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**SANTA MARIA VALLEY
WATER CONSERVATION DISTRICT**

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July 7, 2006

Santa Barbara County Civil Grand Jury
Committee on Audit and Finance
1100 Anacapa Street
Santa Barbara, CA 93101

Attn: Forman

Dear Sir or Madam:

The Santa Maria Valley Water Conservation District ("District") hereby responds to the 2005-2006 Santa Barbara Civil Grand Jury report entitled '*Legal Services in Santa Barbara, Very High Prices for Comprehensive Representation*', in which our department is named as an affected agency.

Finding 1 *Legal services for municipalities and districts are a vital necessity that provides advice, guidance, counsel and defense. Municipalities and districts fulfill their legal service requirements by various methods suitable to each municipality or district's unique need and circumstances. Budgeting procedures for legal services often underestimate actual expenses, especially when the municipality or district is involved in litigation. Often budgeting seems to be a mere guess or a deliberate understatement of anticipated or known foreseeable costs.*

The District agrees that each municipality or district have unique needs and circumstances. However, the district has in the past requested a scope of work for the budget as the attorney should be able to access the anticipated "normal" legal expenses for the upcoming year. Litigation costs can and have been difficult almost impossible to anticipate in advance. Litigation is not the core business of the District, defending our contract elements is. A mandate of the fundamental "discharge of duties" may require the District to litigate specific issues that conflict with policy or law. As in the management form of a responsible agency status, navigation and negotiation is the first level of action prior to litigation.

Finding 2 *Legal services are very costly. Litigation is even more costly. Litigation is often an open checkbook for the municipality or district, which has little or no ability to control the costs' thrust.*

The District agrees that legal services, especially litigation are very costly. Prevention through navigation and negotiation is the first level of action prior to litigation.

Finding 3 *Although confidential information contained in legal bills could be deleted or redacted, some municipalities and district chose to submit bills with all information about services provided by attorneys omitted making it difficult to determine what services were provided to the government agency.*

The District legal bills do not contain confidential information. All confidential information is contained in memos. The District legal bills have charges that are broken down by case, and by individual attorney or support staff detailing their time, cost per hour and activity. Legal activity is tracked through the use of memos summarizing the activity performed, goals obtained and goals

projected for the next billing period. Because unit costs have high hourly rates, the billing or cycle periods need to be altered to coincide with the level of activity (i.e. more workproduct in a compressed schedule requires elevated oversight).

Finding 4 *The requirements of informed consent appear to be informally satisfied.*

The District is not sure what the Grand Jury's opinion and understanding of "informed consent" in the context of this report and is unsure how to respond without clarification of this term rfi.

Finding 5 *Retainers are often short, simple , summary agreements containing little detail defining the nature of the services of the retainer or scope of services to be provided in sufficient detail to assure adequate accountability.*

The District's legal services agreement with County Counsel of Santa Barbara County states that it will provide legal services to the District on non-litigation matters at a hourly sum and details regarding travel and other charges. The District may designate up to five projects or categories of services for itemization in writing. The District's legal retainer with Downey Brand and Seymour as special counsel states that the scope of services is related to a particular matter. The hourly rates and other charges are clearly outlined.

Finding 6 *Retainers contain provisions that are unique to each municipality or district. Hours, rates travel time and travel costs, disbursements, office costs, staff costs, research costs, professional liability insurance, costs and expenses on termination, ownership of documents and renewals are some of the issues relative to retainers that must be carefully negotiated.*

The District agrees and its legal services agreements include these items.

Finding 7 *Budgets or caps are rarely used to control legal expenses.*

It is the District's experience that budgets do not cap the legal expenses, rather that legal expenses impact the budget depending on the scope of work for the upcoming year.

Finding 8 *Counsels are selected on the basis of various objective criteria such as qualification, competence, ability and expertise and on subjective criteria such as politics, confidence and trust.*

The District agrees with this statement. There is also the point that there may not be an abundance of legal counsel specializing in a particular branch of law, such as water law.

Finding 9 *Hiring is a distinctly a function of the governing board and requests for proposals do not seem to be generally used. The lowest cost should not necessarily be the sole objective of legal service but routine repetitive work must justify a more cost conscious manner of obtaining legal services.*

The District agrees. This is why we have one firm for the litigation and another for non-litigation items.

Finding 10 *Special services are required in connection with complex, difficult, time consuming and specialized areas of the law. The cost of special counsel may add substantially to the annual cost of legal services. Often the cost of outside counsel is not included in the annual general fund budget.*

The District budgets for all legal services in the general fund budget.

Finding 11 *The level of audit and review of legal services bills varies. Some municipal or districts closely review bills and services provided. Others rarely question the need, cost or amount of such bills.*

The District reviews the legal bills when received. When errors have been discovered, it has been brought to the accounting department attention and corrected.

Recommendation 1 *Municipalities and district should review and define the level of their legal service needs and seek counsel at a level to satisfy those needs. The level of needed legal services should be developed objectively with an understanding of the anticipated actual costs and include a realistic amount in the annual budget.*

Since the District has signed the Stipulation of Settlement, the involvement and thus legal expense has and will continue to go down unless any unforeseen legalities or litigation arises. The amount that has been budgeted for legal fees in the 2006-2007 budget reflects this trend.

Recommendation 2 *Municipalities and districts should review, audit and control the number of hours for which services are claimed for billing purposes. Management personnel must be given authority to review and audit claims for legal services in the same manner as they review and audit other services provided to the municipality and district.*

District staff reviews and audits all services provided to the district and challenges charges as needed.

Recommendation 3 *Municipalities and district should review basic fee structures and give consideration to flat rate charges for routine or monthly services and define with precision additional services and the methods of authorizing additional services.*

The District will weigh the practicability of a flat rate charge for legal services.

Recommendation 4 *Municipalities and districts should use caps and budgets or other limitations to control costs in litigation where the municipality or district is names a party.*

The District agrees that this would be a good practice where practical.

Recommendation 5 *Municipalities and districts should review necessity for attendance by counsel at advisory board meeting.*

The District has discussed having legal counsel attend board meeting, but decided that the increase legal fees would not make it a viable solution. Counsel can be contacted as needed on a case, by case basis.

Recommendation 6 *Municipalities and district should consider billing practices, minimum charges, minimum hours, carryover of unused monthly hours, multiple billing for in-office conferences and the services to be included in monthly minimum fees.*

The District is not sure that this recommendation applies to us as our legal services do not use the method described above.

Recommendation 7 *Municipalities and districts should review disbursements such as electronic research, postage, shipping, telephone, travel time and travel expenses, expert witness costs, extraordinary discovery procedures, staff overtime costs, outdated charges such as word processing charges, prior approval provisions related to extraordinary costs and costs assumed by a municipality or district in the event of a dispute.*

The District does review all disbursements on all bills, legal or non-legal.

Recommendation 8 *Municipalities and districts should require proof of an agreed level of Professional liability insurance.*

Downey Brand, in accordance with the requirements of California Business and Profession Code section 6148, maintains professional error and omissions insurance. The District will contact County Counsel of Santa Barbara County for a verification of their professional liability insurance.

Recommendation 9 *Municipalities and district should require disclosure of the names of current clients represented by the firm to be retained who may have potential conflict with the municipality or district. Municipalities and district should give consideration to limitations on its law firm's representation of other clients whose interest could foresee ably result in a conflict requiring disqualifications of the municipality of district's law firm and provide a procedure to deal with the issue if it should arise.*

The District's law firm for litigation is based in Sacramento. The local legal representation is County Counsel of Santa Barbara County. In their legal services agreement, potential conflict of interest clients have been identified. A procedure for dealing with this issue if it should ever arise will be forthcoming.

Recommendation 10 *Retainers should provide for payment within a period longer than 30 days without penalty to permit full audit of services. In no event should the period within which pay is required to be made be less than the normal meeting cycle plus processing time of the governing board.*

The District's legal bills usually arrive mid-month and cover the previous month's charges. We are not charged late fees. There is plenty of time to review the invoices.

Recommendation 11 *Municipalities and district should require renewal retainers to be upon the complete agreement rather than the change of a rate sheet.*

The District agrees that this would be a good practice to implement.

Recommendation 12 *Municipalities and districts should use request for proposals for retaining counsel to handle routine, repetitive matters.*

The District agrees that when new issues come up, rfp's would be a good way to select new counsel.

Recommendation 13 *Where legal services exceed 1% of the budget of the municipality or district, legal service costs should be monitored and evaluated to determine need and appropriateness.*

In the event of on-going litigation, such as what the District has been involved in for the past seven years, more than 1% of the operating budget has been designated for legal fees. It was the District's responsibility to finish what had been started on the behalf of its constituents.

Recommendation 14 *In situations where informed consent is required, the rules related to informed consent should be strictly enforced and the basis upon which informed consent is given should be fully set forth in the minutes of the governing body.*

The District is not sure what the Grand Jury's opinion and understanding of "informed consent" in the context of this report and is unsure how to respond without clarification of this term rfi.

Recommendation 15 *Bills and other records of charges made for legal services after deleting confidential information should be deemed to be public records open to public disclosure.*

The District has all paid bills for legal services as well as all other expenditures available to the public during our normal business hours. Copies of the monthly expenditures are also found in the attachments to the monthly board meetings.

Please contact the undersigned if you have any questions regarding this response.

Sincerely yours,

Debi Askew
District Secretary