

# KINGS COUNTY WATER ISSUES

## SYNOPSIS

Kings County, Dudley Ridge Water District (DRWD) and Mojave Water Agency (MWA) are three of 29 entities who contract with the State to receive a portion of its surface water supply through the California State Water Project (SWP). DRWD's service area is located in the southern portion of Kings County. On April 8, 2009, DRWD adopted a *Policy For Permanent Transfer of SWP Table A Water Outside of Dudley Ridge Water District*. This paved the way for a permanent transfer by one of its landowners of 14,000 acre feet of water historically used for agricultural purposes to MWA situated south of the Tehachapis to be used for urban purposes and prompted an in-depth Grand Jury investigation. In the course of the investigation it became apparent that the inquiry was taking a three-pronged path:

- I. The Dudley Ridge Water District – the sale and how it happened
- II. The California Department of Water Resources – policies  
regarding water transfers.
- III. Kings County – responsibilities to its citizens.

## WHY THE GRAND JURY INVESTIGATED

A newspaper article in the *Hanford Sentinel* dated September 5, 2009, describing a \$73.2 million sale of water rights from a landowner in the DRWD to MWA in San Bernardino County stirred public interest.

## AUTHORITY

Penal Code Section 925. The Grand Jury shall investigate and report on the operations accounts and records of the officers, departments or functions of the county including those operations, accounts and records of any special legislative district or other district in the county.

## METHOD OF INVESTIGATION

Interviews were conducted with the DRWD board members and management, Kings County Water District manager, a water broker, local agriculture water users, Mojave Water Agency officials, and attorneys and staff from the California Department of Water Resources (DWR) In addition, many documents, including e-mails, board meeting minutes, contracts and other written materials, were reviewed. The Grand Jury's investigation was assisted by the offices of the California Attorney General and the Kings County District Attorney.

## **I. THE DUDLEY RIDGE WATER DISTRICT - The water sale and how it happened.**

The 37,000 acre DRWD was created in 1963, shortly after completion of the SWP. It was formed by local farmers pursuant to the California Water Code in order to enable SWP supply to be delivered and utilized in the southern Kings County agricultural area that pre-SWP was fallow. DRWD consists of about 70 landowners, most of whom are absentee. Through ownership and farming leases eight entities have active operations in the district. The five member DRWD Board of Directors consists of the landowners of the district or their representatives. The Board of Directors hold their meetings in Fresno County and no member lives in Kings County.

The DRWD Board of Directors created a policy on April 8, 2009, allowing individual members to sell their portion of the district's water allotment, granting that individual or entity sole profits from such sales. Three weeks later, on April 30, 2009, a sale of water between an entity of DRWD and the MWA was initiated. Five months later, in September 2009 a \$73.2 million water sale was reported by the *Hanford Sentinel*. Public notice of the impending permanent water transfer was indeed posted by the DRWD in a lawful manner and a timely fashion. However, these postings were published in a Corcoran newspaper with a paid circulation of 2,450 per week. A public hearing concerning the transfer was held in San Bernardino County and, again, public notice of this hearing was published in the Corcoran weekly newspaper. No member of the public and no Kings County official showed up to speak at that hearing.

## **II. THE CALIFORNIA DEPARTMENT OF WATER RESOURCES - Policies regarding water transfers and its impact on the Dudley Ridge Water District sale.**

When an agreement between parties to transfer state-managed water is reached, the California Department of Water Resources (DWR) is notified. The California State Water Code provides for the beneficial and efficient use of the California water as follows "the water resources of the State be put to beneficial use to the fullest extent of which they are capable...." (section 100) "It is hereby declared to be the established policy of this state to facilitate the voluntary transfer of water and water rights *where consistent with the public welfare of the place of export and the place of import.*" (section 109, italics added) The Legislature hereby finds and declares that voluntary water transfers between water users can result in a more efficient use of water, benefitting both the buyer and the seller" ( section 475) The DWR's mission statement says that its job is to "review, facilitate and implement water transfer . . . in a manner that prevents: (1) injury to the legal users of the water, (2) unreasonable effects to fish and wildlife, and (3) *unreasonable effects to the overall economy of the counties from which the water is transferred consistent with State law.*" (Italics added) Further, the mission statement says, "Develop a water transfer framework that seeks to avoid injury to other legal users of water, avoids or adequately mitigates adverse impacts that may occur, and publicly disseminates information on general transfer uses as well as specific water transfer proposals."

When the DWR is notified, a study is initiated to determine the potential impact according to the California Environment Quality Act (CEQA). California Department of Fish and Game and other public agencies are often consulted in the process of preparing studies under CEQA. When a CEQA report determines there is a possible environmental

impact, the Lead Agency, which is the initiator of the proposed water sale, studies whether the proposed sale will result in a significant environmental impact. If so, it must prepare an Environmental Impact Report. If not, it may produce a Negative Declaration or a Mitigated Negative Declaration if there are impacts which can be mitigated. The DWR (which is a trustee agency over the States water resources) reviews, comments on, makes a determination as to the validity of that Declaration prior to adoption of the Declaration by the Lead Agency and prior to validation of the proposed water transfer. The public also has a chance to provide comments regarding the Declaration.

### **III. KINGS COUNTY – Responsibilities to its citizens.**

Kings County was notified of MWA’s intent to adopt a Negative Declaration regarding the proposed DRWD to MWA water transfer, via e-mail, sent on June 12, 2009, contained the following: “Written comments will be accepted by e-mail or letter until the close of business on July 13, 2009.” On June 19, 2009, Kings County received details of the SWP contract amendments required to complete the permanent transfer of SWP, water from DRWD to MWA. The Kings County Administrator received that information and forwarded it to the County Counsel, the Kings County Water Commission and the Board of Supervisors.

### **FINDINGS AND RECOMMENDATIONS FOR DUDLEY RIDGE WATER DISTRICT**

#### Finding 1

The DRWD enacted a policy on April 9, 2009, to enable individual members of the district to sell their portion of the district’s annual supply of water subject to availability.

#### Recommendation 1

Although the DRWD receives SWP supply that did not originate in Kings County, consistent with the State’s policies, all water agencies should carefully consider whether the transfer will be consistent with the public welfare of both the place of export and place of import. Kings County Board of Supervisors and other agencies within Kings County should carefully monitor and comment on any such transactions.

#### Finding 2

While DRWD is a special district within Kings County there is no provision in place to make it accountable to anyone other than the members of DRWD.

#### Recommendation 2

The California Department of Water Resources is entrusted with jurisdiction over natural resources held in trust for the people of the state. As such, it is bound by the Legislature’s intent and declaration that the water of the State be put to the most beneficial use. The Grand Jury believes that local agencies and the Board of Supervisors should be actively engaged in oversight as well and that they should review and comment on matters that will have local impacts.

#### Finding 3

The sale between DRWD and the Mojave Water Agency was a **permanent** transfer of a SWP supply, not a more common type of temporary water exchange.

#### Recommendation 3

While short term water exchanges are acceptable and common, permanent transfers need more forceful oversight on the part of county officials and local public agencies.

Finding 4

Notices of DRWD meetings concerning the water transfer at issue were posted in a local weekly newspaper.

Recommendation 4

DRWD technically complied with the law. However, to reach a wider group of people concerned with water issues in the County, such notices should be posted in the larger, daily newspaper in the Kings County seat, the *Hanford Sentinel*. In order to gain more public attention, they should also be noticed in valley news media, the county's website, and Kings County Farm Bureau.

**COMMENTS**

Water has become more valuable due to competition between urban and agricultural interests. Competitive costs have resulted in water becoming a commodity for farmers. This has created a tipping point for farmers. In some cases they sell their water allotment rather than use it to maintain their farms. Loss of water and agriculture production has resulted in lowered assessed land values and a reduction in the county's work force thus a drop in the County's taxable income. Farmers cannot compete with the prices offered by urban users. Loss of surface water has also resulted in increased use of ground water causing deeper wells to be drilled increasing the cost of pumping water to cities and municipalities. Currently there is an overdraft of three million acre feet of water per year in Kings County alone.

DRWD is a special district within Kings County. By creating a policy whereby entities within the district may sell their water, the possibility exists that all of the SWP supply will be sold returning DRWD to its fallow pre-SWP condition.

DRWD is a government agency and as such, its board members are not allowed to profit from its actions.

**FINDINGS AND RECOMMENDATIONS FOR THE CALIFORNIA DEPARTMENT OF WATER RESOURCES**

Finding 1

It appears that the precepts of Water Code Section 109 were disregarded since no interviews, no visits and no studies were made by DWR in Kings County concerning the permanent water contract transfer made by DRWD.

Recommendation 1

DWR could do more to show it is adhering to its own mission statement and the requirements of Water Code Section 109 by not only commenting on the CEQA environmental document, but by contacting the place of export of water and interviewing the parties that could be impacted by the decision.

Finding 2

DWR considers permanent and temporary water transfers the same.

Recommendation 2

Permanent and temporary water transfers should be considered differently by the very nature of a final loss of water vs. a temporary exchange of water.

Finding 3

DWR essentially discounted the Fish and Game report challenging the CEQA negative declaration impact report regarding the danger to local species.

Recommendation 3

DWR should adhere to its policy concerning the negative impact to both the place of export as well as place of import of water. There should be more consideration paid to those who are experts in their fields.

**COMMENTS**

During interviews, two representatives stressed that, “priority is given to the financial integrity of the water project.” Both Water Code section 109 and the DWR mission statement require that the public welfare of the places of export and import be considered; no priority concerning the finances of the State Water Project is mentioned.

**FINDINGS AND RECOMMENDATIONS FOR THE KINGS COUNTY BOARD OF SUPERVISORS.**

Finding 1

The Board of Supervisors was notified of the pending water sale by both the County Administrator and the County Counsel.

Recommendation 1

The county supervisors should have commented during the review process. There seems to have been no study or request for information regarding the possible negative impact to Kings County at that time. A study session was held by the Kings County Board of Supervisors concerning “. . . issues related to development of additional surface water supplies, extraterritorial water transfers and regulation of supplies to surface water and ground water” was held on October 20, 2009, well after the review process had been completed.

Finding 2

The Kings County Water Commission, though expressing concern about the permanent water transfer, failed to submit any written comments or to advise the Board of Supervisors to do so. It appears to the Grand Jury that there is a consensus among the County officials that they have no jurisdiction in such matters.

Recommendation 2

The County Water Commission needs to fulfill its obligation to report to and advise the Board of Supervisors on water issues affecting Kings County.

Finding 3

The Grand Jury was led to believe that in the last eight years no Kings County official has made any comments to the Department of Water Resources concerning water issues and, in fact, it was stated that this Grand Jury is the first to question any such issue by a Kings County agency.

Recommendation 3

The Kings County officials need to be alert when it comes to the loss of water and, as a state water contractor, there is an opportunity to respond to water matters affecting the County through the CEQA process.

## **COMMENTS**

The Kings County Resolution No. 08-003, adopted in November 2008 states:

“WHEREAS, for over forty years the Kings County Water Commission has well and faithfully served the County of Kings on advice concerning water issues: and WHEREAS, this Board of Supervisors remains keenly interested, on behalf of all persons in the County of Kings, in the development, use and conservation of water resources, both as to quantity and quality, for agricultural, commercial, industrial, domestic and recreational uses in the County of Kings . . . To call the attention of the Board of Supervisors to pending water matters . . .”

It seems that this resolution has been ignored by the county in this case. Is the Board of Supervisors not listening to the Water Commission or is the Water Commission not advising the Board of Supervisors? The old “we can’t do anything about it” or “we have no authority” are not valid excuses for inaction. This permanent sale of water allocations has led to further water losses in the County due to additional sales of land and water contracts to entities outside of Kings County. As the water allocations in King County diminish, a major economic base is depleted.

While no actual breaking of California law was found, there was sufficient evidence of possible malfeasance due to the creation of a policy allowing a permanent sale of water allocations. This caused the Grand Jury to request the aid of attorneys from the Kings County District Attorney’s office and the California State Attorney General’s office to participate in the investigation. The current Grand Jury recommends that these two agencies follow up on the matter.

## **RESPONSE REQUIREMENT**

Penal Code Sections 933 and 933.05 require that specific response to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Kings County Superior Court within 90 days from time of receipt.

- Dudley Ridge Water District
- California Department of Water Resources
- Kings County Supervisors