

June 23, 2006

The Honorable Rodney S. Melville  
Santa Barbara County Superior Court  
312-M East Cook Street  
Santa Maria, California 93454-5162

Santa Barbara County Civil Grand Jury  
Attention: Foreman  
1100 Anacapa Street  
Santa Barbara, California 93101

Re: Response to Report of the 2005-2006 Santa Barbara County Civil  
Grand Jury– Legal Services in Santa Barbara

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Dear Judge Melville and Civil Grand Jury Foreman:

By letter dated May 16, 2006, to the Board of the Montecito Water District, Ted Sten as Foreman of the Santa Barbara County Civil Grand Jury notified this District that we are “required to respond within 60 days to each applicable finding and recommendation contained in the (above-referenced) report as specified by California Penal Code § 933.05(b).”

As an initial matter, we note that the Montecito Water District is a political subdivision of the State of California, with a separate directly elected Board of Directors. Though it is formed pursuant to the “County Water District Law” (Water Code § 30,000 et seq.), the District is not a part of county government or a county dependent special district as referenced in Penal Code § 925, or an incorporated city or a joint powers agency as referenced in Penal Code § 925a, or any of the other types of agencies over which the Grand Jury has been statutorily granted reviewing authority. We therefore do not understand that the District is actually subject to such Grand Jury reviewing authority. Despite that lack of jurisdiction, the District has been happy to cooperate with the Grand Jury, in an attempt to provide all requested information, but has not thereby waived any jurisdictional issue. We do further note, however, that Penal Code § 933(c), the section referenced in the demand for response, expressly provides that the response by the governing board of any public agency which is subject to the reviewing

authority of the Grand Jury is due no later than 90 days after submission of the final report. The 60-day comment period is for elected county officers or agency heads for which the Grand Jury has responsibility pursuant to Penal Code § 914.1 – county matters of civil concern including illegal use of county funds. While the Montecito Water District is organized pursuant to the County Water District Act, it is not part of the county government.

As a responsible local agency, the governing board of the Montecito Water District is happy to provide these responses to the Civil Grand Jury Report, but is providing them within the terms of the 90-day period which would be applicable if the District were subject to Grand Jury reviewing authority, and is not providing the additional responses to county officials called for under the 60-day response period of § 933(c).

We also find that the Grand Jury Report calls for the Montecito Water District to respond to all findings and recommendations. We have attempted to so respond, although some findings and recommendations do not appear to be at all applicable to the District.

Finding 1. The District agrees that legal services for the District are a vital necessity that provides advice, guidance, counsel and defense. The District disagrees as to the District with the finding that budgeting for legal services is “a mere guess or deliberate understatement of anticipated or known foreseeable cost.” The District very carefully budgets for known foreseeable legal service expenses, and tracks those expenses, including as against budget, on a regular basis.

Finding 2. The District agrees that legal services are very costly and that litigation is even more costly. The District carefully monitors and attempts to control all legal costs, including the costs of litigation.

Finding 3. The District provided the copies of legal services bills as requested by the Grand Jury, including the narrative description of those legal services, the time spent on such services, and the rate charged. The only information redacted related to litigation concerning a legal challenge to the environmental document prepared for covering of the Ortega Reservoir project, which litigation has been tolled pursuant to a pending settlement agreement, but has not been dismissed.

Finding 4. The District disagrees that the requirements of informed consent are informally satisfied. The District has instead formally and expressly satisfied those requirements.

Findings 5 and 6. These findings make general statements about retainers which do not appear to apply to the District. The District has a legal services agreement, which it periodically reviews with legal counsel and has negotiated the terms of that agreement.

Finding 7. The District disagrees with the finding as applied to the District, as it does use its legal services budget to control legal expenses. The legal services costs are reviewed as

appropriate by the District Business Manager, District General Manager, District Finance Committee and the District Board.

Finding 8. The District agrees that District Counsel is appropriately selected on the basis of objective criteria such as qualifications, competence, ability and expertise, and also on confidence and trust though the District disagrees that those are necessarily subjective criteria. The District disagrees that “politics” plays a role in the selection of District Counsel.

Finding 9. The District agrees that hiring is a function of the governing board. The appointment of counsel—which in fact serves as a District officer—is expressly delegated to the Board by Water Code § 30544, which also provides that Counsel serves at the pleasure of the Board.

Finding 10. The District agrees that special services may be required in connection with certain specialized areas of the law, and that the cost of special counsel may add substantially to the annual cost of legal services. The law firm which provides District legal services provides a broad spectrum of specialization amongst its attorneys available to the District. To the extent that District has had need for special counsel, it has included the cost of such service in the budget for the specific activity requiring such special service, such as the need for bond counsel to assist the District with financing of certain capital projects.

Finding 11. This finding again makes general statements about the level of review of legal service bills by various districts. This District can only comment on its own level of review, which is performed in detail and includes monthly review by at least one District subcommittee of the detailed bills and by the entire Board of the overall monthly bill for legal services.

Recommendation 1: Implemented. The District regularly reviews and defines the level of its legal service needs and develops its annual legal budget based upon its anticipated actual costs.

Recommendation 2: Implemented. Management personnel have authority to review and audit claims for legal services, and legal service bills are also subject to review by the District Finance Committee and Board of Directors.

Recommendation 3: Implemented. In 2005, the District performed a detailed review of fees and charges for legal services to the District, considered negotiation of a retainer agreement, and determined that it was instead in the best interest of the District to continue with its current services agreement, by which the District is billed for services on an hourly

basis, at a reduced “public agency” rate, with specific guidelines for utilization of such legal services and coordination of District agendas so that District legal counsel time will be used most efficiently.

Recommendation 4: Implemented. The District will continue to use budgets and other appropriate limitations to control costs and litigation where the District is named as a party.

Recommendation 5: Implemented. As noted in the response to Recommendation 3, the District regularly reviews the necessity for attendance by counsel at Advisory Board meetings, and has established a process for consultation between the District General Manager and counsel of the agendas for such meetings, and counsel only attends such meetings at the request of the Manager or Board.

Recommendation 6: Implemented. As noted in the response to Recommendation 3 above, the District has recently reviewed and considered District counsel billing practices. Those practices do not include minimum charges, minimum hours, carry-over of unused monthly hours, or monthly minimum fees. Multiple billing for in-office conferences are also carefully scrutinized, and District counsel avoids such practice except where the District is clearly benefiting from and requires services of more than one attorney at the firm, such as where one attorney is providing a specialized service which also requires service from general counsel.

Recommendation 7: Implemented. The District will continue to review all actual cost charges by District counsel.

Recommendation 8: Implemented. The District has on file a current Certificate of Insurance evidencing that District Counsel carries professional liability insurance in an amount the District finds adequate.

Recommendation 9: Implemented. The District has provided a specific procedure to deal with the issue of potential conflict or appearance of conflict by the District’s law firm, and has found that process to be very satisfactory. District counsel is an office of the District, and so is required to annually submit disclosure forms listing all significant sources of income, which includes all clients of the firm for which the firm performs legal services of more than \$100,000 per year. District counsel has revealed the names of other current agency clients with potential conflict due to geographic proximity, and does not represent private clients in matters related to the District. Finally, the District notes that the Grand Jury cites with approval the representation by Liebert, Cassidy Whitmore (LCW) of at least 17 separate

and often adjacent and overlapping school districts in Santa Barbara County, apparently with the understanding that such multiple representation can provide economies of scale and knowledge of related issues.

Recommendation 10: Implemented. The District legal counsel does not charge penalties to the District for late payment of legal services, and provides any period requested by the District for appropriate review of billings.

Recommendation 11: Implemented. The District currently considers appointment of legal counsel on a bi-annual basis, at the time the District considers appointment of its other officers. The District and District legal counsel have also agreed to limit fee increases to an annual cost of living adjustment based upon the cost of living adjustment used by the District for other purposes. The District will consider renewal of the complete legal agreement at the next time it considers appointment of legal counsel.

Recommendation 12. The recommendation is not warranted. The District believes it is currently well served by District legal counsel, including due to the long institutional memory and relevant legal and factual information that counsel has about the District, the counsel's general and specific knowledge in areas of practice relevant to the District, the breadth of specialized legal services available through general counsel's firm, and the economies of scale available with general counsel's current practices as overseen by and working in close cooperation with the District's manager, of routine, repetitive matters. The District therefore does not believe use of the request for proposals is appropriate at this time.

Recommendation 13: Implemented. The District notes that legal service costs currently are within 1% of the District's budget, and that costs have been at or below approximately 1% for the past couple of years. The District did have significant management challenges a few years ago, which resulted in District legal counsel performing District management functions, and so caused higher than typical legal service costs. The District has subsequently addressed those management issues through the hiring of a highly experienced General Manager. While District legal costs generally do not exceed 1% of the budget, legal service costs are still closely monitored and evaluated to determine need and appropriateness.

Recommendation 14: Implemented. The requirement and procedure for informed written consent is included in the District's legal services agreement. If the District does in the future provide informed consent for additional joint representations, the District will reflect such consent in the Board minutes.

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Recommendation 15: Implemented. The District will continue to treat bills and other records of charges for legal services as public records, except to the extent that they contain confidential information, which would primarily relate to ongoing litigation, administrative or personnel proceedings.

Thank you again for the opportunity to provide these comments.

Sincerely,

Robert M. Edmonston  
President