

July 14, 2006

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

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

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

Dear Judge Melville:

The purpose of this letter is to provide the response of the Governing Board of the Goleta Sanitary District (GSD) to the findings and recommendations contained in the Santa Barbara County Grand Jury report dated May 16, 2006. The findings and recommendations set forth in the 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

GSD agrees that legal services for districts are a vital necessity and that districts fulfill their legal service requirements by various methods suitable to each district's unique

needs and circumstances. Although GSD agrees that budgeting procedures for legal services may sometimes underestimate actual expenses, especially when a district is involved in litigation, GSD believes that its own budgeting procedures generally provide accurate estimates of legal expenses. Over the years, GSD's budget for legal services has closely approximated actual expenditures. Although GSD cannot speak to other agencies, GSD disagrees that its budgeting represents a mere guess or a deliberate understatement of anticipated or known foreseeable costs. To the contrary, GSD makes every effort to accurately predict legal expenses for the upcoming year and to budget accordingly.

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

GSD agrees that legal services, especially services for litigation, can be very costly. GSD disagrees that litigation is often an open checkbook for the municipality or district, and further disagrees that the agency has little or no ability to control the costs' thrust. In GSD's case, in the rare instances where the District becomes involved in litigation, the litigation is carefully monitored by the GSD Governing Board and General Manager, expenses are controlled to maximum extent feasible, and the case is reviewed on an ongoing basis to ensure that the legal costs incurred are reasonable in light of the amount in controversy and the expected outcome of the case.

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

GSD does not have sufficient information to either agree or disagree with this finding as it relates to other agencies. GSD agrees that it is appropriate to delete or redact confidential information from legal bills submitted to the Grand Jury. GSD was not asked to submit copies of bills to the Grand Jury. GSD's legal counsel has no authority to submit copies of bills to the Grand Jury or to waive the attorney-client privilege without GSD's express prior consent.

FINDING 4

The requirements of informed consent appear to be informally satisfied.

RESPONSE TO FINDING 4

GSD does not have sufficient information to either agree or disagree with this finding as it relates to other agencies. GSD believes that, in its case, the requirements of informed consent are consistently satisfied in accordance with the Rules of Professional Conduct and applicable law.

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

GSD does not have sufficient information to either agree or disagree with this finding as it relates to other agencies. GSD agrees that fee arrangements should define the nature, purpose and scope of legal services in sufficient detail to assure adequate accountability. GSD's legal counsel provides services pursuant to a fee agreement that provides for services to be billed at discounted hourly rates with a fixed fee for attendance at regular Board meetings. The legal counsel's fee agreement with GSD adequately defines the nature, purpose and scope of the services and assures adequate accountability. GSD's legal counsel is not authorized to undertake any services or incur any fees without express prior direction from the District's General Manager or Governing Board.

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

GSD agrees that the agencies should carefully negotiate the terms of retainer agreements and fee agreements with legal counsel. GSD carefully negotiates all terms of the fee agreement with its legal counsel at regular intervals and all changes to the agreement are subject to approval by GSD's Governing Board.

FINDING 7

Budgets or caps are rarely used to control legal expenses.

RESPONSE TO FINDING 7

GSD does not have sufficient information to either agree or disagree with this finding as it relates to other agencies. GSD utilizes the budget process as a means for controlling legal fees. Other means employed by GSD to control legal fees include careful monitoring of legal services and a clear understanding with legal counsel that no services are to be provided without express prior direction from the District's General Manager or Governing Board.

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

GSD does not agree that politics play a role in its selection of legal counsel, but agrees with the balance of this finding.

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

GSD agrees with this finding. GSD has attempted to control the cost of routine repetitive work by establishing a fixed fee for preparing for and attending regular Board meetings, reviewing minutes, etc.

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

GSD agrees with this finding. In the rare instances where GSD utilizes outside counsel, the cost may not be included in GSD's budget because the need for such counsel could not have been reasonably anticipated at the time the budget was prepared. An example would be where GSD finds itself a party to litigation.

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

GSD does not have sufficient information to either agree or disagree with this finding as it relates to other agencies. The monthly invoices provided by GSD's legal counsel include detailed descriptions for all services and set forth the time spent on each matter. GSD closely reviews these invoices and the services provided.

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

This recommendation has been implemented. GSD defines the level of legal services it anticipates for each fiscal year during the preparation of its annual budget. The estimated legal services budget is based on historical actual legal expenditures for routine services, and any foreseeable unusual expenditures associated with predetermined events such as operating permit renewal, appeals, or ongoing litigation, if any.

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

This recommendation has been implemented. GSD management reviews all legal invoices, which contain detailed descriptions of legal services provided, including hours spent, and hourly rates for such services.

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

This recommendation has been implemented. GSD has negotiated a flat rate for legal services associated with preparation and review of the regular meeting agenda, and for attendance at monthly Governing Board meetings. GSD has also negotiated discounted hourly rates for all attorneys performing budgeted and anticipated routine legal services. Unanticipated services are charged using the same discounted hourly rates upon specific authorization on a case-by-case basis.

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 4

This recommendation has been implemented. Although litigation is often difficult to predict and control, GSD budgets for litigation whenever feasible. GSD is very aware of the nature of litigation and is very prudent in engaging in such efforts. On those occasions where GSD has found itself compelled to enter litigation, it has managed its options very thoroughly to control costs and has sought reasonable settlements prior to proceeding with expensive court trials.

RECOMMENDATION 5

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

RESPONSE TO RECOMMENDATION 5

This recommendation has been implemented. GSD previously considered this issue and made the decision to have its legal counsel attend its regular Board meetings to make sure that its policies and practices are always in compliance with applicable legal requirements. GSD believes that defending its position due to inadvertent improper

policies or practices would result in legal expenditures that far exceed its monthly fixed retainer with its legal counsel for Board meeting attendance. Legal counsel attends meetings of standing and advisory committees only when necessary.

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

This recommendation has been implemented. GSD only pays for legal services actually performed. There are no carry-over hours. All legal services are charged as a flat fee (e.g., for attendance at Board meetings) or at discounted hourly rates. GSD is not charged for miscellaneous administrative services provided by its legal counsel.

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

This recommendation has been implemented. Please refer to responses to recommendations 3, 4 and 6 above.

RECOMMENDATION 8

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

RESPONSE TO RECOMMENDATION 8

This recommendation will be implemented. GSD's legal counsel carries adequate levels of professional liability insurance. GSD will obtain proof of such coverage within the next 30 days and will thereafter ensure that it has proof of such coverage at all times.

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

This recommendation has been implemented. GSD's legal counsel advises the District of all reasonably foreseeable potential conflict associated with his or his firm's services to the District. It should be noted, however, that any person or business within the GSD service area could potentially have a conflict with GSD in the future. It would not be reasonable to restrict the District's law firm from representing all persons and business within the GSD service, nor would it be reasonable or appropriate to require the law firm to disclose all such persons and businesses to GSD. Instead, when a conflict of interest arises or becomes reasonably foreseeable, the matter is handled on a case by case basis in accordance with applicable law and the Rules of Professional Conduct governing the practice of law in California.

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

This recommendation has been implemented. Invoices for legal services are paid after review and approval by the GSD's management and upon approval of the Governing Board. The Governing Board meets twice per month and invoices are paid without penalty within 30 days after receipt. In case of audit of services, invoices are paid after completion of audit and after resolution of any conflicts.

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

This recommendation has been implemented. GSD reviews its legal services agreement at regular intervals, at which time rates and other matter are renegotiated. The existing fee agreement is revised as necessary at that time.

RECOMMENDATION 12

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

RESPONSE TO RECOMMENDATION 12

This recommendation will not be implemented. GSD is of the opinion that changing legal counsels frequently is neither beneficial nor cost effective to the District. Lack of continuity with District's policies, procedures and practices will result in more expensive legal services. GSD will change its legal counsel in the event of unsatisfactory performance. GSD surveys legal costs locally at regular intervals in the process of renegotiating its legal services agreement to ensure appropriate cost of services.

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

This recommendation has been implemented. GSD monitors its legal services for need and appropriateness at all times and irrespective of whether such services are below or above 1% of the budget. District management is closely involved in all legal counsel activities performed for the District.

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

This recommendation has been implemented. GSD and its legal counsel comply with the requirements of informed consent in accordance with applicable law and the Rules of Professional Conduct governing the practice of law in California .

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

This recommendation has been implemented. The California Public Records Act, Evidence Code and other provisions of California law specify the circumstances under which GSD's records are public records open to public disclosure. GSD fully complies with all applicable legal requirements when acting on a request to disclose bills and other records of charges made for legal services. Where appropriate, GSD deletes confidential information prior to disclosure.

ADDITIONAL COMMENTS

GSD wishes to call to the Grand Jury's attention the fact that, during the 2004-2005 year, the District's legal fees were higher than in prior years and higher than budgeted because of extraordinary matters relating to the renewal of the District's wastewater discharge permit. As noted in the Grand Jury's 2004 report, the level of treatment provided by the District involves numerous complex issues. These issues came to a head during hearings before the Regional Water Quality Control Board and State Water Resources Control Board in 2004 and 2005. Litigation arose out of these hearings and the District was required to hire special counsel. Pursuant to the terms of the settlement agreement entered into to conclude this litigation, the District is now proceeding to convert its existing facilities to provide full secondary treatment. This project will be carried out over a ten year period and is expected to cost in excess of \$25,000,000. This represents the most expensive project ever undertaken by the District. The higher than usual legal fees during the 2004-2005 year are attributable to these unusually significant events.

The District appreciates the Grand Jury's thorough analysis with respect to the issue of legal services.

Sincerely,

GOLETA SANITARY DISTRICT

Steven T. Majoewsky
Governing Board President