

**Alleghany County Water District (ACWD) Conflict of Interest concerns:**

Report prepared by Rae Bell Arbogast General Manager (GM) December 2019

**A request was made at the Nov. 12, 2019 ACWD board meeting that this topic be placed on the agenda for the December 10<sup>th</sup> meeting. Since this is not the first time that this topic has come up, I decided to take the time to write an extensive report.**

In light of the recent discovery of buried motor oil waste and other stuff\* at the Sixteen to One Mine, once again there is speculation going around that I (Rae Bell) personally have a conflict of interest because of my relationship to the 16 to 1 mine and ACWD. I was the office manager for the mine for over 20 years (having recently resigned), I am a minor shareholder (ownership less than 1/10 of 1% of the company) and my husband David works in the mine's Gold Sales Division on a limited basis. I also am the ACWD GM and the project manager for the State Revolving Fund Projects for ACWD, which includes work at the Ram Spring which is under a 99 year lease from the Sixteen to One Mine. (Lease dated 8/8/1977 includes water and land use. Lease expires on 9/30/2076)

I agree that this is not an ideal situation and I do understand why some people would perceive that a conflict exists. It is true that it is advisable to avoid even the "appearance" of a conflict of interest. How can I avoid the "appearance" of a conflict of interest? What are my options?

If somebody else is willing and able to take over wrapping-up the Planning Project, applying for and managing the related construction project; let's talk! I am open to suggestions.

I am confident that no violation of the Conflict of Interest law is actually occurring despite appearances. This topic has been researched and addressed extensively in the past. Here is a summary for those who have either forgotten or who weren't around at the time.

When I was appointed as the project manager for the planning project on March 29, 2015 (resolution #92), the template provided by the State for appointing a project manager was not used. It was not used because it gave the project manager full control of the project. At my insistence, the resolution template was modified so that the project manager (me) would NOT have full control of the project. The modified resolution authorizes me to represent the district for the purpose of keeping the project moving forward and also to handle the disbursement requests (this includes the required record keeping). All major decisions about the direction of the planning project must be brought to the board for approval; as they have been and continue to be. This is well documented in the ACWD meeting minutes.

The topic of a potential conflict of interest was brought forward by a member of the public in January of 2016. One of the statements that was made was that the reason the option of vertical wells for the town's water supply was being explored as part of the planning project was because it was a "water grab" by the mine.

Careful attention was paid to all of the concerns that were brought up and due diligence was done to consult with outside sources including the State Water Board and/or an attorney for answers. All of the concerns were responded to in writing.

Also, ACWD's engineer with the State Division of Drinking Water at the time (Stephen Rooklidge) attended a regular board meeting in Alleghany to explain why the decision to try vertical test wells was made and also to answer any questions that the public might have about the project.

The following reasons were given for considering vertical test wells rather than renovations at the Ram Spring: Both Springs (Ram & Cumberland) had been issued a Curtailment Order by the State Water Resources Control board in May of 2015. This was because of the drought conditions that the state was experiencing. Other concerns with the spring renovation had to do with the “unknowns” of working on the spring sites such as: potential environmental concerns and slope stability concerns at both sites. Vertical well drilling was seen as a more familiar straight-forward proposition by the State representatives. The main goal with the water supply was to get “ground water” so that the need for a treatment plant would go away. A secondary water source was another goal.

It was apparent at the next ACWD meeting that the efforts above were not satisfactory to the member of the public who brought the conflict of interest concern forward. On March 25, 2016 an official request for an opinion was sent to the Fair Political Practices Commission’s (FPPC) legal department. Members of the public were encouraged to provide documentation that they wished to provide to the FPPC. A request was received to send a copy of the 16 to 1 Mine’s 2014 annual report to the FPPC as part of the investigation and that was done.

The “CONFLICT OF INTEREST” item was kept on the District’s monthly agenda as part of the President’s report while the investigation was ongoing. (I was the President at that time) The item was kept on the agenda so that anybody who wanted to comment on it could, and also to provide the status of the FPPC investigation. It was kept in the open.

An official response was finally received from the FPPC on July 8<sup>th</sup>. The FPPC did not find any evidence of a conflict under the Fair Political Practices Act. (A summary is attached at the end of this report)

After all that, at the August 2016 ACWD board of directors meeting an accusation was made by a member of the public that the conflict of interest topic had been “swept under the rug”!! (I was not present at the Aug. 2016 meeting but I did listen to the recording).

The topic was put back on the agenda for the September 13, 2016 meeting and the summary was provided again. I also brought copies of the six page letter from the FPPC to the meeting for anybody who wanted a copy. If anybody wants a copy now, please let me know. I will be happy to provide it.

The KEY thing that needs to be present for a conflict of interest is: “a measurable and material financial benefit” . In this case the benefit could be to either me or the mine.

It has been verbally implied, many times now, that I intentionally tried to void the 99-year lease because of an oversight at a meeting in 2017 when the horizontal wells at the Ram Spring were first being considered. (This was after the vertical test wells failed) REMEMBER the board has to approve all proposed work for the Planning Project. Board approval comes BEFORE attorney and State review. It would be premature to have the attorney review anything before ACWD board approval. I will freely admit that I DID miss the part in the language of the lease where it states that the 16 to 1 mine must approve all construction work at the Ram Spring. At that point in time I was scrambling to get the horizontal drilling going, because the driller had a very short time frame of availability. One would hope that the district’s attorney would have caught the requirement as part of the review process but who knows? It is good that a member of the public caught this oversight. “The more eyes the better”.

Why would the mine want to void the lease? As far as I know, the mine has never had any kind of water shortage. Not even when the low-grade mill was running (closed in Feb. 1998) and not during the drought of 2015. Also, fire protection is just as important to the mine as it is to all of us.

Considering the fact that I started working for the mine in 1996 and joined ACWD in 2000 it is alarming that I did not know about the 99-year lease until 2014. I found a copy of the lease in a box of stuff that was brought to the mine office from the old minesite office and not more than a few days later Donna Hauck brought me a copy! Donna was digging up stuff that I needed for the SRF grant application when she found the lease. What are the odds? It is disturbing that the lease seems to have been forgotten by ACWD less than half-way through the 99-year term. We need to make sure that this does not happen again! Younger people take note.

I do not believe that the water district would have gotten the SRF grants (1.4 million to-date) without my efforts. The ground-work for applying for funding is much more extensive than most people realize. For example, the accounting service that I provided to put the district's books in order would have cost ACWD approximately \$5,000 if it was done by an accounting firm. I did it for free. (A three-year look-back plus the current year) This is just one example of many things that I did on my own time, so that the district would qualify for funding. I continue to donate many hours to ACWD.

The financial benefit to me for initiating and managing the State Funded Projects was NEGATIVE for about four years. Being paid reasonable rates (as I am now, at \$25 an hour for managing the projects) does not create a conflict. Reasonable rates for service do not constitute a "material financial gain". (My service is billed to the projects, paid for by the State).

Regarding the ongoing speculation that I was somehow involved in the burial of the material at the 16 to 1 mine: my job duties at the mine included managing the office, shareholder relations and preparing the financial statements. I was never directly involved in the operation of the mine itself. My most direct involvement with the mine operation was helping with a regulatory compliance calendar. Usually, the only time that I went down to the mine was when I conducted mine tours for the museum. The museum is a separate legal entity from the mine.

I had no direct knowledge of the burial of the oil drums at the Sixteen to One Mine until the search warrant was issued on October 8, 2019 and it wasn't until October 16<sup>th</sup> when I saw the Sheriff's press release that I learned what had been uncovered. Several years ago I had heard what I assumed to be rumors about buried oil drums, evidently my assumption was wrong.

I would like to think that the issue of the conflict of interest can finally be put to rest, but I am no longer as optimistic about such things as I once was.

\*go to <http://www.sierracounty.ca.gov/337/Press-Releases> and look up the one titled: Toxic Waste dated Oct 8<sup>th</sup> for information about the buried oil drums. The press release was published on October 15, 2019 NOT October 8<sup>th</sup> as the County website seems to imply.

(Next page attachment: FPPC opinion summary from July 2016 meeting packet)

It should be noted that when the FPPC opinion was requested, I was a member of ACWD's board of directors. I gave up my board seat in early 2017 after Toby Mehrmann volunteered to take the position of President. This enabled separating the positions of General Manager & President. When I gave up my board seat I remained as the GM.

***The text below is from the President's report that was included in the July 12, 2016 ACWD board meeting packet. The "two alternatives" that are mentioned in the FPPC's response are: original plan = horizontal drilling at the Ram Spring, alternate plan = vertical wells.***

**Conflict of Interest Update:**

On July 8<sup>th</sup> the response from the Fair Political Practices Commission was finally received. It is 6 pages long. If anybody wants a copy let me know. My original questions submitted on March 25, 2016 were as follows:

1. Did I violate the conflict of interest code by participating in the decision to narrow the scope of the SRF planning project at the July 10<sup>th</sup> meeting?
2. Is it a violation for me to be the main person who is coordinating with the engineers for the SRF project as I am now?
3. When the Planning Project is completed and a recommendation has been made for the construction phase of the project, do I need to excuse myself from participation in the decision making?

**In their response letter they rephrased all of my questions as follows:**

#1: May you take part in a decision of the Alleghany County Water District (the "District") Board to reinstate a proposed water project plan (the "original plan") after an alternate plan (the "current plan") has been approved where both plans affect property owned by Original Sixteen to One Mine, Inc., (the "corporation") of which you are the Secretary and a shareholder?

***The answer to their version of question #1 is "Yes. It is not reasonably foreseeable that the decision will materially affect your financial interest."***

Question #2 : May you act as the primary coordinator with engineers working on the project?

Question #3: May you participate in decisions involving the construction phase of the project after the planning phase has been completed?

***The answer to their version of #2 and #3 is: "Yes, You have not identified any governmental decisions that may come before the District's Board that would relate to the activities of a project coordinator or involve the construction phase of the project. You will need to determine as to each decision whether the decision will have a reasonably foreseeable material financial effect on your financial interest."***

Any views or opinions expressed in this 4 page report are those of Rae Bell and do not necessarily reflect the views or opinions of ACWD or the ACWD Board of directors. December 2019

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