

# LEBEC COUNTY WATER DISTRICT TWELVE INCH LINE

## **PREFACE:**

This is the second of three reports on the Lebec County Water District issued by the 2011-2012 Kern County Grand Jury AD HOC Committee/Lebec County Water District. The third report, *Lebec County Water District: Board of Directors* directly correlates to the concerns addressed in this second report.

## **PURPOSE OF INQUIRY:**

The AD HOC Committee (Committee) of the 2011-2012 Kern County Grand Jury (Grand Jury) investigated complaints from Lebec area citizens alleging continuing violations by the Lebec County Water District (District) and the District's Board of Directors (Board) regarding the installation and connection of a private twelve inch (12") line to the District water supply in December 2009. The investigation was conducted, pursuant to Penal Code §933.5, between September 2011 through April 2012.

## **PROCESS:**

The Committee interviewed, under oath, past and present District Board members, and employees of the District. The Committee subpoenaed, received and reviewed District Board meeting agendas, meeting minutes, contracts, plans and other documentation regarding the concerns of the complainants. Members of the Committee attended several District Board Meetings between September 2011 and April 2012. Contact was also made with the Kern County Building Department regarding necessary permits, inspections, etc.

To accurately "triangulate" the events concerning the 12" Line Issue, the Committee requested and received a "Timeline of Events" concerning the issue from two previous board presidents, a previous board director, and the owner/civil engineer.

The Committee reviewed the District's Policies and Procedures Manuals (Manuals) approved in 2008 (p. 39-50) and 2011 (p. 16-21) regarding CONNECTIONS – PERMIT TO CONNECT. Quotations from these manuals will be addressed under FACTS.

**NOTE:** The principal land owner and the land owner/civil engineer wanted to run an approximate 15,000-17,000 foot water line from Lebec Road to the Wainright cul-de-sac (providing a hotel on Wainright Court with water). The line extended through undeveloped land, including under Cuddy Creek, and the line was to connect to the District's water supply. The land owners paid for the construction of the line and, apparently, hoped to connect future development into that line for water as needed.

As is noted in the following, there is a great deal of over-lapping and changing of positions between the various Board of Directors for the District during the past few

years. To avoid disclosing specific names of individuals, the Committee has chosen to use only titles and positions when describing the FACTS and FINDINGS herein.

- **PBP1:** Past President 1 served as Board President, in part but not limited to, through most of 2009 and most of 2010.
- **PBP2:** Past President 2 served as Board President during December 2009 and January 2010 (when he resigned).
- **PBP3:** Past President 3 served as Board President January–November 2011.
- **CBP:** Current Board President was elected to the Board in November 2011 and appointed as the Board President in December 2011.
- **PBD:** Past Board Director was elected to the Board in November 2009 and served on the board December 2009 to January 2010 (when he resigned). **NOTE:** The PBD is married to the Current Board Secretary/Treasurer.
- **CVP:** Current Board Vice President was appointed to the board in January 2010 and was subsequently elected to the Board in November 2011.
- **CBT:** Current Board Secretary/Treasurer was elected to the board in November and is the spouse of the PBD mentioned above.
- **CBD4** and **CBD5:** Current Board Directors who were also elected to the board in November 2011.
- **GM:** APT General Manager for the District has been in place since October 2011.
- **OM:** Office Manager for the District has been in place since September 2010.
- **PLO:** Principal Land Owner is the principal land-owner of the area to be discussed in these FINDINGS.
- **OCE:** Land Owner/Civil Engineer is an additional co-land owner of the area to be discussed and is also a civil engineer.
- **HO:** Hotel Owners are the persons who own the hotel to be discussed in these FINDINGS.
- **SLO:** A separate land owner of adjacent property to be discussed.

#### **BACKGROUND/FACTS:**

**NOTE:** Any spelling/grammatical errors appearing in the quoted material below were duplicated from the source.

- A. The District was established by resolution of the Kern County Board of Supervisors, effective December 26, 1967, in accordance with the provisions of the County Water District Law, within the Water Code of the State of California.

- B. The District began operation of the existing water system in Lebec, California, on April 21, 1969. The District was formed to provide the organization and water works, and for acquisition or construction of facilities for the distribution and sale of water.
- C. The District Board consists of five elected members. Board meetings are held the first Tuesday of each month at 7:00 p.m.
- D. Since 2009 the Board's membership has frequently changed mid-term due to resignations and reappointments. The Board's Presidency has also changed within terms a number of times.
- E. In October 2011 the previous Board approved a five year contract for Applied Process Technology (APT) to manage the District. At that time, a General Manager (GM) was put in place to manage the District.
- F. The current Board was seated in December 2011 and consists of four newly elected members as of November 2011 and one incumbent.
- G. The current Board President is employed as a Kern County building inspector.
- H. The Lebec County Water District Policy and Procedures Manuals approved in 2008 (p. 39-50) and approved in 2011 (p. 16-21), under CONNECTIONS – PERMIT TO CONNECT clearly states the following:

- *A connection will only be made by an authorized District Water Operator after completion of either or all of the proper application, completion of all "Will Serve" procedures, a unanimous vote by the Board of Directors..."* (p. 39)
- *Every person of the District must complete the proper L. C. W. D. Water Application prior to service being connected.* (p. 39)
- *Users shall not make any material change in the size, character or extension of the utilizing equipment or operation of any of the Districts water service system.* (p. 42)
- *No plans will be approved by the District until the plans are reviewed by the District Engineer, at the Applicants cost.* (p. 43)
- *Upon completion of the plans and specifications for such work, the owner or applicant shall forward a copy of the same to the District Office, together with the cost estimate for the instillation from a licensed contractor and under the supervision of our Water Operator and Engineers. The plans shall be presented to the Board at it's next regular meeting.* (p. 44)
- *Upon approval by the Board of said plans, authorization shall be given to the owner or applicant to proceed with the instillation and arrangements shall be made with the District for inspection and test as required in the specifications.* (p. 44)

- *Before the applicant commences work, he or she shall furnish performance and completion bond, pursuant to the to the Public Works Law of the State of California, and in addition thereto, an Indemnity Agreement with the corporate surety guaranteeing the system free from effects for a period of one year from the acceptance by the District.*  
(p. 44)
- I. The District has a Policy and Procedures Manual approved April 2011. Policies and Procedures Manual (p.4) addresses Board Meetings in **ARTICLE II, section 2.01: Board Meetings** which, in part, include the following:
- *The L.C.W.D. Board of Directors shall conduct each and every meeting in an informal, but professional manner.*
  - *The Directors will adhere to all governing laws and regulations including the “Brown Act” and “Roberts Rule of Order”*

#### **FINDINGS:**

- F1. What began as a request to the District from a hotel under construction for a 6” main in 2006 graduated into the need for an 8” main in mid-2009, and finally to a 12” main in December 2009.
- F2. The 12” Line Issue originated in 2006 when discussion for the construction of a 71 room hotel began between the HO, PLO, OCE and the District.
- F3. By mid-2008 the HO had revised its needs and increased the number of hotel rooms to 77 from 71.
- F4. An application for commercial water service is the first step in making a new line connection (see FACT H). There is NO “Commercial Water Service Application, Lebec County Water District” on file with the District. from the hotel requesting a connection line.  
**NOTE:** An application is not the same as an agreement.)
- F5. On September 17, 2009, a Water Systems Connection Agreement was filed with the Kern County Recorder between the District and a hotel under construction. The agreement was executed as of August 24, 2009, for a ***Meter: Hotel has requested a six inch (6”) meter be installed to serve the hotel building.*** No new agreement was executed regarding a 12” line (see FACT H).
- F6. In mid-2009 the PLO and OCE proposed an agreement with the District. The PLO and OCE would install a privately owned 8” water main that would tie in to an existing 6” water line at both ends.
- F7. No easement was found around a portion of the existing 6” water line in the area of the SLO’s property. This became a problem when tying-in the proposed private 8” water line to be connected to the 6” water line at both ends.

- F8. By late November 2009 no water line had been installed. No specifically revised agreement between the parties involved had been established for the larger water line.
- F9. The hotel was due to open in mid-December 2009 and even though planning/construction had begun in 2006, the hotel had not made sure that water service was up and running in a timely fashion.
- F10. On November 30, 2009, the PBP2, PBD, PLO, OCE, HO, SLO and others met on-site of the proposed private 8" water line. According to the OCE's time line, due to issues with the SLO during the discussion of the *...new 8" main and obtaining an easement. It became apparent that M\_. (SLO) was not going to cooperate in a timely manner if at all.*
- F11. Continuing with the OCE's time line it was stated, *M\_. (PLO) and myself (OCE), at the urging of the hotel owners and the board member, agreed to construct a new 12 inch main from the existing 6 inch main in Lebec Road, across our property (including Cuddy Creek) to the new 8 inch main around Wainright Court. I promptly prepared a plan for the new line. The new 12 inch main was approved by the district's president, (PBP2) and (PBD), a Director Elect with anticipation of formal approval of the whole board.*  
**NOTE:** No formal Board approval has been forthcoming as of April 2012.
- F12. The other three District Board Directors were NOT notified of the November 30, 2009, meeting at the site. At least one of the Directors was in town and available.
- F13. No Board meeting was called to address the 12" line situation. No public notice was given regarding the 12' line or of the fact that the PBP2 and the PBD were purportedly to have approved the line on behalf of the Board.
- F14. No permits were issued and no inspections were conducted. The 12" line installation was not supervised by the District's licensed engineer and water operator as per the District's Manual (see FACT H).
- F15. The PBP2 and PBD have stated that they considered the 12" line situation to be an "emergency connection" and for that reason they did not seek to have the Board approve the line and acted on behalf of the Board. They have also stated that "no other Director was available", a false statement.
- F16. The self-created emergency was not a true emergency. The discussion for a water line had been on-going since 2006; therefore, there was no actual "emergency" in late 2009. Three years was ample time for an application for the 12" line, plans, permits, inspections, and Board approval to have been completed.
- F17. On December 1, 2009, the District sent a request to the County of Kern, State of California Resource Management Agency, Roads Department for an ENCROACHMENT PERMIT (Permit No. 1250-09). The Encroachment Permit stated, *Permission is hereby granted to bore across Lebec Road at*

*Chimney Canyon Road to install new water main, in Lebec, as shown on drawing. The permit further states: **\*\*You must notify the inspector 24 hours prior to starting work or your permit may be revoked\*\****

- F18. On December 4, 2009, the District requested an amendment of Permit 1250-09 as follows: *Complying with your request of 12/4/2009, we are hereby amending the above numbered permit as follows:*

***ACROSS LEBEC ROAD TO CHIMNEY CANYON RD IN LEBEC***

***RIDER TO CHANGE INSPECTOR TO E---- W---- (661) --- ----***

***LEBEC ROAD MAY BE OPEN CUT.***

***TRENCH PATCH 6" CONCRETE WITH #4 REBAR AT 24" O.C.***

***DOWELED 6" INTO EXISTING CONCRETE.***

***Date of completion/expiration extended to 6/30/2010***

- F19. The required inspection, per F17 above, NEVER took place. In a memorandum to the Committee, dated April 19, 2012, the Permit Engineer for the Kern County Roads Department stated, **Subject: Permit for Lebec Rd @ Chimney Canyon Rd. ... The permit expired on June 30, 2010. Permittees are required to notify the Inspector 24 hours prior to starting work within the road right-of-way. I was told by my Inspector that he was never notified of any construction, so he did not perform any inspection.**
- F20. The construction of the private 12" line was completed on December 7, 2009. However, the OCE turned in a set of "AS BUILT" plans to the Kern County Building Inspection Department on December 9, 2009, two days after the construction was completed. Those plans were approved, after the fact, by the Kern County Building Inspection Department on December 28, 2009.
- F21. To date the As Built plans of December 2009 were never presented to the District Board for approval.
- F22. The District Board of Directors was not made aware of the private 12" line construction/connection on December 7, 2009. The District Board of Directors was not made aware until the next scheduled Board meeting of January 4, 2010.
- F23. The connecting of the private 12" line and the subsequent opening of the hotel created a water outage that lasted for at least five days during the 2009 Christmas Holiday for many District customers. The hotel had water for its guests, but many of the homes in the District were without water during that time.
- F24. **At the January 4, 2010, Board meeting both the PBP2 and PBD abruptly resigned from the District Board of Directors citing medical problems. With PBP2's resignation, PBP1 was again selected to be the Board President.**
- F25. In a memorandum dated March 12, 2010, directed to the Board of Directors for the Lebec County Water District, from the District's engineers, Provost &

Prichard (P&P) Consulting Group, P&P stated: ... *The interconnection causes bleed through of pressure preventing the State well and the State tanks from functioning normally. ... Because this 12-inch main was constructed without LCWD approval, it can be considered a private water main.*

- F26. A primary issue with the 12” line is that of adequate fire-flow in case of fire at both ends of the District between the hotel and Chimney Canyon. According to P&P (in the March 12, 2010, Memorandum regarding the line): *The current operating conditions, with the Chimney Canyon well and tanks interconnected ... the PRV station is unsustainable and needs to be immediately modified...* P&P also stated: *The PRV station should be utilized only as an emergency interconnection, not as the primary means providing fire flow to the HIX.*
- F27. Included in the above mentioned Memorandum, P&P gave “Recommendations” (three options) and “Interim Solution” (two) for the Board to consider. The PBP1 and PBP3 have also indicated that there are solutions to the 12” Line Issue; however, the Board has not considered those possible solutions to date.
- F28. Since the election of the current Board in November 2011, the CBT (who is married to the PBD) has been seeking Board approval for the private 12” line.
- F29. As of April 2012 the Board has **not** voted to approve the private 12’ line or connection. The CBT refuses to recuse from the Board discussion and plans to vote on this issue.
- F30. As of April 3, 2012, the District Board has not discussed the facts/concerns regarding the 12” line connection with the District engineers or with the District’s legal advisors. Nor has the Board, by its own admission, thoroughly reviewed the documentation regarding the private 12” Line Issue.
- F31. The PBP1 and PBP3 continue to express concerns that if there were to be a fire at the hotel, and simultaneously in the Chimney Canyon area, there would most likely not be enough pressure to provide water to extinguish both fires.

#### **RECOMMENDATIONS:**

- R1. The Board of Directors should abide by the Policy and Procedure Manual and adhere to the Brown Act and the Robert’s Rules of Order as directed in the Manual. Training on proper Parliamentary Procedure and the Brown Act should be considered for all Board members.
- R2. The current Board Secretary/Treasurer should recuse from any and all discussion and/or voting by the Board concerning the 12” line.
- R3. The Board of Directors should seek advice from their Legal Advisors and the District Engineers as to approval and/or acceptance of the disputed 12” line.
- R4. The District should immediately establish the proper fire-flow of water to provide adequate water use continually for all customers and the Fire

Department. In case of a fire emergency, all areas of the District, including simultaneously Chimney Canyon and the hotel, must have enough water pressure for the Fire Department to effectively subdue the fire.

**NOTES:**

- The Lebec County 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.co.kern.ca.us/grandjury](http://www.co.kern.ca.us/grandjury), and click on: Sign up for early releases.
- Present and past Kern County Grand Jury Final Reports and Responses can be accessed on the Kern County Grand Jury website: [www.co.kern.ca.us/grandjury](http://www.co.kern.ca.us/grandjury).

**RESPONSE REQUIRED WITHIN 90 DAYS TO:**

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

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



# LEBEC COUNTY WATER DISTRICT BOARD OF DIRECTORS

## **PREFACE:**

This is the third of three reports on the Lebec County Water District that have been issued by the 2011-2012 Kern County Grand Jury AD HOC Committee/Lebec County Water District. The second report, *Lebec County Water District: Twelve Inch Line*, directly correlates to the concerns addressed in this report.

## **PURPOSE OF INQUIRY:**

The AD HOC Committee/Lebec County Water District (Committee) of the 2011-2012 Kern County Grand Jury (Grand Jury) investigated a number of complaints from Lebec area citizens alleging continuous violations by the Lebec County Water District (District) and the District's Board of Directors (Board) between 2009 to the present. The complaints include, but are not limited to, allegations of violations of The Brown Act, exceeding authority, and unprofessional conduct by the Board. The Committee's investigation was conducted, pursuant to California Penal Code §933.5, between September 2011 through April 2012.

## **PROCESS:**

The Committee interviewed, under oath, past and present District Board members and employees of the District. The Committee subpoenaed, received and reviewed District Board meeting agendas, meeting minutes, contracts, plans and other documentation related to the concerns of the complaints. Members of the Committee attended several District Board Meetings between September 2011 and April 2012.

The Committee also reviewed, in their entirety (with specific regard to the pages indicated) the District's Policy & Procedures Manuals adopted in 2008 (p. 10-13) and 2011 (p 4-6) regarding Board Meetings. The Policy & Procedures Manuals (Manuals) include specific information requiring the Board to act in compliance with The Brown Act and Robert's Rules of Order. Quotations from the Manuals will be introduced under FACTS.

## **BACKGROUND/FACTS:**

***NOTE: Any spelling/grammatical errors appearing in the quoted material below were duplicated from the source.***

- A. The District was established by resolution of the Kern County Board of Supervisors effective December 26, 1967, in accordance with the provisions of the County Water District Law, within the Water Code of the State of California.

- B. The District began operation of the existing water system in Lebec, California, on April 21, 1969.
- C. The District was formed to provide the organization and water works, and for acquisition or construction of facilities for the distribution and sale of water.
- D. The District Board consists of five elected members. Board meetings are held the first Tuesday of each month at 7:00 p.m.
- E. Since mid-2009 to present, the Board has experienced several resignations of Board members and a number of changes in the Board Presidency mid-term. For example one President presided over the Board for only two months; December 2009 and January 2010. During 2011, the Board was short one member who resigned and was not replaced.
- F. The current Board was seated in December 2011 and consists of four newly elected members (as of November 2011) and one incumbent.
- G. The Committee attended a Special Board meeting in October 2011. The previous Board approved a five year contract for Applied Process Technology (APT) to manage the District. At that time a General Manager (GM) was put in place to manage the District.
- H. Following the District's contract agreement with APT, the District's Office Manager became an employee of APT under the direct supervision of the APT General Manager.
- I. The District has a Policy & Procedures Manual approved April 2011. The Policy & Procedures Manual (p.4-6) addresses Board Meetings in ARTICLE II, section 2.01. Board Meetings which, in part, include the following:
- ***The L.C.W.D. Board of Directors shall conduct each and every meeting in an informal, but professional manner. (p. 4)***
  - ***The Directors will adhere to all governing laws and regulations including the "Brown Act" and "Roberts Rule of Order". (p. 4)***
  - ***Each L. C. W. D. Board Meeting will be audio recorded and have Minute's written memorializing the meeting. These minutes will include the date and time of the meeting, place of the meeting, all present during the meeting and all pertinent information discussed at the meeting. These Minutes will be copied and distributed to each Director and all attendees of the following meeting. The Minutes will be kept in a "Minute Book" at the L. C. W. D. office for public review. (p. 5)***
- J. California Government Code §§54950-54963 are known as the "Brown Act". These statutes specify the rules for conducting meetings of legislative bodies in California.

## FINDINGS:

- F1. Since 2009 the Board's membership has frequently changed mid-term due to resignations and reappointments. The Board's Presidency has also changed within terms a number of times.
- F2. As of April 3, 2012, Statement of Economic Interest 700 forms were not submitted by the current Board members for 2011.
- F3. As of April 3, 2012, the current, new Board members since the November 2011 election had not participated in the required bi-annual Ethics Training.
- F4. Various Committee members have attended five Board meetings between September 2011 – April 2012 and have observed first hand a continuing lack of professionalism by the Board, lack of proper use of Parliamentary Procedure and, specifically, lack of adherence to Roberts's Rules of Order (RRO) as per the District's Policy & Procedures, including, but not limited to the following:
- The Chair's lack of control over the proceedings is a concern, especially with regard to the Chair not addressing persons who are clearly out of order.
  - Frequently motions are made and seconded, but are not voted upon or dropped.
  - RRO's *Fair and Orderly Meeting Conventions* are not being followed or addressed. It is often unclear who has the floor and what subject matter is being addressed.
  - Speakers from the audience frequently do not state their name and or subject of concern, nor do they address the Chair.
  - Frequent bickering occurs between members of the Board, members of the public, and members of the Board with the public.
  - There seems to be no dress code for the Board, and attire is often overly casual for a public meeting (i.e. overalls or sweatshirts).
- F5. Examples of the complainants' concerns regarding, but not limited to, the District Board's lack of compliance with The Brown Act and Robert's Rules of Order, exceeding authority and unprofessional conduct are given in F6 – F16.
- F6. An example of Board members exceeding authority and probable Brown Act violations is covered in the 2011-2012 Kern County Grand Jury Report (see PREFACE), *Lebec County Water District: Twelve Inch Line*. That situation, which began in 2006, remains unresolved and the District's Board, to date, has not voted to approve the 12" line.

In the above mentioned report, a previous Board President (serving from December 2009 – January 2010) and a previous Board Member (serving December 2009 – January 2010 and married to the Current Board Secretary/Treasurer), without Board approval or knowledge, independently approved the construction of a 12" main and water line connection. Those previous Board members stated the 12" line situation was an "emergency

connection” and for that reason did not seek to have the Board approve the line connection and acted on behalf of the Board. Also stated was that “no other Director was available”, a false statement. The self-created emergency was not a true emergency. The discussion for a water line had been on-going since 2006; therefore, there was no actual “emergency” in late 2009. Three years was ample time for an application for the 12” line, plans, permits, inspections, and Board approval.

Subsequently, in January 2010, both the previous Board President and the previous Board Member resigned from the District Board. Currently the spouse of the previous Board Member (the current Board Secretary/Treasurer) has been strongly urging the current Board to finally, after three years, approve the 12” line. The Board Secretary/Treasurer has refused to recuse from any Board discussion on the 12” line and plans to vote on the issue when/if that time comes.

- F7. In mid-2011 a Board Member (the current Board Vice President) became concerned with the amount of detail that was being reported in the District’s Board Meeting Minutes (see FACT I ). The Board discussed the concern and decided that the District’s Office Manager (currently the APT Office Manager) should add some summary detail to the minutes in addition to the name/subject discussed during the Board Meetings. There was no motion made nor any vote taken, it was simply an idea the Board discussed. The District Office Manager complied and began to somewhat summarize, in the minutes, what was said during the meetings. *Robert’s Rules of Order* states under Minutes and Reports, *Additional rules and practices relating to the content of the following: The name and subject of a guest speaker can be given but no effort should be made to summarize his remarks.* However, by late 2011 the now Board Vice President was requiring the now APT Office Manager (an employee of APT, not the Board) to transcribe verbatim everything that was said at each meeting and include that transcript in the monthly minutes distributed to the Board and the public.
- F8. As has been the past practice of the District, the newly elected Board members as of November 2011, were expected to be sworn in at the December 5, 2011, Regular Board Meeting when the former Board would be excused and recognized for its service. However, the one incumbent Board member (the current Board Vice President), on November 29, 2011, contacted the other newly elected Board members and suggested that they meet on Thursday, December 1, 2011, at the District Office at 6:00 pm to be sworn in, to the Board, by the incumbent rather than taking the Oath of Office at the public Board meeting slated for December 5, 2011. There was no posting or public notification of this special meeting as is required by **The Brown Act**. After speaking with the District’s attorney, the proposed December 1, 2011, swearing in meeting of the newly elected members did not take place. Instead, the newly elected Board members chose to go to the Board of Elections Office in Bakersfield to be sworn in on December 2, 2011. One of the newly elected Board members (the current Board Secretary/Treasurer) stated that: *If we had*

*not been sworn in early, the district would have been without a legal board over the weekend in the case of an emergency. However, California's State Elections Code §10507 states, **...term of office of each elective officer, elected or appointed pursuant to this part, is four years or until his or her successor qualifies and takes office.***

- F9. The Committee attended the Regular Board Meeting on December 5, 2011, in anticipation of seeing the former Board thanked and excused and the newly elected Board sworn in. However, when the Committee arrived at the meeting there was no sign of the former Board members and the newly elected Board was seated in the Board chairs. No mention of the former Board was made, no mention that the new Board had been sworn in at the Board of Elections Office in Bakersfield on December 2<sup>nd</sup> was made, and a seemingly pre-designated slate of Board Officers was approved. The Committee considered these actions by the new Board to be highly irregular.
- F10. In December 2011, the newly elected Board Secretary/Treasurer advised the APT Office Manager (an employee of APT, not the Board) that the APT Office Manager was **not to communicate with any of the previous Board of Directors**. The APT Office Manager is the Custodian Of Records (COR) for the District. Upon receipt of the Grand Jury's COR Subpoena for District records, the APT Office Manager was not allowed to communicate with past Board members to obtain some of the information needed to fulfill the Grand Jury's Subpoena, thus impeding the Grand Jury's investigation of facts.

During the February 2012 Board meeting, the APT Office Manager was seated at her desk (customary place during Board meetings) to record and take minutes of the meeting. A Past Board President arrived at the meeting and sat in close proximity to the APT Office Manager's desk. The Board Secretary/Treasurer told the APT Office Manager to move away from the desk and sit with the APT General Manager in the front of the room (because the APT Office Manager had previously been told to not have any communication with any past Board members).

- F11. During the 2011 calendar year, the Board Vice President (without Board approval, discussion or direction) contacted the District's attorney and directed the attorney to do extensive research on several items including, but not limited to, questions regarding Robert's Rules of Order and analyzing the District's October **1984** Procedures & Practices (see FACT I; there are current Policy & Procedures in place). There were also numerous conference phone calls and e-mail requests to the attorney from the Board Vice President. The resulting attorney billing fees charged to the District were approximately \$2,500 (see below). Those billing fees have been under discussion by the Board as to whether the District is responsible for paying the billing fees or whether the Board Vice President is responsible for the billing fees since the Board Vice President acted without prior Board approval.

The Committee discovered upon reviewing the Attorney's Billing Statements to the District, for the Period of August 21 – December 14, 2011, that the Board

Vice President (BVP) generated billing charges including, but not limited to, the following:

- 8/16/11 – 9/2/11 Eight Conferences calls with BVP \$990
  - 8/29/11 – 10/14/11 Reviewing and replying to e-mail from BVP \$1,494
  - 10/12/11 & 10/20/11 Other inquires from BVP     \$98
- \$2,582

- F12. During the January 9, 2012, Board meeting there was discussion regarding the replacement of a water valve costing approximately three to four thousand dollars. The District had done on-line research to determine the best source/cost for the replacement of the valve. During that discussion, a Board member stated that the company for which the Board member works could supply the valve for a cost less than any found on-line. The Board member would take care of the purchase of the valve. The Board agreed and the Board member was given the okay to purchase the valve.
- F13. The April 3, 2012, District Board Regular Meeting was attended by five members of the Grand Jury. It was noted that the Meeting Agenda did not include any items regarding Personnel, nor was a Closed Session regarding a Personnel issue on the agenda.

***The Brown Act, Chapter VI: PERMISSIBLE CLOSED SESSIONS. 2.A. Personnel Exceptions: The purpose of the personnel exception is to avoid any undue publicity or embarrassment for public employees and to allow full and candid discussion of such employees by the body in question. ...***

***Accordingly, the Act provides for closed session regarding the appointment, evaluation of performance, discipline or dismissal of a public employee. (§54957.) ... Under the Act , an employee may request and require a public hearing where the purpose of the closed session is to discuss specific charges or complaints against the employee. Under the Act, the employee must be given at least 24-hour written notice of any meeting to hear specific charges or complaints against the employee, or any action taken at the meeting will be null and void. (§54957)***

The Board President (Chair) called for a review of the minutes from the March 5, 2012, regular meeting. The Board Vice President (VP), holding up a two page typed statement, began to berate the APT Office Manager (OM). The VP proceeded to conduct a Personnel Performance Review of the OM in a public forum, chastising the OM for, among other things, not quoting verbatim (see F7) every word spoken, and not using proper quotation mark placement, during the Public Presentations portion of the March 5, 2012, Board Meeting minutes. The VP spoke for several minutes regarding the quality of the OM's job performance. (It should be noted again that the OM is an employee of APT and is not employed by the Board.) The VP should have recognized that this was a personnel matter that should have been discussed in closed session, and that to make such comments in public is a direct violation of **The Brown Act**.

At no time did the Chair tell the VP that the VP was out of order, nor did the Chair ask the VP to stop speaking.

- F14. Subsequent to the events covered in F13, the Board Vice President made a motion to **not** approve the minutes of the March 5, 2012, meeting which was passed. The Board Vice President then made a motion that the minutes be rewritten by another un-named member of the staff so that the minutes would be correct. The second motion was also passed.
- F15. During the April 3, 2012, District Board meeting which the Committee attended, the Board Secretary/Treasurer gave the Treasurer's report and there was some discussion. The Board President called for a motion and the Board Vice President moved to accept the Treasurer's report. No one immediately seconded the motion, so the Board Secretary/Treasurer seconded the motion to approve the Treasurer's own report.

Rather than taking a vote on the standing motion, there was further discussion between the Board and the public about a supposed "newly discovered" \$30,000. A vote was never taken on the original motion on the floor. At the end of the rather heated discussion of the Treasurer's report, another motion was made to **not** approve the Treasurer's report and that motion was seconded and passed.

- F16. ***Robert's Rules of Order*** (see FACT I), under ***For Fair and Orderly Meetings and Conventions***, establishes clear guidelines for proper and orderly meetings. However, it is the Committee's observation that these guidelines are not adhered to by the District Board. Frequently it is unclear who may have the floor since several people are often loudly speaking over each other all at one time (both Board members and the public) regardless of which item of the agenda is being addressed. Most notably – ***All remarks must be directed to the Chair. Remarks must be courteous in language and development – avoid all personalities, never allude to others by name or motives!***, is completely ignored by this Board.

One example of such behavior was observed by the Committee on April 3, 2012, when a member of the public was speaking about an agenda item. The speaker, who happened to be a previous Board President, was answering a question asked by another member of the public. Rather than allowing the speaker to complete a statement, the Board Vice President interrupted the speaker several times stating, *I know The Brown Act!*, and, *I know Robert's Rules of Order!*, neither of which were pertinent to the point the speaker was trying to make. The Board Vice President continued to interrupt the speaker using a very loud tone of voice and making irrelevant comments about the subject on the floor. At no time, again, did the Chair say that the Board Vice President was out of order or to stop speaking.

## **COMMENTS:**

The Committee thanks the District's APT employees for the timely and thorough compliance with the Committee's requests for information.

The Committee has spent many months gathering information from the District and conducting in-depth investigations of several issues concerning the District Board brought to the Committee's attention by the complaints received. The Committee finds the lack of forward progress by the District Board and lack of concern for the District's customers problematic. The Board's primary focus does not appear to be running the District in the best manner possible for the public that the Board serves.

Ongoing issues including various Board members apparently exceeding authority and other unprofessional conduct by the Board plus the disregard for the Board's own Policy & Procedures Manual is extremely troublesome.

The District's Board of Directors is fraught with self-serving members. The Board members are urged to take a step back to reassess what is in the BEST interest of the District, NOT personal agenda items.

## **RECOMMENDATION:**

- R1. Based on the foregoing, it appears to the Grand Jury that the Lebec County Water District is not operating in a manner that serves the best interest of the public. Accordingly, the Grand Jury recommends that District Board members who consistently fail to comply with the District's policies and/or their own responsibilities as members of the Board, should either obtain formal training on those matters and conduct themselves accordingly, or resign from the Board.

## **NOTES:**

- The Lebec County 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.co.kern.ca.us/grandjury](http://www.co.kern.ca.us/grandjury), and click on: Sign up for early releases.
- Present and past Kern County Grand Jury Final Reports and Responses can be accessed on the Kern County Grand Jury website: [www.co.kern.ca.us/grandjury](http://www.co.kern.ca.us/grandjury).

## **RESPONSE REQUIRED WITHIN 90 DAYS TO:**

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

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



**Lebec County Water District Board of Directors**

**Response to Grand Jury Final Report**

**LEBEC COUNTY WATER DISTRICT**

**12 INCH LINE**

**Response to Findings:**

The Board of Directors notes that the Grand Jury's findings are substantially incorrect and unsubstantiated.

**\*Bullet Points below are mistakes in findings:**

**\*Please** note that **F1** and **F13** are the result of previous Boards and Board Members

**\*F14** The Installation was supervised from start to finish by the Districts Water Operator. (see statement) **\*It** should be noted that the PBP1 and current Board at that time, were aware of his supervision, prior, during and after completion.

**\*F22** The LCWD Board of Directors were aware of the construction/connection on the Dec. 7th Board Meeting. (see Minutes) There were also TWO subsequent SPECIAL MEETINGS held in that same month regarding this issue.

**\*F23** The Hotel had not opened until December 31, 2009 and the water outage was due to an error of adjustment in calculation of a Cla-Valve and pump failure at the State Well.

**\*24** PBD was listed as absent on this agenda and PBP2 did not resign during the 1/4/2010 Board Meeting, PBP2 resigned on the 1/6/2010. A motion was made and passed during the 1/4/2010 meeting, to remove the PBP2 as Board President and to reinstate the PBP1 as Board President. (None of which was on the AGENDA)

**Response to Recommendations:**

**\*R1** The LCWD Board of Directors agrees. The Brown Act and the Roberts Rules of Order are very important and we will be investigating training for all the newly appointed.

**\*R2** The LCWD Board of Directors considers this matter the sole decision of the Secretary/Treasurer. It sees no reason to intervene.

**\*R3** The LCWD Board of Directors has continued to consult with Legal Counsel on this matter.

**\*R4** The Kern County Fire Department has determined that fire flow has been previously established. The LCWD Board of Directors is continually upgrading the system when funds become available, and have fire flow as our main priorities and sought to provide clean drinking water adequately provided.

**Lebec County Water District Board of Directors**

**Response to Grand Jury Final Report**

**LEBEC COUNTY WATER DISTRICT  
BOARD OF DIRECTORS**

**Response to Findings:**

**The Board of Directors notes that the Grand Jury's findings are substantially incorrect and unsubstantiated.**

**\*Bullet Points below are mistakes in findings:**

**\*F2** Copies of "Statement of Economic Interest 700 Forms" we submitted by all LCWD Directors at the Kern County Elections Office in August, 2011. (copies available)

**\*F4** The LCWD Board of Directors follow Policy and Procedures which states that we "shall conduct each and every meeting in an informal, but professional manner." Thus making this statement regarding dress inappropriate and discriminatory.

**\*F8** The CVP, (Incumbent) was instructed by Kern County Elections, to swear in the newly elected Board Members at anytime, either prior to, or on the date of Dec. 2, 2011 (take office on the first Friday in December) No meeting was needed, as instructed by Kern County Elections and General Counsel. (No Brown Act Violation) Because of untrue allegations regarding, the CVP chose to have Kern County Elections administer the process instead.

**\*F11** The CVP was directed by General Counsel to contact him with concerns and any questions or concerns regarding District matters.

**\*F12** The LCWD Board of Director did not make this statement. (See recording) In fact, recues himself from any motions made to approve billing associated with said employment.

**RESPONSE TO RECOMMENDATION:**

**THE BOARD OF DIRECTORS DOES NOT AGREE WITH THIS RECOMMENDATION. THIS REPORT IS FILLED WITH OPINION, UNSUBSTANTIATED WITH ACTUAL FACTS. We find that many of the issues were due to previous Boards and its Members. We find that the Grand Jury's attendance of our meetings, were done in a very unprofessional manner and showed clear bias toward certain members of the Board and the Public. The Grand Jury's statement that the LCWD Board of Directors is self-serving is again inaccurate and untrue. Our only goal is to provide safe, clean water to all of the Districts customers and we will continue on this path. Our LCWD Board of Directors has "NO HIDDEN AGENDA", other than above mentioned.**

**\*Due to the complexity of errors of the Grand Jury's report, several individuals on the Board will be submitting their own responses, as they target them individually.**