area and NOR will provide wholesale water services to OMWC. The integration proposal is expected to significantly reduce friction between the two entities as well as reduce costs for all retail water customers of both OMWC and NOR. The integration proposal is also expected to permanently resolve all past disputes and differences between the two entities. The integration proposal is reflected in a written agreement (and related documents) which has been approved and executed by both NOR and OMWC. The integration proposal was implemented on June 30, 2014.

R3. An independent auditing firm (Brown Armstrong) has reviewed the accounts of both NOR and OMWC for purposes of the integration proposal. All past accounting issues have been resolved as part of the integration contemplated by the written transfer agreement (and related documents). From and after June 30, 2014 all accounts will be reconciled and errors rectified annually. From said date forward both entities will set aside differences and conduct business as two separate entities.

Very truly yours,

OILDALE MUTUAL WATER COMPANY

By: _____


Douglas Nunneley, General Manager

cc: **FOREMAN, KERN COUNTY GRAND JURY**

1415 Truxtun Avenue, Suite 600
Bakersfield, California 93301

McMURTREY, HARTSOCK & WORTH
2001 22nd Street, Suite 100
Bakersfield, California 93301

Board of Directors
NORTH OF THE RIVER MUNICIPAL WATER DISTRICT
4000 Rio Del Norte Street
Bakersfield, California 93308

PROPOSED INTEGRATION OF WATER SERVICE

North of the River Municipal Water District

and

Oildale Mutual Water Company

PREFACE:

The 2013-2014 Kern County Grand Jury (Grand Jury) appointed a North of the River Municipal Water District (District) Ad Hoc Committee (Committee) to investigate the concerns and disputes with the District and Oildale Mutual Water Company (Company).

PURPOSE OF INQUIRY:

Pursuant to California Penal Code §§925, 933.5 and 919(c) the Committee has authority to investigate and file a report on the operations, accounts and records of the officers, departments or functions of any special district. The first 2013-2014 Kern County Grand Jury Report addressed the entities operations and accounting problems. The purpose for this report is to respond to a complaint and inform the public about the facts and findings of the Proposed Integration of Water Service for the community of Oildale.

PROCESS:

The Committee obtained information regarding the proposed integration agreement of the retail water service by:

- Interviews
- Internet research
- Attending the District's monthly meetings
- Attending the March 4, 2014, Public Meeting with both Boards of Directors
- Documents provided to the public by Klein-DeNatale-Goldner, Attorneys at Law (Law Firm)

BACKGROUND:

North of the River Municipal Water District was established to provide wholesale water from the Kern County Water Agency to retail companies in the Oildale community. In 1982 the District became a retailer of water in the consolidation of the Highland Park Public Utility District. Today the District has approximately 2,000 retail customers. Oildale Mutual Water Company provides retail water to over 8,000 connections.

The friction between the two entities goes back several decades and continues today. At question is the billing of wholesale water and lack of accountability for all funded accounts.

The most recent lawsuit filed by the Company against the District for inaccuracies in billing and accounting of funded accounts ended with the Court placing the case on hold with a Tolling

Agreement. To satisfy the requirements of the Tolling Agreement of September 2012 the District appointed an Ad Hoc Tolling Agreement Committee consisting of two Board Members and the General Manager (GM) to meet two Board Members and the General Manager of the Company. The original purpose of the meetings was for "Good Faith Settlement Negotiations" under the leadership of the "Kern Citizens for a Sustainable Government" committee. The Tolling Committee in March 2013 hired the Law Firm to evaluate the legality and feasibility of an integration of the two entities.

FACTS:

- A. The Tolling Committee in June 2013 directed the Law Firm to retain accounting, engineering and human resources consultants to evaluate those aspects of a proposed integration. The stated purpose of the Proposed Integration was to save retail customers money and to save operation costs for the two entities.
- B. The Law Firm retained the services of Brown Armstrong Accountancy Corporation (Accounting), Dee Jaspar & Associates (Engineer), Belden Blaine, LLP (Human Resources) and Chang, Ruthenberg & Long, PC (Lawyers) as consultants (Consultants) to help complete the work and provide a final report.
- C. The Law Firm released a public memorandum to the District and Company dated February 19, 2014. Under the Proposed Integration Agreement, the following would occur:
 - 1. The District will transfer the retail facilities to the Company.
 - 2. The District will transfer cash reserves related to the retail facilities to the Company.
 - 3. The District will retain the wholesale water facilities and related reserves.
 - 4. The Company will transfer the agreement with North of the River Sanitary District No. 1 (Supplier) for a supplemental water supply for the District.
 - 5. The Company will assume the obligation to provide water service to the District's retail customers.
 - 6. The Company will issue stock to the District's former retail customers.
 - 7. The Company will retain all water wells.

FINDINGS:

- F1. The Consultants made the following assumptions in preparing the memorandum of the Proposed Integration Agreement:
 - 1. All District employees would be terminated upon consummation of the agreement.
 - 2. The two administrative District employees with employment contracts would continue to be paid and receive benefits as if employed for 18 months pursuant to their employment contracts with the District.
 - 3. The District would continue to fund post-employment benefits, i.e., retiree health benefits, at a cost of \$742,075 over the next five years.

- F2. The District employs six full-time employees including the GM and one part-time employee.
- F3. The Company would receive cash and net fixed assets totaling \$7,972,866 from the District (\$825,572 in cash and \$6,520,089 in assets).
- F4. The Company's Water Sale Agreement with the Supplier for additional groundwater supply would be transferred to the District with a book value of \$330,894.
- F5. The Water Sale Agreement with the Company and Supplier was signed July 1, 2006. The Water Sale Agreement allows the Company to purchase treated waste water recharged into the groundwater basin by North of the River Sanitary District No. 1.
- F6. The Water Sale Agreement of July 2006 states:
1. A lump sum payment of \$180,000 from the Company to Supplier for an estimated amount of 180,000 acre feet of water.
 2. Annual payments of five dollars per acre foot as full payment for all treated waste water recharged into the groundwater basin.
 3. The delivery point of treated waste water to the Company is the point of percolation of treated waste water into the groundwater aquifer.
 4. The Supplier will not be required to deliver any treated waste water as surface supply water.
 5. The Company shall have the sole right to store water in the groundwater basin and subsequently extract water through wells at its discretion.
- F7. Revenue from the combined retail operations would decrease by about \$3.5 million through reduced billings but the combined retail operation would remain profitable due to a net reduction in expenses.
- F8. The two main components that result in a 31 percent reduction in billings are:
1. The \$18.92 monthly charge imposed by the District for each additional unit served through the same meter.
 2. The difference in metered service rates.
 - The District has a graduated rate structure starting at \$1.04 to a top rate of \$2.30 per unit of water
 - The Company has a single rate of \$1.03 per unit of water
- F9. A rate comparison between the District's water rates and the Company's current rates for the District's retail customers concludes:
1. Overall net savings of \$520,514 per year to the customers.
 2. Net savings of \$2,602,568 over the next five years.
 3. About \$13,000 of the annual savings would go to 80% of the customers (1,747 of the 2,191). This is approximately \$7.50 per year of savings per (single-family residence) customers.

4. The largest portion of the annual savings (\$507,000) would apply to 20% of the District's retail customers (multi-family dwelling units).
- F10. The Company's water system and District's water system are both in good condition according to the Engineer. The average age of the majority of the pipelines in the two systems is 33 years for the District and 38 years for the Company. The average age of the Polyvinyl Chloride (PVC) pipe is 9 years for the District and 12 years for the Company. The average age of the Asbestos Cement (AC) pipe is 43 years for the District and 50 years for the Company.
- F11. The retail distribution systems of the Company and the District operate independently. Both are connected to the District's wholesale distribution system; no additional pipelines or appurtenances are needed for the Company to provide retail water service to existing District retail customers.
- F12. The Company's by-laws require shares be issued based on the frontage of each parcel and/or the total acreage of the parcel.
- F13. Applying the Company's parameters to issue stock, the District's retail customers would require 198,152 new shares.
- F14. The Company's share has an accepted value of \$2.
- F15. It is expected one new field serviceman would be hired by the Company with the proposed integration plan.
- F16. Field servicemen salaries and benefits for the Company are expected to increase by \$90,955 to cover the cost of another field serviceman.
- F17. It is expected one new office clerk would be hired by the Company with the proposed integration plan.
- F18. Administrative salaries and benefits for the Company are expected to increase by \$68,434 to cover the cost of another office clerk.
- F19. Water purchases are forecast to remain constant at \$1,558,573 per year for the next five years.
- F20. The District expects to receive property taxes in the amount of \$502,430 per year for the next five years.
- F21. The Law Firm made the conclusion that the Proposed Integration Agreement would not constitute an impermissible gift of public funds.
- F22. The District Board of Directors at the February 19, 2014, monthly meeting, voted to approve the Proposed Integration Agreement in concept and set March

4, 2014, as a public meeting and discussion concerning the proposal. At the public meeting both Boards of Directors and legal counsel were present to present the integration plan and answer questions and hear comments from the residents of Oildale.

- F23. The District applied for and received a Safe Drinking Water State Revolving Fund (SDWSRF) Grant of \$398,570 plus a zero percent interest loan of \$99,642 for 20 years to install water meters to existing flat-rate retail customers. The work and the Grant must be completed by November 2015. It is unknown if the Grant can be transferred to a private company for completion.
- F24. The District placed the SDWSRF Grant process on hold in January 2013. At the February 19, 2014, regular meeting the District Board of Directors voted to approve the Grant and purchase of meters in concept.

COMMENTS:

After decades of disputes and lawsuits between the two entities, the Grand Jury is confident that the Proposed Integration Agreement will be a step in the right direction in resolving the issues. Concerns are raised as to the parity of the considerations of the Agreement. The District is signing over cash and assets of over \$7 million while the Company is signing over \$330,000 of an unknown water supply. The District is no longer obligated to provide retail water but must remain a water wholesaler. The Agreement may create unforeseen labor issues by stating all District employees would be terminated. It is unclear who would perform the day to day operations of the District, i.e., paying bills, preparing reports.

RECOMMENDATIONS:

- R1. The Proposed Integration Agreement must provide all retail water customers with the same quality of service previously offered and eliminate all pending litigations between the entities. (Findings 10 and 11)
- R2. The District and/or the Company must complete the SDWSRF Grant and install water meters to the existing flat-rate District's retail customers before the November 2015 deadline and/or before the Proposed Integration Agreement is finalized and becomes effective. (Findings 23 and 24)
- R3. Before the Integration of Water Service is completed, the SDWSRF Grant and loan must be transferred to the Company without consequences. (Findings 23 and 24)

NOTES:

The North of the River Municipal Water District and Oildale Mutual Water Company should post a copy of this report where it will be available for public review.

Persons wishing to receive an email notification of newly released reports may sign up at: www.co.kern.ca.us/grandjury, click on: Sign up for early releases.

Present and past Kern County Grand Jury Final Reports and Responses can be accessed through the Kern County Library system and the Kern County Grand Jury website: www.co.kern.ca.us/grandjury.

RESPONSE REQUIRED WITHIN 90 DAYS TO:

**PRESIDING JUDGE
KERN COUNTY SUPERIOR COURT
1415 TRUXTUN AVENUE, 2ND FLOOR
BAKERSFIELD, CA 93301**

**cc: FOREPERSON
KERN COUNTY GRAND JURY
1415 TRUXTUN AVENUE, SUITE 600
BAKERSFIELD, CA 93301**



North of the River Municipal Water District

4000 Rio Del Norte Street • Bakersfield, CA 93308 • Office (661) 393-5411 • FAX (661) 399-8911

June 19, 2014

Mahlon L. Keel, Foreman
2013-14 Kern County Grand Jury
1415 Truxtun Avenue, Suite 600
Bakersfield, CA 93301

The response below is from and has been approved by the North of the River Municipal Water District's Board of Directors. The Board has attempted to address the specific recommendations as made in both the March 24, 2014 cover letter and the May 1, 2014 cover letter. We have not attempted to correct, add or comment on the facts, findings or other portions of both reports.

March 24, 2014 Recommendations:


- R1. Please see our more detailed comment below regarding the Metering Grant Program. Please understand the both the North of the River Municipal Water District and Oildale Mutual Water Company are committed to water conservation and water use reduction.
- R2. The two entities, the North of the River Municipal Water District and Oildale Mutual Water Company, have met and have entered into agreements that will resolve the past disputes and differences. Should Your Honor or the Grand Jury wish to review the agreements that have been executed, that being the Retail Transfer Agreement, Operation & Maintenance Wholesale Agreement and Third Amended Agreement, please contact the North of the River Municipal Water District for copies.
- R3. Brown Armstrong was retained an independent auditing firm that reviewed the accounts of both the North of the River Municipal Water District and Oildale Mutual Water Company in connection with investigation of the integration of services now being implemented. In conjunction with that review, the auditor for the North of the River Municipal Water District has reviewed the accounts of the North of the River Municipal Water District and is in agreement with the assets and monies that will be transferred to Oildale Mutual Water Company in accordance with the above referenced agreements.

May 1, 2014 Recommendations:

- R1. The agreements that have been completed between the North of the River Municipal Water District and Oildale Mutual Water Company will provide all retail water customers with the same quality of service. The agreements have eliminated all pending or stayed litigation between the two entities.
- R2. The North of the River Municipal Water District and Oildale Mutual Water Company has had conference calls with the State of California in regard to transferring the Metering Grant to OMWC, for completion prior to the November 2015 date. The State is in agreement with the transfer and North of the River Municipal Water District and Oildale Mutual Water Company have provided the necessary documentation to the State. The State has approved the transfer of the Metering Grant.
- R3. See R2.

Should there be additional information needed in regard to the Grand Jury Recommendations, please contact us at the number listed on the letterhead.

Respectfully,



James Tyack, IV
Board President



**Oildale
Mutual
Water
Company**

INCORPORATED OCTOBER 30, 1919

Phone (661) 399-5516

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2836 McCray

P.O. Box 5638

BAKERSFIELD, CA 93388

August 6, 2014

PRESIDING JUDGE
KERN COUNTY SUPERIOR COURT
1415 Truxtun Avenue, 2nd Floor
Bakersfield, California 93301

**Re: Response to Grand Jury Report (released May 12, 2014)
Oildale Mutual Water Company/NOR Municipal Water District
Proposed Integration of Water Service**

Dear Judge:

Oildale Mutual Water Company (OMWC or Company) takes this opportunity to respond to that portion of the Grand Jury Report released May 12, 2014 referring to the PROPOSED INTEGRATION OF WATER SERVICE by and among NORTH OF THE RIVER MUNICIPAL WATER DISTRICT (NOR) and OILDALE MUTUAL WATER COMPANY (OMWC). Our response is as follows:

1. Jurisdiction:

Jurisdiction for the subject report is premised on California Penal Code §§ 925, 933.5 and 919(c). It is noted that none of these code provisions confer jurisdiction on the Grand Jury with respect to the activities of OMWC.¹ Neither do the cited code sections provide jurisdiction with respect to the specific activities of NOR under scrutiny. As explained in our letter of August 15, 2013 on the same subject:

¹ California Penal Code § 925 authorizes the grand jury "to investigate and report on the operations, accounts, and records of ... any special legislative district or other district in the county created pursuant to state law for which the officers of the county are serving in their ex officio capacity as officers of the districts". California Penal Code § 933.5 authorizes the grand jury to "examine the books and records of any special-purpose assessing or taxing district located wholly or partly in the county" and to "investigate and report upon the method or system of performing the duties of such district...." California Penal Code § 919(c) authorizes the grand jury to "inquire into the willful or corrupt misconduct in office of public officers of every description within the county." Clearly, none of these provisions apply to a private entity or individual.

It is recognized that the Grand Jury may investigate certain activities of a special district, such as NOR, pursuant to Penal Code § 933.5. However, an investigation under this section is limited in purpose and scope. [See, e.g., *Board of Trustees v. Leach* (1968) 258 Cal.App.2d 281, 287-288]. For example, although § 933.5 allows the Grand Jury to examine the "method or system of performing the duties" of a district such as NOR, the California Attorney General has held that this authority extends only to "operational procedure" as distinguished from "substantive concerns." [64 Ops.Cal.Atty.Gen. 900 (1981): "...the parameter of operational procedure does not extend to an inquiry as to the merit, wisdom, or expediency of substantive policy determinations which may fall within the jurisdiction and discretion of a particular district"]. A subsequent Attorney General Opinion sheds more light on the difference between "operational procedures" and "substantive concerns". In 78 Ops.Cal.Atty.Gen. 290 (1995) dealing with school districts, the California Attorney General explained that such policy matters as the selection of school sites or the purchase and improvement of school property would constitute substantive concerns falling exclusively within the discretion of the school board. The opinion goes on to say that the same is true of school district reorganizations, which could include such matters as the transfer of territory of one district to another. Similar to a school district reorganization, the proposed...[integration] is a substantive concern which falls exclusively within the discretion of the NOR board and, therefore, outside the jurisdiction of the Grand Jury.

2. Response to Recommendations:

Since the Grand Jury lacks jurisdiction with respect to the subject report, no response is required with respect to any of its recommendations. However, assuming *arguendo* that the Grand Jury does have jurisdiction over the proposed integration, the Company makes the following response to recommendations contained in the report:

R1. This recommendation states that the proposed integration agreement must (i) provide all retail water customers with the same quality of service previously offered and (ii) eliminate all pending litigations between the entities. OMWC believes that the proposed integration agreement accomplishes both goals.

R2. This recommendation states that the District and/or Company must complete the SDWSRF Grant and install water meters to the existing flat-rate District's retail customers before the November 2015 deadline and/or before the proposed integration agreement is finalized and becomes effective. The latter option is not available since the proposed integration agreement has already been finalized and has become effective, i.e., the integration was completed on June 30, 2014. As part of the integration process, the SDWSRF Grant was assigned by NOR to OMWC (with the consent and approval of the California Department of

Public Health). Whether or not the Company is able or willing to complete the Grant and install the water meters before the November 2015 deadline will be determined by the Company in its sole discretion and judgment.

R3. This recommendation states that, before the integration of water service is completed, the SDWSRF Grant and loan must be transferred to the Company without consequences. This recommendation has been satisfied. More particularly, the SDWSRF Grant was transferred to the Company without consequences approximately three weeks before the integration was completed.

Very truly yours,

OILDALE MUTUAL WATER COMPANY

By: 

Douglas Nunneley, General Manager

cc: **FOREMAN, KERN COUNTY GRAND JURY**
1415 Truxtun Avenue, Suite 600
Bakersfield, California 93301

McMURTREY, HARTSOCK & WORTH
2001 22nd Street, Suite 100
Bakersfield, California 93301

Board of Directors
NORTH OF THE RIVER MUNICIPAL WATER DISTRICT
4000 Rio Del Norte Street
Bakersfield, California 93308