

2021 – 2022 KERN COUNTY GRAND JURY

RAND WATER DISTRICT

A District Turning Around

December 15, 2021

RAND COMMUNITIES WATER DISTRICT

A District Turning Around

SUMMARY:

Situated in the foothills of the Rand Mountains there are three small communities which serves tourists in hiking, motorcycle runs, and antiquing. Domestic water is furnished by the Rand Communities Water District (District) who has struggled for several years because their system dates back to the '60s. In 2017, the "Best Tasting Water in California" award went to the District at the California Rural Water Association's (CRWA) 2017 Expo. However, the 2018-2019 Kern County Grand Jury recommended the District be placed into receivership if they could not correct numerous issues. A turn around was needed. This report shows the District today.

PURPOSE OF INQUIRY:

The 2021-2022 Kern County Grand Jury (Grand Jury), under the authority of California Penal Code §933.5, chose to inquire into the numerous recommendations given to the District. According to the 2018-2019 Kern County Grand Jury report on the Rand Communities Water District, a recommendation was made that they enter into receivership unless multiple major changes were made; *R.20 In light of the severity of this report, if the above recommendations are not met within 120 days of the release of this report, the 2018-2019 Kern County Grand Jury recommends that the RCWD be placed in receivership through the State Water Resources Control Board. (All Findings).*

METHODOLOGY:

After reading the previous Grand Jury Report, the current Grand Jury reviewed the District's website, <https://randwaterdistrict.com>. It appeared the District has begun to make the needed turn-around. The Grand Jury journeyed to Johannesburg to meet with staff and Board Members, reviewed the Annual Financial Report for the Fiscal Years Ended June 30, 2020 and 2019 (Audit), the current budget, and the General Manager's report given to the Board each month.

DISCUSSION OF FACTS:

The Rand Communities Water District is located in Johannesburg, California. The District boundaries are located in Kern and San Bernardino Counties. The local economy depends mainly on holiday visitors to the area, gold mining, motorcycle runs, antiquing, and hiking.

- A. The District was established in 1969 to supply domestic water. Today it serves 273 water hookups, both residential and commercial properties, in Randsburg, Red Mountain, and Johannesburg:

- The District is a community public water system as defined in the California Health and Safety Code §116275.
- The office is located at 501 Comstock Avenue, Johannesburg, California 93528.
- The District has four employees and one part-time employee.
- The District is a member of the CRWA. The District has been given advice and assistance from the CRWA in regards to the process of meeting state requirements of arsenic in the water.

B. The Board of Directors (Board) consists of five members who are elected for a four year staggered term:

- Each Director is compensated \$40 per Board Meeting with an allowable maximum of two meetings (\$80) per month. Special or additional Board Meetings are not to be further compensated.
- There are three Board seats up for election in the election cycle of 2022.
- There is a family connection with a Board Member and a water user who filed a suit against the District.
- According to approved minutes, there has been three closed sessions in August regarding the litigation. The Board member with family ties to the plaintiff has not attended any of the August closed sessions, according to the minutes. However, the September 8, 2021, minutes reflect all members of the Board in attendance at the Regular Board Meeting. The closed session listed in the minutes concerned the litigation.
- California Government Code §87100 concerning conflict of interest states: *No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.*
- The considered best practice concerning recusal for any Board Member who is conducting district business is to recuse from any action which might give an **appearance of impropriety** to the general public. The recused person must exit the room or area completely before the discussion or action commences.
 - The refusal to recuse can damage the reputation of the board member or call into question the governing by the board.
 - The Secretary of the Board should make mention of the recusal in the minutes as the agenda item is being considered.

C. The Audit issued the following comments in the section entitled Financial Highlights:

In fiscal year 2020, the District's net position increased 9.98%, or \$84,863, from \$850,173 to \$935,036. In fiscal year 2019, the District's net position decreased 3.38% or \$29,762, from \$879,935 to \$850,173.

In the fiscal year 2020, the district's total revenues increased 53.73%, or \$136,980, from \$254,947 to \$391,927. In fiscal year 2019, the District's total revenues decreased 11.10%, or \$31,824, from \$286,771 to \$254,947.

In the fiscal year 2020, the District's total expenses increased 7.85%, or \$22,355, from \$284,709 to \$307,064. In fiscal year 2019, the District's total expenses decreased 22.72%, or \$72,501, from \$357,210 to \$284,709.

D. Budget for Fiscal Year 2021-2022:

Total Income	\$305,800.00
Cost of Goods Sold	<u>39,500.00</u>
Gross Profit	\$266,300.00
Total Expenses	<u>222,800.00</u>
Net Income	\$ 43,500.00

E. The District has three wells called Prather's 01, 02, and 03, located approximately 13 miles west of Randsburg. In addition, there are three booster pumping stations located along the 13 mile section of the pipeline. The water must be lifted 2,000 feet from Prather 02 to the storage tank in Randsburg:

- Arsenic levels in Prather Well 01 is an average of 24 parts per billion (ppb).
 - State requirements are 10ppb.
 - This well is a standby well to be used only in an emergency.
 - Can be used for bulk non-potable water sales.
- Arsenic levels in Prather Well 02 is an average of 10.75ppb. Only water from this well is used to supply the system.
- Prather Well 03 has not been completed. Completion is scheduled in the new construction project.
- The approved minutes from the June 9, 2021, Regular Board Meeting, the General Manager gave a report to the Board which contained the following statement about Prather Well 01, *On Friday morning, June 4, I was informed that Newmont was only able to get one load of water before the control panel smelled hot. The pump would not turn on again for the second load. Tiger verified that he could smell something burning, and that a black box inside the panel was melted. So, I called Garrison Well Service to come out again. They came out on Saturday morning, June 5, to fix the panel. They discovered that one wire had been removed from the motor control box, and the screw to one of the fuses was so loose that it fell out when touched. One of the fuses was also blown. The black box that was melted was not actually being used for anything and was not required to run the pump. They then asked me if someone had tampered with the wires, because only someone with knowledge of how everything was wired would have messed with the particular wires that were loose or disconnected. Yes, it was tampered with by an ex-employee fired by the district who holds a grudge and retained a key to the old locks. I will not mention any names, but I think everyone knows who it is who has knowledge of the system wiring. Garrison Well Service put everything back the way it was supposed to be, replaced the fuse, then wired in the on/off switch so that could be used to turn the pump off and on instead of the breaker lever. Why the switches were ever disconnected, I have no idea. I changed the locks to the*

gates before I left the site, so I was the only one with a key for the rest of the weekend.

The incident was reported to the Kern County Sheriff's Office and was assigned report number 2021-00076658.

F. The entire system has been in place for many years:

- Well pumps must be manually turned off and on.
- Leaks can only be found if water usage increases substantially or by visual inspection of the 13 mile pipeline.
- Leaks can be reported by citizens of the three communities.
- The water loss has been as low as 21% and as high as 50% in calendar year 2021. Chart below represents September 2021 Loss of 50%:

GALLONS UNACCOUNTED FOR	TOTAL GALLONS	% LOSS	Cost of Loss @\$.013 per gal.
Transmission Line Loss	228,766	18%	\$2,973.96
Town sites Loss	404,587	32%	\$5,259.63
Total Combined Losses	633,353	50%	\$8,233.59

Chart provided by Grand Jury

- The September 2021 General Manager's Report given to the Board contains a statement concerning leaks in the system, *There have been multiple leaks in Randsburg and Johannesburg, most seemingly in the same or nearby places where ones occurred before. In Randsburg we attribute this to the rocky ground, and in Johannesburg to the water pressure, plus many lines are becoming brittle from age. All leaks are fixed as soon as possible.*
- There is the possibility of water theft, however, the District's employees are on constant watch for illegal connections.

G. The District has been awarded a state grant of \$3,900,000 for the following:

- Final completion of Prather Well 03.
- Fabrication and installation of a blending station so water from Well 02 and Well 03 can be blended to lower arsenic levels in the water supply.
- Retrofitting and automation of the existing water system.
- Replacement of sections of the defective pipeline.

H. NV5, a compliance, technology, and engineering consulting firm, has been approved by the State to serve as the project manager:

- The design portion has been completed.
 - A Request For Proposal is being prepared by the project manager for release in November 2021.
 - The project has a completion date of March 2022.

I. The District acquired a line of credit from Cobank to pay construction costs. Construction invoicing requires a 30-day payment; reimbursement from the grant takes 90 days.

J. The Board approved, on a vote of 3-2, a rate increase, Ordinance #14, effective July 1, 2021:

- The rate increase was required by the lending institute before a line of credit could be established.
 - The District contracted with Richard D Niehaus, Inc., to conduct a rate study and other components of Proposition 218 requirements.
 - Letters to all registered owners informing the water user of the proposed rate increase were mailed on April 29, 2021. (See Appendix)
 - Provisions were made for written protest letters to be submitted to the Board prior to the rate increase approval.
 - Public hearing was held after the required 45-day period.
 - Rate increase approved on June 23, 2021. This was a one-year increase.
 - Proposition 218 allows for multiple year rate increases.
 - The District must conduct an additional Proposition 218 hearing to establish a yearly rate increase structure until 2025 to maintain the line of credit.
- K. A group of residents campaigned throughout the communities to defeat the rate increase:
- Form letters were furnished to citizens making it easier for them to protest the increase.
 - Some form letters contained statements of why the increase should not be accomplished, i.e., *I protest the proposed standby charges for all of the above reasons, and because they do not comply with the ballot requirements of Cal. Const. Art. XIII D, Sec. 4, which Sec. 6.(b)(4) specifically does not exempt water districts from. Also, I protest the proposed standby charges because the District cannot prove that it actually cost \$29.00 per month, much less \$42.45, just to maintain a meter in the ground, as required by Sec. 6.(b)(1).*
- L. The District had 273 metered parcels subject to water service fees. A majority protest would mean that the District had to receive 137 valid protests:
- In the approved minutes of the June 9, 2021 Regular Board Meeting, it is stated that they had received 10 letters of protest.
 - The approved minutes of the June 23, 2021 Special Board Meeting, called for the specific purpose of establishing the rate increase, stated the Board Secretary was handed an envelope containing pre-typed protest letters.
 - The approved minutes of that Special Board Meeting contains the following statement, *The board secretary, members of the board, and the former general manager, as a representative from the public, went inside the district office to tabulate the protest letters. After a few minutes, the former general manager was escorted out of the district office by a police officer due to his behavior. Another member of the public was brought in to replace him. The protest letters were examined and deemed either valid or invalid. They were considered invalid if they were not personally signed by the customer or owner with water service, had an invalid address and no account number, did not have an active meter with water service, or was a duplicate letter from the same individual for the same property.*
 - Received 174 letters of protest.
 - A total of 53 letters received were declared invalid.

- After removing the invalid letters, the protest letters were insufficient to defeat the rate increase.
- All protest letters have been scanned into a computer and originals are kept in the office safe. These letters must be kept for two years.
- Litigation regarding the protest letters has been filed by a single water user.

M. The Water Rates effective July 1, 2021 are:

3/4" METER SERVICE RATES

\$46.50 Fixed Monthly Charge

VOLUMETRIC CHARGES PER GALLON

0-10,000 Gallons: \$0.013 Cents per Gallon

10,000 Gallons or More: \$0.025 Cents per Gallon

\$100.00 deposit required for new accounts

1" METER SERVICE RATES

\$71.72 Fixed Monthly Charge

VOLUMETRIC CHARGES PER GALLON

0-10,000 Gallons: \$0.013 Cents per Gallon

10,000 Gallons or More: \$0.025 Cents per Gallon

\$150.00 deposit required for new accounts

BULK WATER PURCHASES

0000-3,499 Gallons: \$0.050 Cents per Gallon at Office

3500 or More Gallons: \$0.025 Cents per Gallon at Office

PRATHER WELL 1 Non-Potable Bulk Water Directly From Well:

\$0.020 Cents per Gallon (Contracts Available)

FINDINGS:

- F1. The District has made progress to meet the 2018-2019 Kern County Grand Jury Report to avoid entering into receivership.
- F2. It appears the District is in a better financial position.
- F3. The District could benefit by joining the California Special Districts Association (CSDA) for assistance on the governance of the District.
- F4. The official minutes have not indicated a formal recusal from any Board Members.
- F5. The Board Member with a family connection has not been formally recused from any discussion regarding the litigation. This lends to the **appearance of impropriety**.

- F6. The water loss indicated by the monthly reports appear to be substantial and is impacting the financial viability of the District. Hopefully, the new construction will reduce the water loss in the transmission line. Town site loss needs to be addressed also.
- F7. Because of administrative and engineering delays, the District will need to request an extension of the construction completion date.
- F8. The District will be severely impacted financially if the rate increase is reversed:
- Any income derived from the rate increase could be required to be refunded to customers.
 - The District could struggle to remain financially viable.
 - A question was asked and answered in the Rate Study Questions and Answer portion of the Proposition 218 hearing. Comment: *The previous manager left the District with a large monetary surplus.* Response: *Currently, the District does have some money in the bank; however, this money will not last if the District continues to run at a yearly deficit, in fact, by FY 2025, there will be a negative balance if no action was taken.*
- F9. To minimize what appears to be a misrepresentation of information throughout the communities, the District could include an “information newsletter” when monthly statements are issued. Some of the issues to cover could include:
- Progress on the system upgrade
 - Financial information
 - Board actions which could affect the customers
 - A positive message from the Board President
 - Reminder of upcoming Board Meetings
- F10. A change in the Board Meeting time to an earlier hour in the evening or, a Saturday morning time, may encourage greater public participation.

COMMENTS:

The Grand Jury was pleased to see the progress this District has made between the previous report and now. The District welcomed the Grand Jury and was helpful in acquiring the information needed.

RECOMMENDATIONS:

- R1. The District should continue the progress they have diligently worked for to better serve the communities. (Findings F1, F2, and F3)

- R2. The Board Member, with family ties to the litigant, should publicly recuse from any discussion or action by the Board on the litigation before any more discussions. (Finding F5)
- R3. The minutes of Board Meetings should reflect that the recused left the area during the discussion or action. (Finding F4)
- R4. The District should seek assistance from project management to request, within the next 60 days, a final date extension so no penalty fees are assessed. (Finding F7)
- R5. The District should open some form of communication within the next two billing cycles to the customers to show progress and transparency. (Findings F9 and F10)

NOTES:

- The Rand Communities Water District 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.kerncounty.com/grandjury
- Present and past Kern County Grand Jury Final Reports and Responses can be accessed on the Kern County Grand Jury website: www.kerncounty.com/grandjury

RESPONSES ARE REQUIRED PURSUANT TO CAL. PENAL CODE § 933, SUBD. (C) AND 933.05 WITHIN 90 DAYS TO:

- **PRESIDING JUDGE
KERN COUNTY SUPERIOR COURT
1415 TRUXTUN AVENUE, SUITE 212
BAKERSFIELD, CA 93301**
- **FOREPERSON
KERN COUNTY GRAND JURY
1415 TRUXTUN AVENUE, SUITE 600
BAKERSFIELD, CA 93301**

Reports issued by the Grand Jury do not identify individuals interviewed. Cal. Penal Code § 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

APPENDIX:

NOTICE OF PUBLIC HEARING

Date: Wednesday, June 23, 2021 Time: 7:00 PM Location: Join Zoom Meeting
<https://zoom.us/join> or dial in (669)900-9128 Meeting ID: 850 0858 3058 Passcode: 965969

This Notice of Public Hearing provides information regarding proposed basic meter charge and water rate increases to Rand Communities Water District customers pursuant to the requirements of California Constitution Article XIII (commonly referred to as Proposition 218). The hearing will cover the proposed multi-year rate increase for water services. This Notice has been mailed to all record owners and customers of the parcels upon which the rates or charges will be imposed by utilizing the address identified on the last property tax assessment roll and the District's current customer database. If adopted, the first increase would take effect **July 1, 2021**. All subsequent increases would be effective on and after July 1 of each year beginning **July 2021 through July 2025** without further rate hearings.

**WHY
HAVE I
RECEIVED
THIS
NOTICE?**

Rand Communities Water District (CWD) is proposing changes to its water rates. Rand CWD is dedicated to providing reliable, cost-effective water service at rates which do not exceed the cost to provide service. As part of our commitment to transparency, Rand CWD is sharing this update with all customers who receive water deliveries from the District and may be impacted by these changes. We are seeking feedback to help our Board of Directors make the right choice for the District and its ratepayers.

WHAT IS CHANGING ABOUT YOUR WATER SERVICE?

To continue the District's long tradition of providing excellent water service to our customers, like being voted California's best tasting drinking water of 2017 by the California Rural Water Association, rate increases are necessary to cover system costs, which continue to increase. The system belongs to the customers and Rand CWD is responsible for infrastructure maintenance and replacement. To this end, the District has secured a significant grant which will fund much needed infrastructure improvements. In order to secure the funding the District needs to also finance a gap loan which requires an initial rate increase at a minimum of 15%. The Board of Directors is proposing a multi-year rate setting strategy. If adopted, there would be a series of rate increases over the next five years. The first increase would take effect **July 1, 2021** and be reflected on your bill beginning **August 1, 2021**. If you have questions regarding this notice, please contact our office at **(760) 374-2414**.

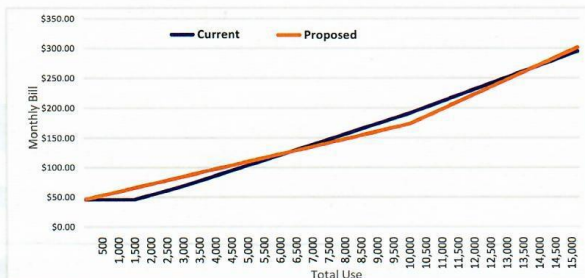
HOW ARE MY RATES CALCULATED?

Volume Rates: The new rates conform to the stipulations of the gap loan and will allow the District to access the grant funding needed to complete major capital projects. A new two tiered-volumetric rate was developed for all customers. The new volumetric rates simplify the old rates and are based on the actual costs to provide service. Tier one includes 10,000 gallons of water and will be priced at \$0.013 per gallon. Tier two includes all water use over 10,000 gallons and will be price and \$0.025 per gallon. The proposed water rates increase equity between customers by removing the free water allotment which currently acts as a subsidy. Additionally, the tier widths were calculated to reflect actual efficient water use for District customers. The 10,000 gallons included in Tier one is based on the water needed for the average customer household size and lot size.

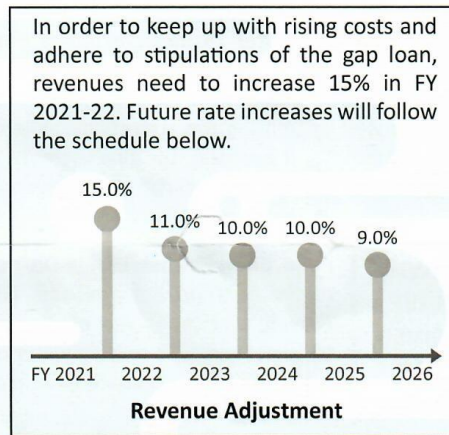
Fixed Rates: A utility system must be able to pay all expenses as well as prepare for unforeseeable capital improvement projects and repairs or to respond to mandatory conservation requirements, which usually result in revenue loss. Therefore, the Board is adopting an initial rate of \$46.50 for ¾” meters and \$71.72 for 1” meters.

Standby Charges were also adjusted so that they better reflect the actual cost to provide service. The proposed standby charges are \$29.00.

	VOLUME RATES		FIXED RATES		STANDBY CHARGES
	Tier 1 0-10,000 Gallons	Tier 2 All Additional	Meter Size		Meter Size All Meters
FY 2021-22	\$0.013	\$0.025	\$46.50	\$71.72	\$29.00
FY 2022-23	\$0.014	\$0.027	\$51.62	\$79.61	\$32.19
FY 2023-24	\$0.015	\$0.030	\$56.78	\$87.57	\$35.41
FY 2024-25	\$0.017	\$0.033	\$62.45	\$96.32	\$38.95
FY 2025-26	\$0.019	\$0.036	\$68.08	\$104.99	\$42.45



The figure above shows hypothetical customer’s monthly bills under the current and proposed rates. While some customers will see rate increases because of the removal of 1,500 gallons from the fixed charge, some customers will see their rates decrease if they use water efficiently.



The District’s Board of Directors wants you to have the opportunity to comment on the proposed rate increases before a final decision is made. **Attend the Public Hearing:** During the hearing, members of the public are encouraged to ask questions or make comments on the proposed increase. **Submit a Written Protest:** Water rates are subject to majority protest, which means that if a majority of impacted property owners (or renters if they are financially responsible for the bill) submit written protests against the increase, the District cannot institute the new rates. To be valid, a protest must be in writing, specifically stating that the proposed rate increases are being protested and information sufficiently identifying the property where District water is served, such as Assessor’s Parcel Number, customer account number or street address. Email and FAX protests are NOT valid. In accordance with Proposition 218, only one written protest per parcel will be counted. Protest letters must be received prior to the conclusion of the Public Hearing. Protests can be mailed or personally delivered to the District at **27804 Comstock Ave Johannesburg, CA 93528**.

RAND COMMUNITIES WATER DISTRICT

27804 Comstock Ave
PO Box 187
Johannesburg, CA 93528-0187
rcwd@randwaterdistrict.com



FINDINGS:

- F1. The District has made progress to meet the 2018-2019 Kern County Grand Jury Report to avoid entering into receivership.
Agree
- F2. It appears the District is in a better financial position.
Disagree. The rate increase was reversed due to the lawsuit.
- F3. The District could benefit by joining the California Special Districts Association (CSDA) for assistance on the governance of the District.
Agree – the District is now a member.
- F4. The official minutes have not indicated a formal recusal from any Board Members.
Agree
- F5. The Board Member with a family connection has not been formally recused from any discussion regarding the litigation. **Agree** This lends to the **appearance of impropriety. Disagree – Could, but doesn't according to our lawyer.**
- F6. The water loss indicated by the monthly reports appear to be substantial and is impacting the financial viability of the District. Hopefully, the new construction will reduce the water loss in the transmission line. Town site loss needs to be addressed also.
Agree
- F7. Because of administrative and engineering delays, the District will need to request an extension of the construction completion date.
Agree
- F8. The District will be severely impacted financially if the rate increase is reversed:
- Any income derived from the rate increase could be required to be refunded to customers.
 - The District could struggle to remain financially viable.
 - A question was asked and answered in the Rate Study Questions and Answer portion of the Proposition 218 hearing. Comment: *The previous manager left the District with a large monetary surplus.* Response: *Currently, the District does have some money in the bank; however, this money will not last if the District continues to run at a yearly deficit, in fact, by FY 2025, there will be a negative balance if no action was taken.*
Agree

F9. To minimize what appears to be a misrepresentation of information throughout the communities, the District could include an "information newsletter" when monthly statements are issued. Some of the issues to cover could include:

- Progress on the system upgrade
- Financial information
- Board actions which could affect the customers
- A positive message from the Board President
- Reminder of upcoming Board Meetings

Agree

F10. A change in the Board Meeting time to an earlier hour in the evening or, a Saturday morning time, may encourage greater public participation.

Agree

COMMENTS:

The Grand Jury was pleased to see the progress this District has made between the previous report and now. The District welcomed the Grand Jury and was helpful in acquiring the information needed.

RECOMMENDATIONS:

R1. The District should continue the progress they have diligently worked for to better serve the communities. (Findings F1, F2, and F3)

Implemented – Progress is continuing.

R2. The Board Member, with family ties to the litigant, should publicly recuse from any discussion or action by the Board on the litigation before any more discussions. (Finding F5)

Will not be Implemented – Our attorney says the board member does not need to in this case.

R3. The minutes of Board Meetings should reflect that the recused left the area during the discussion or action. (Finding F4)

Will be implemented when the occasion arises.

R4. The District should seek assistance from project management to request, within the next 60 days, a final date extension so no penalty fees are assessed. (Finding F7)

Will be implemented by the end of March, 2022.

R5. The District should open some form of communication within the next two billing cycles to the customers to show progress and transparency. (Findings F9 and F10)

Not yet implemented – will be as soon as the empty board seats are filled and there is a full board to address issues.