

June 29, 2006

Honorable Judge Rodney Melville
Superior Court
312-M East Cook Street
Santa Maria, CA 93455-5165

Re: Response to Grand Jury "Legal Services" Report dated May 16, 2006

Dear Judge Melville,

The purpose of this letter is to provide responses of the Governing Board of the Carpinteria Valley Water District (CVWD) as requested for all Findings and Recommendations contained in the Santa Barbara County Grand Jury Report dated May 16, 2006 entitled "Legal Services in Santa Barbara, Very High Prices for Comprehensive Representation." The Findings and Recommendations set forth in this Grand Jury Report, together with the District's responses, are set forth below.

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 needs 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.

Response to Finding 1

CVWD agrees that legal services for the District are a vital necessity that provide advice, guidance, counsel and defense. CVWD disagrees with the finding relative to the reference to "deliberate understatement of anticipated or known foreseeable costs." CVWD makes a deliberate effort to accurately estimate anticipated or known foreseeable costs.

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.

Response to Finding 2

CVWD disagrees with the finding relative to "Litigation is often an open checkbook"... little or no ability to control the costs' thrust." CVWD strives to control litigation costs regularly by review and with direction from the Board to appropriate legal counsel. CVWD practices preventative litigation by trying to resolve issues without litigation.

Finding 3

Although confidential information contained in legal bills could be deleted or redacted, some municipalities and districts 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

Response to Finding 3

CVWD neither agrees nor disagrees. CVWD provided bills with information about services without omissions.

Finding 4

The requirements of informed consent appear to be informally satisfied.

Response to Finding 4

CVWD disagrees. CVWD, as set forth in its engagement letter with counsel, has a process for formal informed consent and waiver.

Finding 5

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

Response to Finding 5

CVWD disagrees. CVWD's retainer statement in its engagement letter with its general counsel of Price Postel and Parma is specific and carefully delineates services covered by retainer.

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.

Response to Finding 6

CVWD agrees with the finding.

Finding 7

Budgets or caps are rarely used to control legal expenses.

Response to Finding 7

CVWD disagree with the finding in its general nature. Budgets or caps are generally provided in the annual budget process. They are, however also used for specific assignments during the course of the year.

Finding 8

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

Response to Finding 8

CVWD agrees with the finding relative to the selection of counsel “on the basis of various objective criteria such as qualifications, competence, ability an experience. CVWD disagrees with the finding relative to the “subjective criteria” reference.

Finding 9

Hiring is 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 services but routine repetitive work may justify a more cost conscious manner of obtaining legal services.

Response to Finding 9

CVWD agrees with the finding.

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.

Response to Finding 10

CVWD agrees with finding 10.

Finding 11

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

Response to Finding 11

CVWD regularly reviews legal service bills and services approved at a staff and Board level.

Recommendation 1

Municipalities and districts 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.

Response to Recommendation 1

Implemented. CVWD has for many years annually reviewed and determined its level of need for legal services as a routine part of its fiscal year budget cycle.

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.

Response to Recommendation 2

Implemented. The General Manager was given authority by the Board of Directors by a vote of the Board of Directors on December 18, 1996 to provide direction and billing oversight to legal counsel for services rendered in the same manner as other consultants engaged by the Board of Directors.

Recommendation 3

Municipalities and districts should review the basic fees structure 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.

Response to Recommendation 3

Implemented. Since 2003 CVWD's engagement letter for services rendered by its general counsel expressly identifies and delineates flat rate services as well as additional 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 named as a party.

Response to Recommendation 1

Implemented. CVWD has routinely used both caps and budgets over the years in an effort to control unpredictable litigation costs.

Recommendation 5

Municipalities and districts should review the necessity for attendance by counsel at advisory board meetings.

Response to Recommendation 1

Implemented. CVWD rarely holds an advisory board meeting, but when it does the General Manager informs counsel as to the need or lack thereof for his attendance and directs him accordingly. The same process is used by the Manager with regard to attendance by special counsel.

Recommendation 6

Municipalities and districts 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.

Response to Recommendation 6

Implemented. Since 2003 CVWD though the retainer provision of its engagement letter with counsel precludes the use of minimum charges, minimum hours and carryover expenses for most services provided to the District.

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.

Response to Recommendation 7

Implemented. CVWD has reviewed its attorney billing practices, and its engagement letter with counsel since 2003 restricts miscellaneous charges. CVWD carefully reviews all charges and hours during its monthly review of legal statements.

Recommendation 8

Municipalities and districts should require proof of an agreed level of professional liability insurance.

Response to Recommendation 8

Implemented. CVWD has current proof of professional liability insurance from District counsel on file.

Recommendation 9

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

Response to Recommendation 9

Implemented. CVWD since 2003 has 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 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.

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.

Response to Recommendation 10

Implemented. CVWD has never been penalized for payments extending beyond its agreed upon 30 day payment period within 30 days of counsel's billing date.

Recommendation 11

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

Response to Recommendation 11

Implemented. CVWD negotiated a new agreement in September of 2003 and is currently in discussion about renewal expected no later than September of 2006.

Recommendation 12

Municipalities and districts should use requests for proposals for retaining counsel to handle routine, repetitive matters.

Response to Recommendation 12

CVWD finds this recommendation to be not applicable, as there are so few routine or repetitive matters handled by counsel.

Recommendation 13

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

Response to Recommendation 13

Although CVWD legal services costs do not exceed 1% of its annual budget they are routinely monitored and evaluated.

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.

Response to Recommendation 14

CVWD has not implemented the recommendation regarding reflection in the minutes of informed consent. This recommendation will be followed in those instances where it is required.

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.

Response to Recommendation 15

Implemented. It is CVWD's practice to treat all non-confidential records of legal charges as public records.

In conclusion, the Governing Board of the Carpinteria Valley Water District wishes to thank the Santa Barbara County Grand Jury for its efforts and recommendations to ensure that Carpinteria Valley Water District effectively and efficiently fulfills its mission as the public water purveyor for the Carpinteria Valley.

Sincerely

Frederick Lemere
President of the Board of Directors

Melville062906