



NEVADA IRRIGATION DISTRICT

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8/21

September 28, 2022

The Honorable Robert Tice-Raskin
Presiding Judge of the Grand Jury
201 Church Street
Nevada City, CA 95959

RE: Response to the 2021-2022 Nevada Irrigation District Grand Jury Report Findings

Dear Honorable Judge Tice-Raskin:

This letter responds to the June 16, 2022, Report released by the 2021-2022 Nevada County Grand Jury, received on August 18, 2022, relating to Nevada Irrigation District. Included in this letter are Responses to both the Grand Jury's Findings and Recommendations.

Grand Jury Findings

F1 There is a significant disparity between the costs for raw, untreated water sold to Grass Valley and Nevada City compared to the cost to agricultural customers.

Response: Partially Agree with Finding. The cities of Grass Valley and Nevada City are not located within the District's boundaries and are considered out of District customers. The District receives property tax revenue from parcels that are located within District boundaries and does not receive property tax revenue from parcels that are located outside of the District's boundaries. Due to the inability to collect property tax from parcels located outside the District, the rates for raw water are increased to address the discrepancy in total revenue collected. Additionally, in District customers receive the benefit of revenue that is generated by hydropower facilities owned by the district and this benefit is not available to out of District customers.

Furthermore, water service provided to Grass Valley and Nevada City is, in surplus years, a non-interruptible public health and safety supply which comes at a higher operational delivery cost. The wholesale delivery rates for raw water to Grass Valley and Nevada City were negotiated and agreed upon through agreements. It should be noted that the raw water provided to Nevada City is supplemental to the City's own supply.

F2 The NID cannot sustain the current subsidizing of low agricultural rates from internal reserves.

Response: Disagree with finding Irrigation water rates are not subsidized by internal reserves. Each reserve has a specific purpose and monies designated for reserve can only be utilized if the Board determines that the use is consistent with the stated purpose. Please note that the District does not have an agricultural rate, and instead established a rate for raw water that is utilized for any authorized use including irrigation.

F3 The NID cannot financially continue to provide low-cost agricultural water to customers who do not produce an agricultural product.

Response: Disagree with finding. Proposition 218 requires the District to charge rates for water service that have a direct proportional relationship to the cost to provide service to any specific rate payer class. There is currently no fundamental difference between the cost to provide raw water to a commercial agricultural customer versus a non-commercial agricultural customer.

F4 The NID has no requirement for a consumer of raw, untreated water to produce an agricultural product.

Response: Agree with finding. NID is legally obligated to provide water to in-District customers that have a right to service. The right to service is for all uses of water that are reasonable and beneficial. There is currently not a provision in California law that requires water to only be used for agricultural products. Reasonable and beneficial use of water extends to multiple other uses, including irrigation that does not involve an agricultural product (e.g., irrigation of ornamental landscape). Regardless, all irrigation water customers are required to report to NID what irrigation water will be used for and how much acreage will be irrigated. This is done through an annual crop report.

F5 The failure to adequately increase raw water rates is creating a significant disparity in the costs of operation between the treated and untreated, raw water rates.

Response: Disagree with finding. The District will be initiating the 218 process to establish rates in late 2022. During the public rate establishment process, the cost to provide treated and raw water services will be evaluated and rates will be established in compliance with Proposition 218.

F6 The NID Board has placed the district at financial risk by failing to raise the rates of raw, untreated water to agricultural users.

Response: Disagree with finding. The District is not at financial risk. The Grand Jury provides no information to substantiate the finding. Rates for all customers will be evaluated during the rate setting process that will be completed in 2023. Currently, the District is not utilizing reserved monies for ongoing operational expenses. However, it should be noted that long-term capital improvements to the District's infrastructure will likely require increased revenue collection.

F7 The NID failed to follow statutes in the California Elections Code during the reapportionment processes in 2019 and 2022.

Response: Disagree with finding. The Irrigation District Act, Water Code section 21605 states that NID "shall, by resolution, adjust the boundaries of any divisions pursuant to Chapter 8 (commencing with Section 22000) of Division 21 of the Elections Code." Elections Code section 22000(a) requires that NID adjust its division boundaries following each decennial census. As such, division boundary adjustments should have been considered after the 2010 census and were not.

Elections Code section 22001 states: "Before adjusting the boundaries of a division pursuant to Section 22000 or for any other reason, the governing body of the district shall hold at least one public hearing on the proposal to adjust the boundaries of the division prior to the public hearing at which the governing vote to approve or defeat the proposal." In light of the Board's adoption of Map E, a question has arisen as to whether NID complied with this requirement. The key language is "proposal to adjust the boundaries", which is a reference to the process, not a specific map. In NID's case, the proposal to adjust division boundaries was discussed in six (6) prior public meetings prior to taking action on the proposal at the March 9, 2022 board meeting. NID legal counsel and expert consultant have offered opinions that NID satisfied the California Elections Code obligation to "hold at least one public hearing on the proposal to adjust the boundaries of the division" prior to taking action on March 9, 2022. Therefore, the District does not agree with the Grand Jury's finding that the 2022 redistricting efforts failed to follow the statutes in the California Election Code.

F8 The Board placed NID in legal jeopardy of a lawsuit by failing to heed NID legal counsel's advice regarding reapportionment.

Response: Disagree with finding. The legal jeopardy associated with not completing redistricting in 2019 did not increase any legal risk to the District. The risk level remained the same as the redistricting should have been completed shortly after the 2010 census was completed. It should also be observed that no lawsuits were initiated concerning reapportionment.

F9 The Board has exhibited a disregard for the Brown Act as outlined in the California Government Code and NID policies regarding California's open meeting laws.

Response: Disagree with finding. The Board does not exhibit a disregard for the Brown Act. The Board of Directors receives Brown Act training every two years and is committed to conducting NID business in the public sphere as required by the Brown Act.

F10 The NID has failed in the implementation of their Board Policy and has demonstrated organizational dysfunction in the areas of trust and communication.

Response: Disagree with finding. There is not widespread organizational dysfunction. The District does not agree that there is widespread failure to implement Board Policy. There is, however, conflicting policies, laws, and regulations that, from time to time, need to be reviewed and updated in a manner that is in the best interest of the District's

customers and tax payers. NID's Board of Directors continues to periodically review and update its policies. Dysfunction between the Board and staff is limited and is not experienced by the large majority of the Board Members and staff members.

Recommendations

R1 Conduct a comprehensive review and adopt a rate structure to align the cost of water provision to treated water and agricultural customers.

Response: Accept recommendation and will implement. The District will initiate a new rate setting public process in late 2022 and will likely complete the process in 2023.

R2 Develop, adopt, and implement a procedure to identify raw water users who do not produce agricultural products.

Response: Recommendation will not be implemented. NID already requires customers to indicate whether or not they are using raw-water for agricultural purposes and requests identification of the crop that they are watering. This is how the District's annual crop report is completed.

R3 Develop and implement a policy to differentiate the water rates for non-agricultural and agricultural water customers.

Response: Recommendation will not be implemented. At this time the District declines to implement this recommendation. There are many legal and policy related issues that need to be analyzed to determine whether a different rate for raw water can or should be charged for non-agricultural and agricultural products.

As noted in the response to Finding 3, Proposition 218 requires the District to charge rates for water service that have a direct proportional relationship to the cost to provide service to any specific rate payer class. There is currently no fundamental difference between the cost to provide raw water to a commercial agricultural customer versus a non-commercial agricultural customer. Additionally, in-District customers have a right to water service from the District for reasonable and beneficial uses of water.

R4 Develop and implement a plan and procedures for future reapportionment processes.

Response: Recommendation will not be implemented. The division boundary reapportionment process is contained within the Election Code and the Irrigation District Act.

R5 Develop and implement policies and procedures for the review of District boundaries when NID annexes parcels into the NID.

Response: Recommendation will not be implemented. The division boundary reapportionment requirements and process related to new annexation is already contained within the Election Code and Irrigation District Act.

R6 Comply with California's open meeting laws.

Response: Recommendation already implemented. The District continues to comply with California's open meeting laws.

R7 Develop and implement team building exercises to address the current dysfunction among Directors and between NID staff, administration, and the Board.

Response: Partially accept recommendation. There is not widespread dysfunction between the Board and staff. However, team building exercises can be beneficial and will be considered when appropriate and when such exercises can be undertaken within the confines of the Brown Act.

Thank you for the opportunity to comment on the Grand Jury Report. Please contact us if you have any questions or if you require additional information.

Sincerely,



Chris Bierwagen

President, Board of Directors
Nevada Irrigation District