



Staff Report

TO: Board of Directors
FROM: Jennifer Hanson, General manager
DATE: August 24, 2022
SUBJECT: 2021-2022 Nevada County Grand Jury Report Response

ADMINISTRATION

RECOMMENDATION:

Consider the attached draft response to the June 16, 2022, Report released by the 2021-2022 Nevada County Grand Jury and approve the Board President to send the response approved by the Board to the Grand Jury.

BACKGROUND:

During the 2021-2022 term of the Nevada County Grand Jury, an investigation was completed in response to two citizen complaints received. The first complaint was related to water rates and the second complaint was in response to actions of the Board of Directors.

The final report that was received by the District on June 29, 2022, included eleven findings and seven recommendations. Pursuant to state code, the District is required to provide a response to the report's findings and recommendations within 90 days of receipt of the report. Responses to both the findings and the recommendations included in the report are required to comply with Penal Code § 933.05. Per Penal Code § 933.05, respondents must identify whether they agree with each finding or disagree in part or in whole with the finding. Acceptable responses to the recommendations of the Grand Jury fall within four categories: 1. Recommendation has been implemented; 2. Recommendation has not been implemented but will be implemented; 3. Recommendation requires further analysis; or 4. Recommendation will not be implemented.

CONCLUSION:

The attached response letter provides the required responses to the Grand Jury's findings and recommendations contained in the June 16, 2022 Report.

Attachments: (2)

- Grand Jury Report
- Grand Jury Responses

Nevada Irrigation District: Troubled Waters

2021-2022 Nevada County Grand Jury

Report Date: June 16, 2022

Release Date: June 29, 2022

Nevada Irrigation District: Troubled Waters

Summary

The Nevada Irrigation District is an independent special district responsible for the provision of agricultural irrigation water and residential drinking water to areas in and around western Nevada County and northern Placer County. The district operates an extensive reservoir and canal system, and a network of water treatment plants. Additionally, the district produces hydroelectric energy and provides outdoor public recreation.

The Nevada County Grand Jury received two citizen complaints. The first complaint asked for a review of the rates for raw, untreated water provided to agricultural customers, in comparison to the rates paid by customers of treated water. The second complaint requested review of the actions of the Board of Directors for failures to follow requirements outlined in the California Government Code and Nevada Irrigation District policy and procedures.

During these investigations, the Nevada County Grand Jury broadened the scope of the investigation and reviewed the 2019 and 2022 reapportionment processes of the Nevada Irrigation District.

The Nevada County Grand Jury found that there is a significant disparity in the price of raw water provided by contract to the cities of Grass Valley and Nevada City, and to “agricultural” customers of raw water for irrigation.

Nevada County ranks 54th out of 58 California counties in agricultural production. Many customers receive raw water, at the low agricultural rate, and do not produce an agricultural product from their land. There is no policy or procedure for which customers of the raw, untreated water are required to show income from agriculture on their property.

The Nevada County Grand Jury has found that the combination of the low rates for “agricultural” customers, coupled with a historical reluctance of the Board of Directors to raise these rates, have forced water operations to now operate at a deficit. The Nevada Irrigation District transferred monies from reserve funds in other operating areas to supplement water operations. This may force the Nevada Irrigation District to forego needed infrastructure repair and replacement, and affect the investment rate for potential bonds.

The Nevada Irrigation District is divided into five Divisions with one Director representing each Division. The last record of reapportionment, prior to 2022, by the Nevada Irrigation District was found to be in 1983.

During the Board of Directors’ discussions over the course of several meetings in 2019, the legal counsel for the district advised the Board of Directors that not reapportioning placed the district at risk of a lawsuit based on California Election Code law and the Voting Rights Act. However, the Board of Directors tabled the reapportionment process in October 2019.

The Nevada County Grand Jury finds that by ignoring advice from legal counsel and not asking counsel for an interpretation of the law, the Board of Directors placed the Nevada Irrigation District at legal risk and in danger of facing a potentially expensive civil lawsuit.

In January 2022, Nevada Irrigation District staff and the Board of Directors revisited the issue of reapportionment of the Nevada Irrigation District Divisions. The Board of Directors faced a strict timeline for completion of the reapportionment process as statutes required reapportionment be completed by April 17, 2022.

The Nevada County Grand Jury found the Board of Directors was presented a new map and voted on adoption of this map on the same date. This action violated California Election Code section 22001.

The Nevada County Grand Jury found that Directors contacted each other on issues coming before the Board outside of open, public meetings in violation of sections of the California Government Code, commonly known as the Brown Act, and the Nevada Irrigation District Policy Manual. In public meetings, Directors also spoke on issues that were not on the posted agenda for the specific meeting.

Further, the Nevada County Grand Jury found a lack of trust and communication throughout the Nevada Irrigation District's Board of Directors, administration, and staff.

Glossary

- Jury Nevada County Grand Jury
- NID Nevada Irrigation District
- Schedule *Schedule of Rates and Charges by Nevada Irrigation District*
- HFC Hundred Cubic Feet
- Board Nevada Irrigation District Board of Directors
- GM Nevada Irrigation District General Manager
- Brown Act California Government Code section 59400, et seq.
- Study *Cost of Service Study*

Definitions of Measurements

One (1) Miner's Inch = 11.22 gallons per minute

One (1) Acre Foot = 325,821 gallons

One (1) hundred cubic feet = 748 gallons

Background

Special districts are a form of local government created by a community to meet a specific need. Most of California's special districts perform a single function such as sewage, water, fire protection, pest, or cemetery management. There are approximately 2,300 independent special districts in California, each governed by an independent board of directors elected by the district's voters or appointed to a fixed term of office by either a city council or a county board of supervisors. There are twenty-four (24) independent special districts in Nevada County (County).

The Nevada Irrigation District (NID), founded in 1921, is an independent special district responsible for the provision of agricultural irrigation water and residential drinking water to areas in and around western Nevada County and northern Placer County. NID operates an extensive reservoir and canal system and a network of water treatment plants. Additionally, the district produces hydroelectric energy and provides outdoor public recreation,

The NID is governed by a five-member Board of Directors (Board), who serve four-year terms and are elected by the NID voters, with three of the Directors slated for election in November 2022 and two Directors slated for election in November 2024.

The NID is divided into five Divisions with one Director representing each Division. The Director of each Division must reside in that specific division. Each Director is elected by only the registered voters of the specific division.

The Board meets for regularly scheduled meetings. Special meetings of the Board are held at various times, in accordance with the California open meeting laws. Agendas and meeting minutes are posted on the NID website along with video/audio recordings of the meetings. Closed sessions of the meetings are not on video.

The Nevada County Grand Jury (Jury) received a citizen complaint which questioned the rates for raw, untreated water provided to agricultural customers in the NID, in comparison to the rates paid by customers in urban areas.

The Jury received a second complaint regarding NID. The complainant requested the Jury review the actions of the Board for failures in following prescribed statutes, rules, regulations, and ordinances, including the California Elections Code, the California Government Code (Brown Act) and NID policy and procedures.

During these investigations, the Jury broadened the scope of the investigation to review the reapportionment processes of the NID in 2019 and 2022.

The Jury has the authority, under the California Penal Code, to investigate special purpose assessment or taxing districts, including those commonly known as special districts, in the County.

Approach

During this investigation, the Jury conducted interviews of NID staff and Directors of the NID Board and reviewed related documents, including:

- Board Meeting Agendas and Minutes
- video recordings of Board meetings
- material from the NID website
- NID staff reports
- NID governing documents
- e-mails and other written documentation prepared by Directors
- quotations of Directors in the media
- documents from the Nevada County Registrar of Voters
- sections of the California Election Code and the California Government Code

Discussion

Nevada Irrigation District Water Rates

The NID was founded to sell and provide irrigation water to agricultural customers, including ranchers and farmers, and continues to this day. Over the years, NID's services have evolved into selling and providing untreated raw water to urban municipalities and water districts. The raw, untreated water is then filtered through water treatment facilities, owned and operated by municipalities and water districts who then provide treated water to their own customers.

In February 2020, NID received a *Cost of Service Study* (Study) prepared by a private consultant. The Study estimated the cost of service for NID's treated and raw water systems. The Study identified expenses incurred by each of these two systems over three fiscal years, 2017-2019.

Based on an analysis of data from those years, NID's treated water system accounts for approximately 54% of the operating and maintenance expenses and the raw water system accounts for approximately 46% of total operating expenses.

In 1966, NID began producing hydroelectric power which generates revenues used to defray the costs of operating NID's water systems and subsidizes the low cost of water sold to agricultural customers. However, the revenue for hydroelectric power sold has not kept pace with the cost discrepancy of rates of raw water to agricultural customers and the cities of Grass Valley and Nevada City.

The hydroelectric division generates substantial income that is transferred to the water division to help fund operating expenses. The Study showed the hydroelectric division generated approximately \$9.1 million of net income in 2019 and was budgeted to generate a little less than \$8 million of net income in 2020. The Study projected the amount of net income generated by

the hydroelectric division to decrease to approximately \$6 million in future years due to debt service funding for anticipated future bond issues.

The hydroelectric division will not generate enough revenue to cover the needed transfers to other divisions. This may result in budget deficits requiring a substantial drawdown of hydroelectric reserve funds.

The NID’s combined treated and raw water rate revenues funded only 64% of total water operating expenses in 2019 and 59% of total operating expenses in 2020. After accounting for the various other funding sources, including substantial transfers from the hydroelectric division, water rate revenues slightly exceeded the net operating funding requirement in 2019 and were budgeted to fall about \$1.2 million short of the net operating funding requirement in 2020.

The Study noted in 2019, 68% of water rate revenues came from treated water rates and 32% came from raw water rates. In 2020, 72% of water rate revenues came from treated water rates and 28% came from raw water rates.

The table below shows NID’s treated and raw water rate revenues to various operating funding targets for 2019 and 2020. The funding targets exclude capital improvement expenditures which are primarily funded by NID’s property tax revenues.

2019 - 2020 Water Rate Revenues

	2019 Estimated Revenues	% of Water Rate Revenues	2020 Estimated Revenues	% of Water Rate Revenues
Treated Water Rates	\$16,544,000	68%	\$19,208,000	72%
Raw Water Rates	\$7,616,000	32%	\$7,358,000	28%
Total	\$24,160,000	100%	\$26,566,000	100%

The Study, based on financial projections, estimated that treated water rates would increase and raw water rates would need to increase substantially in order to align each system’s rates with the estimated cost of service. This is due partly to the historical legacy of the founding of NID and the Board’s reluctance to raise raw, untreated water rates for agricultural customers and rural residential home/landowners.

The Jury examined the *California Department of Food and Agriculture Statistics Review, 2019-2020*. In a section of this report titled, “County Rank, Total Value of Production and Leading Commodities,” in 2018 and 2019 the County ranked 54th out of 58 California counties. In a second area, County Rank by Gross Value of Agricultural Production, in 2018 and 2019, the

County ranked 54th. The only counties ranking lower were Sierra, Alpine, Trinity and San Francisco.

However, the Jury has learned that many customers receiving raw, untreated water are not agricultural farmers or ranchers. This water goes to many customers who have bought or built homes on small acreage parcels and have a well on their property for drinking water. These home/landowners buy raw, untreated water from NID to irrigate their property around their homes, including lawns, ponds, and horse pastures, but do not produce any agricultural commodity.

Many other states offer rural home/landowners costs or tax breaks if they can show that they are producing an agricultural product and reach a predetermined level of monies earned from those products. The Jury could find no similar procedure in California or the County. The Jury did not find any NID policy or procedure requiring a user of raw, untreated water to provide evidence of agricultural income in order to receive raw, untreated water at agricultural rates.

In April of 2019, the Board passed NID Resolution No. 2019-06, waiving NID Policy for Unrestricted Designated Reserves. This action waived NID Policy No. 3040.4.1, “which establishes Operating Reserve fund must strive to maintain a minimum reserve level of six months of annual budgeted operating costs using a three-year running average, approximately 180 days of operating cash for an individual Division (Water, Hydroelectric, Recreation).”

Further, Resolution 2019-06 states:

- NID will transfer \$22 million from hydroelectric reserves to the water fund to cover costs over the three-year period.
- NID will transfer \$3.6 million from investment earnings to the water fund to cover costs over the three-year period.
- NID will transfer \$1.2 million from non-operating revenue to the water fund to cover costs over the three-year period.

The Jury was advised that NID does not plan to review the current water rate structure until 2023. One issue will be the inequity between the rates for raw water and treated water.

The NID’s *Schedule of Rates and Charges by Nevada Irrigation District* (Schedule) consists of twenty-eight (28) pages. There are thirty-eight (38) rate schedules for the various types of NID customers. This document may be found on NID’s website (www.nidwater.com). The schedule covers not only ongoing water rates, but also meter service, connection fees and energy costs related to the provision of water.

The Jury’s review of the Schedule has shown that agricultural customers pay \$30 for one acre-foot of untreated water. An acre-foot is equal to 325,821 gallons of water. Many area residents may be familiar with the historical measurement of a “miner’s inch.” A miner’s inch is now officially measured as 11.22 gallons of water per minute. Irrigation water is not a year-round

supply and is not a guaranteed, constant supply, meaning the supply can be discontinued at any time.

The NID has entered into contractual agreements to sell untreated water to the cities of Grass Valley and Nevada City, which have their own water treatment facilities. The Jury found that Grass Valley and Nevada City pay \$296 per acre-foot for the untreated, raw water provided to their water treatment facilities. There is an additional 25%, out-of-district surcharge, as the residents of the municipalities do not pay a portion of their property taxes to support the infrastructure of NID.

Nevada City and most of Grass Valley have never been annexed into NID. For example, a portion of land within the City of Grass Valley, in the area of Morgan Ranch, is a part of NID. In this area of the City of Grass Valley, the residents receive treated water from the Elizabeth George water treatment plant, operated by NID. A portion of the property taxes paid by these residents goes to NID. There are other areas within the Grass Valley city limits which also receive treated water from NID.

The rate for the provision of treated water to non-commercial/commercial customers, of NID, is measured by hundred cubic feet (HCF). One (1) HCF is 748 gallons of water. Non-commercial customers (a residence) have a water meter installed between the feed from NID and the residence. The meter measures the amount of water used by customer. The residence is charged \$2.42 per HCF for the first five (5) HCF, and then is charged \$3.13 for each HCF thereafter. These costs may increase in the event of a drought declaration. There is a minimum fixed service charge for each non-commercial customer, based on the size of the metered connection.

Untreated water is guaranteed to be provided year-round to Grass Valley and Nevada City. Nevada City also has water rights to the watershed of Little Deer Creek and usually will not purchase water from NID until late summer or early autumn of each year.

Nevada Irrigation District Division Reapportionment 2019

The NID is required by the California Elections Code, Division 21, Chapter 8, Section 22000, to adjust its divisional boundaries every ten years following the United States Census. Using the Census as a basis, NID must adjust division boundaries, as practical, to be equal in population, and may give consideration to the following factors:

- topography
- geography
- cohesiveness, contiguity, integrity, and compactness of territory
- community interests of the division

Section 22000 does not prohibit NID from adjusting the division boundaries at any time when deemed necessary by a two-thirds vote of the Board. However, Section 22000 does prohibit the realignment of district boundaries less than 180 days before a scheduled election. NID's next scheduled election is November 2022. Section 22000 also calls for public hearings during the process to provide transparency and input from the public.

The Jury found no record of NID reapportionment in 1990, 2000, 2010 or at any other time in those decades although there were multiple annexations. Interviews of NID staff and review of NID documents confirmed the last reapportionment was completed in 1983. The Jury also conducted extensive research and the only discoveries of reapportionment occurred in 1969 and 1983 as reported in the archives of the *Auburn Journal* on March 11, 1983.

In 2018, NID determined that due to growth in the Lincoln and North Auburn areas of Placer County, the residents of those areas were significantly underrepresented in decisions made by the Board. There was a significant deviation of approximately 25% between the number of voters represented in the districts.

On June 17, 2019, a contract was awarded to a private consultant (consultant) for \$32,000, which would include:

- a review of the current district boundaries
- the creation of new district boundary lines
- the adoption of the new district boundary lines
- working with NID staff to gain approval of the new district boundaries with Nevada and Placer Counties election offices
- an assessment and review of the district boundaries after the findings of the 2020 United States Census are made public

The Board met on 10 occasions between June 26, 2019, and October 23, 2019. The Jury's review of the Board Meeting agendas, minutes, and video recordings indicated the Board mentioned or discussed reapportionment in an open public meeting on only four dates:

- July 24, 2019
- August 28, 2019
- September 11, 2019
- October 23, 2019

During these meetings, the Board received information on the process. The General Manager (GM) reported the contract was awarded to a consultant. The consultant was scheduled to make presentations and answer questions at the upcoming Board Meetings.

The consultant offered three reapportionment map options for consideration, referenced as Map 1, Map 2, and Map 3. The Jury's review and analysis of these options showed the residences of two current Directors were placed in the same district on two of three maps. The Board's acceptance of one of these maps would put two current Directors running for re-election against each other in a future election.

The presentation would be made at two subsequent board meetings, in order to provide information and transparency about the project to the community and to allow for public comment. The consultant advised that after the presentation during the third meeting, the Board could vote to accept one of the proposed district boundary map options. This would allow time

to send the new district boundaries to the election offices in Nevada and Placer Counties to be placed on the 2020 ballot.

On multiple occasions, NID legal counsel (Counsel) advised the Board not doing the reapportionment project placed NID at risk of a lawsuit based on California Election Code and the Voting Rights Act. Counsel stated a situation such as this is construed by some law firms as a “business opportunity.” In such a scenario, a government entity, such as a special district, receives a letter from a law firm. This letter will advise the entity of its violation of the statutes. The letter will “offer” the entity the opportunity to address the issue, along with the remittance of a stated monetary settlement to the law firm. If the entity does not take these actions, the firm states it will file a lawsuit against the entity for these violations potentially resulting in much higher costs. Counsel was aware of a government entity in Yolo County, which received such a letter. Counsel advised the Board the Voting Rights Act is applicable not only to partisan elections but pertains to all elections.

Counsel advised the Board anytime NID annexes a parcel of land, the Board is required by election laws to designate, by resolution, as to which district the annexed parcel shall be placed in. The Board must also review the district boundaries after each annexation to ensure equal representation in all districts.

The Board questioned if the California Elections Code Section, 22000, *et seq.*, had been amended or changed. Counsel stated it had not been amended or changed. The Board’s “interpretation” of the statute was that even if the Board voted to change the district boundaries now, the changes would not take effect until after the 2020 U.S. Census and that NID could not change district boundaries, at this time, with an election coming.

At the meeting on October 23, 2019, a motion was made to table the reapportionment project until after the 2020 U.S. Census and to pay the consultant for the work performed to date.

Counsel advised the Board the district boundary changes would be effective immediately, but if a director’s residence was moved out of their current district, that director would continue to serve their current district until their term was complete. Counsel noted some Directors were personally affected. The Board verbally acknowledged Counsel was correct in stating current Directors were personally affected. Counsel stated that when a Director’s current term was over, they would face the following choices:

- re-locate to a residence in the district the Director is currently representing, or
- run for election in that district in which the Director resides after reapportionment

The Board acknowledged Counsel’s advisement that NID was out of compliance with the California Election Code. However, the Board stated, in a personal interpretation of the law, “there is sort of a grace period or buffer.” The Jury was unable to find any reference to a “grace period or buffer” in the statute. The NID Counsel was not asked for any legal interpretation or guidance on the statute being discussed, nor did Counsel offer further comments.

At this point, the motion to table the item was repeated. There were no comments or questions by any Director, staff or Counsel. The motion was seconded and a vote was called for. The reapportionment project was tabled with the voting results noted in the meeting minutes. The Jury has received a copy of the contract by NID to the consultant as well as a copy of the check used to pay the consultant \$19,600 for the work provided up to October 23, 2019.

Nevada Irrigation District Reapportionment 2022

In January 2022, NID staff and Board revisited the issue of reapportionment of NID Divisions. On January 25, 2022, a contract was given to the same consultant as in 2019 for \$22,000.

The Board was facing a strict timeline for completion of the reapportionment process. Section 22000.1(b)(1) of the California Election Code states:

The governing board of a district that has a regular election to elect members of its governing body on the same date as the 2022 statewide general election shall adopt adjusted division boundaries no later than April 17, 2022.

The Jury’s review of the Board Meeting agendas, minutes, and video recordings indicated the Board mentioned or discussed reapportionment in an open public meeting on only three dates:

- January 26, 2022
- February 9, 2022
- March 9, 2022

The Board was presented with three map options for consideration. The map options were identified as Map A, Map B, and Map C. The consultant advised the Board of the “Redistricting Principles” stating newly drawn districts should:

- be of relatively equal size, based on people, not citizens
- be geographically contiguous, do not hop or jump
- maintain communities of interest
- follow city, county and local government lines
- keep the newly drawn districts compact

The consultant offered the following timeline to the Board:

- January 26, 2022 Draft Maps Presentation
- February 9, 2022 Draft Maps Revision
- March 9, 2022 Final Vote on Maps

The Board requested a fourth map option. The consultant cautioned the Board against voting too soon. The consultant discouraged having a new map option presented at a last meeting and then immediately voting to select this option. This would not allow the public ample time to review and comment on the newest option. The consultant stated the best practice and standing

principle in California is to have the map options posted on the entity's website and available to the public at least one week prior to the Board's vote on which map to accept.

However, regarding the presentation of a new proposal and immediate vote, the Jury researched California Election Code section 22001, which states:

Before adjusting the boundaries of a division pursuant to Section 22000 or 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 body votes to approve or defeat the proposal.

At the February 9th meeting, the Board was presented with four map options by the consultant. With the existing deviations in representation district-wide at 32.7%, the district-wide deviations for the proposed map options would be as follows:

- Map A 1.3%
- Map B 6.0%
- Map C 1.9%
- Map D 6.2%

After discussion, the Board asked the consultant for a fifth map option, to be presented to the Board at their next regularly scheduled meeting.

At the March 9th meeting, the private consultant presented Map E, as requested by the Board. It should be noted that this map placed the residence of two Directors into the same district. The deviation of Map E is 6.2%.

After discussion, a motion was made to adopt Map E. Map E was approved on a 4-1 vote even though the requirements of the California Elections Code were not met to provide time for public comment.

The Jury reviewed the map options and the staff reports, and found Map E had a deviation greater than that of some of the other maps which were considered and rejected by the Board. Additionally, in all considerations, the residences of two Directors who were placed in the same district in the 2019 reapportionment effort, remained safely in their respective districts. One of those Directors had brought forth the motion to table the reapportionment process in 2019.

To this date, NID has paid the consultant \$39,600 for the work performed for reapportionment in 2019 and in 2022. This is an increase of \$7,600, over the original budgeted amount of \$32,000 in 2019.

California's Open Meeting Laws

All Directors receive training on California's open meeting laws. This training is provided on a biannual basis and provided either by the NID legal counsel or from the California Special District's Association. Directors interviewed indicated they had received this training and records provided to the Jury by NID staff confirmed the completion of this training.

The *Nevada Irrigation District Policy Manual Sections 4095-4095.1*, states:

Pursuant to Government Code Sections 53234 through 53235.2, all directors and designated executive staff of NID shall receive two hours of training in general ethics principles and ethics laws relevant to public service within one year of election or appointment to the board of directors and at least once every two years thereafter.

This policy shall also apply to all staff members that the board of directors designates and to members of all commissions, committees and other bodies that are subject to the Ralph M. Brown Open Meeting Act.

California Government Code section 54950 *et seq.*, commonly known as the Ralph M. Brown Act (Brown Act), is the California state law which outlines the responsibilities and requirements of open public meetings held by the governing board of a public agency, including:

- defining a special district as a public agency
- requiring a public agency to notice the public of the items on an agenda of a regularly scheduled meeting of the governing board of the public agency at least 72 hours in advance of the scheduled meeting
- requiring the governing board of a public agency to only discuss items on the agenda at a legally scheduled and noticed Board meeting, and
- limiting Board members from discussing any item which is on the agenda for a Board meeting, outside of a public board meeting and limiting a Board member from discussing said item to more than one other Board member

The Brown Act requires openness in government. An improper “serial meeting” may occur by a “hub and spoke” sequence. In this scenario Member A (hub) contacts Member B (spoke) regarding an issue on an item within the legislative body’s jurisdiction and scheduled to come before the Board for discussion and/or a vote. Member A (hub) then separately contacts Member C (spoke) regarding the same item. In the process, information about the members’ respective views is revealed.

During the inquiry, the Jury found a pattern of violations of open meeting laws by the Board. Interviews and written communications show that on several occasions, the Board was offered advice by NID management and legal counsel regarding the appearances and violations of the Brown Act. The following are instances of these violations:

- A Director (hub) stated, in an open Board meeting, that they had met with each Director individually (spoke) and had discussed items to be placed on the Board’s agenda in the coming year.
- A Director (hub) openly acknowledged, in a written memorandum to the Board, via NID staff, that they had met with two other Directors (spokes) to deliberate on an item to come before the Board in an upcoming Board meeting. The Director (hub) stated they had the support from the two Directors (spokes). The Director (hub) voiced personal support of action to be taken on the item. When confronted with this memorandum, the Director (hub) pulled the item from the agenda.

However, in approximately one month, the Director (hub) again placed the item on the agenda, in a subsequent meeting. The item was discussed and voted on.

The Brown Act does not allow discussion among Directors at a scheduled meeting regarding items that are not on the meeting's agenda. Directors have an opportunity, usually at the end of the meeting, to provide brief reports on meetings, conferences and seminars they have attended. Directors may report on community comments and activities of interest. Examples of Directors' Report may be as follows:

- attended a local town hall meeting
- attended a board meeting for a local non-profit and shared highlights
- participated in an event regarding climate change

On one occasion, a Director opened a Director's Report by saying, "I don't have anything to report, but I do have a comment." The Director stated their support for and commitment to the completion of an item which had appeared on the Board's agenda in the past and will appear on the Board's agendas in the future. The Director also voiced that this would be an item on which the Director would base their re-election campaign. This item was not on the agenda for this meeting.

Discord, Mistrust, and Acrimony

Nevada Irrigation District Policy Manual Section 4010.1.4 states:

The primary responsibility of the Board of Directors is the formulation and evaluation of policies, goals, and objectives to be pursued by the District in carrying out its mission, and in gauging the success of the District in meeting the Board's directives. Routine matters concerning the operational aspects of the District are to be delegated to professional staff members of the District.

Further, *Section 4010.2* states:

The work of the District is a team effort. All individuals should work together in the collaborative process, assisting each other in carrying out the mission of the District.

The Jury learned of discord, mistrust, and acrimony among the Directors and between NID Board, management, and staff. The Jury was told that the Board was trying to "micromanage" the staff by going around management and giving orders directly to staff. The Jury learned that some Directors felt that the former management did not like them or was trying to "get" them. Similar statements were made regarding current management.

There were complaints that Directors received incomplete staff reports lacking pertinent information on agenda items on which the Directors must make decisions. Directors did not trust or seek Counsel's opinions because Counsel was a friend of management and thus, did not trust legal advice given to them by Counsel.

The Jury found a pervasive sense of dysfunction in the NID which affects the health and stability of the organization.

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.
- F2** The NID cannot sustain the current subsidizing of low agricultural rates from internal reserves.
- F3** The NID cannot financially continue to provide low-cost agricultural water to customers who do not produce an agricultural product.
- F4** The NID has no requirement for a consumer of raw, untreated water to produce an agricultural product.
- 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.
- F6** The NID Board has placed the district at financial risk by failing to raise the rates of raw, untreated water to agricultural users.
- F7** The NID failed to follow statutes in the California Elections Code during the reapportionment processes in 2019 and 2022.
- F8** The Board placed NID in legal jeopardy of a lawsuit by failing to heed NID legal counsel's advice regarding 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.
- F10** The NID has failed in the implementation of their Board Policy and has demonstrated organizational dysfunction in the areas of trust and communication.

Recommendations

The Nevada County Grand Jury recommends the Nevada Irrigation District:

- R1** Conduct a comprehensive review and adopt a rate structure to align the cost of water provision to treated water and agricultural customers.
- R2** Develop, adopt, and implement a procedure to identify raw water users who do not produce agricultural products.
- R3** Develop and implement a policy to differentiate the water rates for non-agricultural and agricultural water customers.
- R4** Develop and implement a plan and procedures for future reapportionment processes.
- R5** Develop and implement policies and procedures for the review of District boundaries when NID annexes parcels into the NID.
- R6** 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.

Request for Responses

Pursuant to Penal Code Section 933.05, the following response is required:

- The Nevada Irrigation District: respond to Findings F1-F10 and R1-R7 within 90 days of the receipt of this report.

Responses are to be submitted to the Presiding Judge of the Nevada County Superior Court in accordance with the provisions of California Penal Code section 933.05. Responses must include the information required by section 933.05.



Nevada Irrigation District

August 25, 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 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: Disagree 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 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: Agree 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: Agree with 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: Partially agree 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 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. 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 implemented. 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.

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