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LOIS HENRY: The Kern Grand Jury swings--and misses badly

By LOIS HENRY, Californian columnist lhenry@bakersfield.com

I was absolutely floored by two recent Kern County grand jury reports.

Not because the content was shocking or illuminating in any way.

RELATED INFO

Grand jury reports

Go to this website:

http://www.co.kern.ca.us/grandjury/early_releases/

Under "Ad-hoc Committee:"

North of the River Municipal Water District & Oildale Mutual Water Co., release date: June 17, 2013.

Under "Health, Education and Social Services Committee:"

Kern County Emergency Medical Services, KCSO and KCFD, release date: May 15, 2013.

Logger death

I mentioned the grand jury's "effort" at investigating the rescue attempt of logger Bill Bennett in a June 2 column.

That story chronicled how Bennett's brother-in-law, retired Kern County Fire Department Battalion Chief John Hayes, has been stonewalled in his efforts to get answers about the Sept. 2011 rescue.

It was Hayes who went to the grand jury in the first place, frustrated with the run-around he was getting from the Fire Department, Kern County Sheriff's Department and County Counsel.

According to Hayes, Kern's Emergency Medical Services (EMS) department failed to adhere to a number of its own policies on this rescue.

Among other issues, EMS didn't require Hall Ambulance to respond to a complaint by Hollie Bennett, Bill Bennett's widow. It didn't require medical aid reports from Sheriff's office emergency medical technicians (EMTs). And it didn't discipline a Sheriff's EMT for ceasing proper CPR on Bennett before he was transferred to hospital staff.

Hayes also asked the grand jury to look into why EMS has not enforced changes to Hall, Fire and Sheriff department procedures that it recommended in its own report on the incident.

As for the Fire and Sheriff's departments, Hayes asked the grand jury to find out why "after action reports" weren't being made public or whether they were even done, as required.

Overall, Hayes wanted to grand jury to find out why EMS hasn't stepped in to establish guidelines for when, how and who should do these rescues.

The vast majority of hoists are medical aids, which is exactly what EMS oversees.

Oh, and by the way, Hayes suggested the grand jury look into why its own recommendation from 2006 that the fire department increase funding and hire paramedics to ensure that one of its helicopters was capable of advanced life support was never accomplished.

That's a lot of meat to chew on.

Which makes the grand jury's two-page report laughable, at best.

It lists a few facts, such as the Sheriff's office has had "responsibility for Search and Rescue including helicopter hoist rescues since October 14, 1969."

First, this was not a search and rescue mission. Bennett's location was well known.

Second, the Sheriff's office could not have been responsible for hoist rescues since 1969 since they've only been carried out in Kern since about 1998, by the Fire Department. The Sheriff only started them in 2007 after it bought a medium lift helicopter.

The grand jury also says the Fire and Sheriff's departments have been communicating well and training together "allowing a more harmonious environment" regarding helicopter hoists.

That's not what Sheriff Donny Youngblood told me in a radio interview Feb. 21, 2011.

"They don't fly together, so why would they train together?" he said when I asked about joint training.

That interview is readily available on the internet, had the grand jury bothered to look.

(Go here: bakersfield.com/CalifornianRadio/x2055049065/Californian-Radio-Feb-17-2012. Youngblood calls in about halfway through.)

The grand jury also mentions that Fire and Sheriff operate under a memorandum of understanding

What floored me was how utterly lame they were.

One report was so bad, that it may be legally actionable, in my view.

First, was a report issued May 15 on the death of logger Bill Bennett in Tehachapi back in 2011. (See accompanying article.)

Second, and even worse was a report issued June 17 delving into the decades long water fight between North of the River Municipal Water District, known as NOR, and Oildale Mutual Water Company.

Both reports contain misleading information, outright errors and are one-sided in the extreme. But the Oildale water report may actually have crossed the line into libel.

The new grand jury, seated last month, needs to revoke the reports and either redo them properly or just can 'em entirely.

Leaving them out for public review, frankly, besmirches the credibility of the institution.

I called the grand jury to discuss the reports, but it is out until July 19. Wouldn't matter anyway. Jurors can't legally discuss how investigations were conducted and why certain information was put into or left out of a report.

Oildale water fight

Of the many errors in this report, one immediately stood out not because it was the worst, but because it was just so obviously wrong.

In "Finding 16" the grand jury writes that Doug Nunneley, general manager of Oildale Mutual, is the son of one of the newly elected directors of NOR.

Since I've written several times about this issue and the campaigns of the three candidates backed by Oildale Mutual in last November's election, I knew immediately this finding was incorrect.

Nunneley's father is dead. He passed away five years ago.

Here's the real fact the grand jury was apparently aiming so poorly for: Newly elected NOR director Dennis Meier has a son who works for Oildale Mutual, but is not a manager.

The implication of the alleged Nunneley-NOR patriarchal connection, is, of course, that the NOR director would have a conflict of interest and supposedly should not vote on issues involving Oildale Mutual (rendering that director totally useless as the entities are so intertwined.)

That's ridiculous but the conflict-of-interest issue is one of the main thrusts of the grand jury report, which we'll come back too.

How it all started

First you have to understand why NOR and Oildale Mutual have such a dysfunctional, symbiotic relationship.

Oildale Mutual is a water retailer. NOR was created in 1969 specifically to procure and sell state water wholesale to Oildale Mutual and another smaller retailer, Highland Park.

NOR took over Highland in the early 1980s and that's where the trouble started.

(MOU).

So what?

There's been an MOU in place for years. Hasn't improved department relations, training and certainly not rescue operations.

That MOU, by the way, also mandates the departments do "after action reports." Again, where is the Bennett after action report?

Oh, and two years ago, the County Administrative Office mandated the Fire and Sheriff's departments have a yearly review of helicopter operations and costs. None have ever been done. Why is that?

The grand jury apparently didn't ask.

The report also states that jurors were not allowed to interview the Hall Ambulance paramedic and EMT who refused to walk into where Bennett lay injured, refused a ride on a bull dozer and then didn't notify the Fire department that they had abandoned their feeble attempt.

Though Hall operates under a county permit and must adhere to county performance standards, the grand jury said its authority to interview a private company was questioned. (Hmm. That sure didn't stop them from slamming Oildale Mutual Water Company. See adjoining article.)

Ultimately, they didn't question Hall and buried that key part of the rescue.

Jurors could at least have gone through the performance standards and determined, per the public record, whether Hall lived up to those standards. They could also have worked with EMS to make sure our standards are where we need them.

They did none of that.

In a word, the report is worthless.

-- Lois Henry

Lois Henry appears on "First Look with Scott Cox" every Wednesday on KERN 1180 AM from 9 to 10 a.m. The show is also broadcast live on www.bakersfield.com. You can get your two cents in by calling 842-KERN.

Oildale Mutual became concerned that NOR was subsidizing its retail operations by overcharging Oildale Mutual. A lawsuit ensued. Oildale Mutual won and then there were several agreements, some progress was made then stalled and Oildale Mutual sued again.

Eventually, Oildale Mutual decided to back three candidates for the NOR board. It succeeded and the new members were installed earlier this year, establishing a majority on the board.

Within weeks, Oildale Mutual and the new NOR board began discussions of Oildale Mutual taking over NOR's retail customers.

That's where the grand jury came in.

While the grand jury has jurisdiction to investigate most public agencies, it does not have jurisdiction over Oildale Mutual, which is a private company. The grand jury acknowledges as much at the start of its report.

Which makes it all the more curious why 12 of the grand jury's 16 findings are specifically about Oildale Mutual, its operations, finances, infrastructure and even whether its directors get underhanded "freebie" water hook ups. They do not.

(As an aside, if the grand jury cavalierly reported such a falsehood about me, I would consult an attorney about suing for libel.)

Not one single person from Oildale Mutual was interviewed by the grand jury, Nunneley told me.

That was an extremely bad idea and here's why.

The grand jury claims that "The OMWC has shown losses of \$1.5 million in the past three years."

OK, but why?

If jurors had asked Nunneley, as I did, about the "losses" they would have learned that the treatment plant from which Oildale Mutual and NOR get their water underwent a large expansion in 2005. Debt payments started in 2009, the same year the "losses" showed up on Oildale Mutual's tax returns.

The company used a combination of smaller rate increases over a couple of years, plus reserves, to pay off the debt and has since replaced its reserves.

It was a temporary cash flow change, not mismanagement, as the grand jury implies.

Conflict of interest

Another biggie in the report is supposed conflict of interest on the part of the new NOR board members.

The grand jury states that if the three new directors vote to approve "an agreement, based on receipt of campaign contributions by OMWC, the possibility of a Government Code 1090 violation could exist."

Though this finding is somewhat cryptic, I assume it means if they vote on an agreement to move retail operations to Oildale Mutual, they could be in violation of the state's conflict-of-interest law.

Hogwash.

From the time the new NOR directors took their seats, they've been hazed with this 1090 issue.

Understand that 1090 is meant to keep public officials from personally benefiting from their positions. Such as, approving a construction contract with a company they or a family member owns.

None of the new NOR directors has a financial interest in Oildale Mutual. They may be shareholders, as are all property owners who receive water from any mutual water company. In fact, some of the old NOR directors were Oildale Mutual customer/shareholders.

Shareholders don't receive dividends or any other form of pay. Being a shareholder means you get to attend meetings and vote for the mutual company's directors.

But still, right after taking office, each new NOR director was given a letter written by NOR's own attorneys warning them they could be in violation of 1090 because they'd received campaign contributions from Oildale Mutual. The letter relies heavily on a 2010 case out of Compton where campaign contributions were somewhat involved.

The letter also advises that each new director could be held individually responsible should someone sue over a 1090 violation and that there could even be "criminal sanctions."

It's a scary letter.

And that Compton case sounds pretty compelling, until you read it.

It involved far more than campaign contributions, like actual bribery.

To be on the safe side, however, the NOR board contacted an outside attorney who assured them a 1090 violation doesn't exist just because they might vote on something that affects an entity that had given them campaign donations.

If that was the case, every politician in the state would be in constant violation.

Disheartening

Despite acknowledging it has no jurisdiction over private entities, the grand jury rounds out its botched report with recommendations that NOR and Oildale Mutual have "forensic audits" and that they consolidate into a single community services district.

Annual audits are already performed on both entities and as part of the discussions to have Oildale Mutual take over NOR's remaining retail, both entities have already hired accounting firm Brown Armstrong to conduct a comprehensive financial review.

The community services district idea was already floated and rejected by both boards as that would involve far more than just the two water entities.

The grand jury might have known about that had jurors done any kind of real investigation, rather than relying on a few one-sided interviews.

So far, the only person who acknowledged speaking to the grand jury was NOR's General Manager David Aranda. He would only say it was a "sticky situation," and suggested I speak with the NOR directors.

NOR Board President Jim Tyack, who was elected in November with backing from Oildale Mutual, was aghast at the grand jury report.

He said Aranda had told him he had been interviewed and when he received a copy of the report prior to its release saw all the errors and rushed back to the grand jury to have them fixed, but the grand jury refused.

"I couldn't believe it. I thought of this outfit with a lot of respect," he said. Tyack's father had served on the grand jury years ago and was adamant about doing a thorough job with an absolute eye to accuracy.

So, Tyack himself went down to the grand jury, housed in the Kern County Superior Court building, and demanded to know if jurors had truly issued a report knowing it contained such grievous errors.

He said he couldn't get a straight answer and left, disgusted and disheartened.

"This is going to give the grand jury a pretty big black eye," he said.

I'd say they deserve it.

Opinions expressed in this column are those of Lois Henry, not The Bakersfield Californian. Her column appears Wednesdays and Sundays. Comment at <http://www.bakersfield.com>, call her at 395-7373 or e-mail lhenry@bakersfield.com