



**SOUTH SAN LUIS OBISPO COUNTY
SANITATION DISTRICT**

Post Office Box 339, Oceano, California 93475-0339
1600 Aloha Oceano, California 93445-9735
Telephone (805) 489-6666 FAX (805) 489-2765
www.sslocsd.us

**AGENDA
BOARD OF DIRECTORS MEETING**
Arroyo Grande City Council Chambers
215 E. Branch Street
Arroyo Grande, California 93420

Wednesday, September 20, 2017, at 6:00 p.m.

Board Members

John Shoals, Chair
Linda Austin, Vice Chair
Jim Hill, Director

Agencies

City of Grover Beach
Oceano Community Services District
City of Arroyo Grande

Alternate Board Members

Karen White, Director
Tim Brown, Director
Barbara Nicolls, Director

Oceano Community Services District
City of Arroyo Grande
City of Grover Beach

-
- 1. CALL TO ORDER AND ROLL CALL**
 - 2. PLEDGE OF ALLEGIANCE**
 - 3. AGENDA REVIEW**
 - 4. PUBLIC COMMENTS ON ITEMS NOT APPEARING ON AGENDA**

This public comment period is an invitation to members of the community to present comments, thoughts or suggestions on matters not scheduled on this agenda. Comments should be limited to those matters which are within the jurisdiction of the District. The Brown Act restricts the Board from taking formal action on matters not published on the agenda. In response to your comments, the Chair or presiding Board Member may:

- Direct Staff to assist or coordinate with you.
- Direct Staff to place your issue or matter on a future Board meeting agenda.

Please adhere to the following procedures when addressing the Board:

- Comments should be limited to three (3) minutes or less.
- Your comments should be directed to the Board as a whole and not directed to individual Board members.
- Slanderous, profane or personal remarks against any Board Member, Staff or member of the audience shall not be permitted.

Any writing or document pertaining to an open-session item on this agenda which is distributed to a majority of the Board after the posting of this agenda will be available for public inspection at the time the subject writing or document is distributed. The writing or document will be available for public review in the offices of the Oceano CSD, a member agency located at 1655 Front Street, Oceano, California. Consistent with the Americans with Disabilities Act (ADA) and California Government Code §54954.2, requests for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires modification or accommodation in order to participate at the above referenced public meeting by contacting the District Administrator or Bookkeeper/Secretary at (805) 481-6903. So that the District may address your request in a timely manner, please contact the District two business days in advance of the meeting.

5. CONSENT AGENDA:

The following routine items listed below are scheduled for consideration as a group. Each item is recommended for approval unless noted. Any member of the public who wishes to comment on any Consent Agenda item may do so at this time. Any Board Member may request that any item be withdrawn from the Consent Agenda to permit discussion or to change the recommended course of action. The Board may approve the remainder of the Consent Agenda on one motion.

5A. Approval of Warrants

5B. Approval of Minutes for Meeting of September 6, 2017

6. ACTION ITEMS:

6A. JOINT INVESTIGATION WITH ARROYO GRANDE

1. PRESENTATION BY LIEBERT, CASSIDY WHITMORE

2. DIRECTION TO STAFF

6B. TECHNICAL CONSULTANTS AND PLANT OPERATION'S REPORT

Receive and File Report

7. BOARD MEMBER COMMUNICATIONS

8. CLOSED SESSION

8A. CONFERENCE WITH LABOR NEGOTIATORS pursuant to Government Code Section 54957.6: Agency designated representatives: Richard Sweet or Paul J. Karp; Susan Wells Employee organization: Service Employees International Union (SEIU) Local 620

8B. CONFERENCE WITH LEGAL COUNSEL: ANTICIPATED LITIGATION: significant exposure to litigation pursuant to **paragraph (2) of Government Code Section: 54956.9 (d), paragraph 2, and (e)(5):** Three Items

8C. CONFERENCE WITH LEGAL COUNSEL: ANTICIPATED LITIGATION:
significant exposure to litigation pursuant to **Government Code Section:**
54956.9 (d), paragraph 2, and (e)(4): One Item

9. ADJOURN MEETING

The next regular Board of Directors meeting is scheduled for
October 4, 2017, 6 pm at the
Arroyo Grande City Council Chambers,
215 E. Branch Street, Arroyo Grande, California 93420

SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT
WARRANT REGISTER

09/20/2017 FY 2017/2018

VENDORS	BUDGET LINE ITEM	DESCRIPTION	WARRANT NO.	ACCT	ACCT BRKDN	TOTAL
AGP	PROF SERVICES-AGP	7091	09202017-2416	19-7080	1,500.00	1,500.00
ATLAS PERFORMANCE IND.	ADMIN OFFICE SPACE	RI100494	2417	19-7040	225.00	225.00
BANK OF THE WEST	OFFICE SUPPLIES	USPS	2418	19-8045	46.43	1,950.81
	TRAINING	MUI/DELEON		19-7067	1,448.85	
	ADMIN OFFICE SPACE	FIVE CITIES STORAGE		19-7040	195.00	
	EQUIPMENT RENTAL	HAULAWAY		19-7093	93.80	
	WEBHOSTING	SHERWEB		19-7013	166.73	
BRENNTAG	PLANT CHEMICALS	BPI766441	2419	19-8050	4,218.17	4,218.17
CENTRAL COAST PLUMBING	EQUIPMENT MAINTENANCE	227	2420	19-8045	317.00	317.00
CULLIGAN CCWT	EQUIPMENT RENTAL	44570	2421	19-7032	60.00	60.00
CULLIGAN SANTA MARIA	EQUIPMENT RENTAL	65805	2422	19-7032	17.50	17.50
DIAMOND A EQUIPMENT	EQUIPMENT MAINTENANCE	W00250	2423	19-8030 2017-A1-17	1,356.98	1,356.98
ENVIRONMENTAL SCIENCE ASSOCIATES	REDUNDANCY PROJECT	130184	2424	20-7080	1,440.00	1,440.00
FANNY MUI	PER DIEM	TRI STATE SEMINAR	2425	19-7083	168.00	168.00
GARING, TAYLOR & ASSOCIATES	PROF SERVICES-AG SEWER BRIDGE	14586	2426	26-8065 2017-B1-01	1,027.50	1,027.50
GILBERT TRUJILLO	LEGAL COUNSEL	AUGUST 2017	2427	19-7071	9,120.50	9,120.50
GRAINGER	SAFETY SUPPLIES	954120244	2428	19-8056	24.78	24.78
JB DEWAR	FUEL	855021	2429	19-8020	183.09	183.09
JESSICA MATSON	WEBSITE	AUGUST 2017	2430	19-7065	277.50	277.50
KSB, INC	EQUIPMENT MAINTENANCE	0096189-IN	2431	19-7075	17,807.12	17,807.12
HILTI	EQUIPMENT MAINTENANCE	4610137404	2432	19-8030 2017-A1-27	395.75	395.75
LARA HR SERVICES	HUMAN RESOURCES	7/1/17-8/29/17	2433	19-7076	860.00	860.00
LIEBERT, CASSIDY WHITMORE	OUTSIDE COUNSEL	JULY /AUGUST 2017	2434	19-7070	34,520.39	34,520.39
MARIO DE LEON	PER DIEM	WASTEWATER TECHNOLOGY TRAINERS	2435	19-6075	140.00	140.00
MULLAHEY FORD	AUTOMOTIVE MAINTENANCE	63138	2436	19-8032	435.09	435.09
OILFIELD & ENVIRO. COMPLIANCE	CHEMICAL ANALYSIS	1702989/1703327	2437	19-7078	260.00	260.00
RICHARD SWEET, PE	PROF SERVICES-ENGINEERING	JULY 27, 2017-AUG 30, 2017	2438	19-7077	13,035.00	13,035.00
PG&E	ELECTRICITY	8/10/2017-9/10/2017	2439	19-7091	18,130.51	18,130.51
QUILL.COM	OFFICE SUPPLIES	8600882	2440	19-8045	351.90	351.90
REGIONAL GOVERNMENT SERVICES	HUMAN RESOURCES	7410	2441	19-7076 19-8030	5,460.00	5,460.00
SM TIRE	EQUIPMENT MAINTENANCE	595041	2442	2017 A1-03	106.77	106.77
SO CAL GAS	UTILITIES-GAS	7/28/2017-8/28/2017	2443	19-7092	357.14	357.14
SOUTH COUNTY SANITARY	UTILITIES-RUBBISH	5782093/5775104	2444	19-7093	1,178.46	1,178.46
SPRINT	COMMUNICATIONS	205201234-146	2445	19-7013	219.33	219.33
STANLEY SECURITY	COMMUNICATIONSALARMS	14881386	2446	19-7011	64.06	64.06
STATE FUND	WORK COMP	9/1/2017-10/1/2017	2447	19-6080 19-8030	3,595.00	3,595.00
USA BLUEBOOK	EQUIPMENT SUPPLIES	353369	2448	2017-A1-27	64.38	64.38
VWR	LAB SUPPLIES	8049699454/8049685180	2449	19-8040	368.45	368.45
WENDY STOCKTON	PROF SERVICES ATTORNEY FEE	AUGUST 2017	2450	19-7071	8,047.50	8,047.50
SUB TOTAL					\$ 127,283.68	\$ 127,283.68
SO. SLO CO. SANITATION DISTRICT	PAYROLL	PPE 9/1/2017	2451	19-6030 19-6040 19-6045 19-6090	26,060.37	46,921.55
	CALPERS HEALTH	OCTOBER 2017		19-6010	17,860.28	
	CALPERS RETIREMENT	PPE 9/1/2017		19-6060	3,000.90	
GRAND TOTAL					\$ 174,205.23	\$ 174,205.23

We hereby certify that the demands numbered serially from 09202017-2416 to 09202017-2450 together with the supporting evidence have been examined, and that they comply with the requirements of the SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT. The demands are hereby approved by motion of the SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT, together with warrants authorizing and ordering the issuance of checks numbered identically with the particular demands and warrants.

BOARD OF DIRECTORS:

Chairman

Board Member

DATE:

Board Member

Secretary



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**Action Summary Minutes of the
Meeting of Wednesday, September 6, 2017, at 6:00 p.m.**

BOARD OF DIRECTORS MEETING

Arroyo Grande City Council Chambers

215 E. Branch Street

Arroyo Grande, California 93420

1. CALL TO ORDER AND ROLL CALL

Chairman Shoals called the meeting to order and recognized a quorum.

Present: John Shoals, Chairman, City of Grover Beach
Jim Hill, Director, City of Arroyo Grande
Linda Austin, Vice Chair, Oceano Community Services District

District Staff: Paul Karp, Technical/Administrative Services Consultant
Gilbert A. Trujillo, District Legal Counsel

2. PLEDGE OF ALLEGIANCE

Chairman Shoals led the Pledge of Allegiance

3. AGENDA REVIEW

Motion: Director Austin made a motion to approve the Agenda as presented

Second: Director Hill

Action: Motion approved 3 – 0

Ayes: Directors Austin, Hill and Shoals

Noes: None

4. PUBLIC COMMENTS ON ITEMS NOT APPEARING ON AGENDA

Chairman Shoals opened the Public Comment period.

Julie Tacker commented on the former Administrator's relocation expenses, Water Board complaint filed by the former Administrator and disparaging remarks made about staff.

Kris Victorine spoke on District Counsel and the 2015/16 final audit.

Ron Holt commented on the current Brown Act document.

Patricia Price spoke on Chairman Shoals City Council report, the former Administrator's management style and employee's leave without due process.

Mary Lucey commented on Board meeting guidelines regarding personnel.

Colene Kubel spoke in support of Director/Mayor Hill and moving forward.

Nicholas Pressure commented on recall forms.

Cinnamon Lofton spoke in support of unitive merging of all.

Shirley Gibson commented on taking the focus off of the former District Administrator and moving forward.

Chairman Shoals closed the Public Comment period.

5. CONSENT AGENDA:

Director Hill requested the approval of Warrants be take separately.

5A. Approval of Warrants

Chairman Shoals opened the Public Comment period.

Julie Tacker spoke on the Downey Brand warrant.

Chairman Shoals closed the Public Comment period.

Director Hill made a motion to approve the Warrant Register excluding the Downey Brand Warrant.

Motion died for lack of second.

Motion: Director Austin made a motion to approve the Warrant Register as presented

Second: Director Shoals

Action: Motion approved 2 – 1 Director Hill voted No

Ayes: Directors Austin and Shoals

Noes: Director Hill

Chairman Shoals opened the Public Comment period for the remaining items on the Consent Agenda.

Julie Tacker spoke on removing the Public Commenter's community of residence from the Minutes and why she called Point of Order during the August 2, 2017 meeting.

Shirley Gibson stated the Minutes should be Action Summary only.

Mary Lucey commented on Director Hill's statement regarding the joint investigation.

Nicholas Pressure commented on doing the financial report without a final audit.

Chairman Shoals closed the Public Comment period.

- 5B. Approval of Minutes of Meeting of the Special Meeting of July 26, 2017**
- 5C. Approval of Minutes of Meeting of August 2, 2017**
- 5D. Approval of Minutes of Meeting of August 16, 2017**
- 5E. July Financial Report**

Motion: Director Austin made a motion to approve the Minutes as presented. It was further ordered that future Minutes be Action Summary only and the public speakers community of residence not be included in the Minutes.

Second: Director Hill

Action: Motion approved 3 - 0

Ayes: Directors Austin, Hill and Shoals

Noes: None

6. ACTION ITEMS:

- 6A. DISCUSSION AND CONSIDERATION OF APPROVAL TO REVISE THE ADOPTED BUDGET FOR FISCAL YEAR 2017-18 REGARDING LINE ITEMS FOR LEGAL EXPENSES.**

Technical Consultant Paul J. Karp provided the Staff Report requesting revisions to the two line items for Legal Expenses in the adopted 2017/18 budget.

Chairman Shoals opened the Public Comment period.

Julie Tacker commented on legal fees.

Debbie Peterson spoke on legal fees.

Mary Lucey spoke on the Budget, legal fees and Human Resources.

Patricia Price commented on legal fees.

Shirley Gibson supported the new leaderships recommendations.

Chairman Shoals closed the Public Comment period.

Motion: Director Austin made a motion to adopt Resolution 2017-376 to revise amounts on line items for legal expenses of adopted budget for Fiscal Year 2017-18.

Second: Director Shoals

Action: Motion approved 2 – 1. Director Hill voted No with prejudice.

Ayes: Directors Austin and Shoals

Noes: Director Hill

6B. DISCUSSION AND CONSIDERATION OF APPROVAL TO SUBMIT AN APPLICATION FOR MEMBERSHIP OF PAUL J. KARP TO THE SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT ZONE 1 AND 1A ADVISORY COMMITTEE.

Technical Consultant Paul J. Karp provided the Staff Report requesting approval to submit an application for membership of Paul J. Karp to the San Luis Obispo County Flood Control and Water Conservation District Zone 1 and 1A Advisory Committee.

Chairman Shoals opened the Public Comment period.

Nicholas Pressure questioned if serving both the District and Advisory Committee would be a conflict of interest.

Chairman Shoals closed the Public Comment period.

Technical Consultant Paul J. Karp explained what the Zone 1/1A Committee is advising.

Motion: Director Hill made a motion to appoint Paul J. Karp to the San Luis Obispo County Flood Control and Water Conservation District Zone 1 and 1A Advisory Committee to fill the vacancy left by Gerhardt Hubner.

Second: Director Austin.

Action: Motion approved 3-0

Ayes: Directors Hill, Austin and Shoals

Noes: None

6C. DISCUSSION AND DIRECTION TO STAFF REGARDING THE STATUS OF THE JOINT INVESTIGATION WITH THE CITY OF ARROYO GRANDE

District Counsel Gilbert Trujillo advised that Board direction was needed on the following:

1. Liebert, Cassidy Whitmore to present in open session a review of the joint investigation;
- and
2. Waive attorney/client privilege of additional joint investigation related documents.

Chairman Shoals opened the Public Comment period.

Nicholas Pressure commented on the investigation findings.

Teri Kleir spoke in support of Director Hill.

Shirley Gibson commented on witnessing a conversation conspiring against the former District Administrator.

Stewart Jenkins spoke on waiving the attorney/client privilege, and placing the Liebert, Cassidy Whitmore and Stewart Jenkins letter on the District website.

Debbie Peterson commented on legal fees and apology due to Director Hill.

Julie Tacker spoke on the joint investigation summary and actual reports.

Colene Kubel commented on content and inaccuracies in the report.

Otis Page spoke on fallacy in the report, legal counsel and lack of due process for Director Hill.

Matt Guerrero spoke in support of the investigation and he alleged fabrication created by Director Hill.

Patricia Price commented on Director Hill not getting due process and a vote of no confidence petition.

Mary Lucey spoke on the need for the joint investigation report to go public.

Ron Holt commented on the investigation and his thought that Liebert Cassidy Whitmore had a conflict.

Lindsay Westbrook thanked Director Hill.

Mike Nobel spoke in support of Director Hill.

Chairman Shoals closed the Public Comment period.

Motion: Director Austin made a motion to waive the attorney/client privilege, release the report and have Liebert Cassidy Whitmore provide a presentation to the Board, on the investigation, in open session.

Second: Director Shoals.

Action: Motion approved 3-0

Ayes: Directors Austin, Hill and Shoals

Noes: None.

6D. TECHNICAL CONSULTANTS AND PLANT OPERATION'S REPORT

Technical Consultant Paul J. Karp gave the Technical Consultants and Plant Operation's Report.

The Board discussed the Cherry Avenue bridge, redundancy, ground water recycle, the C-train and the audit.

Chairman Shoals opened the Public Comment period.

Debbie Peterson commented on the District By-laws and the Technical Advisors contract.

Julie Tacker spoke on the Liebert, Cassidy, Whitmore retro contract, recycle of MND, bond market, administration trailer, C-train and the Audit.

Patricia Price commented on the District's By-laws.

Chairman Shoals closed the Public Comment period.

The Board Received and Filed the Technical Consultant's and Plant Operation's Report.

7. BOARD MEMBER COMMUNICATIONS

None

8. CLOSED SESSION

District Counsel Gilbert Trujillo read the Closed Session items into the Record.

Chairman Shoals opened the Public Comment period.

Stewart Jenkins, Attorney at Law, commented on Government Code Section 54956.9.

Julie Tacker commented on item 8A, exposure to litigation, and initiation of litigation.

Chairman Shoals closed the Public Comment period.

- 8A. CONFERENCE WITH LABOR NEGOTIATORS pursuant to Government Code Section 54957.6:** Agency designated representatives: Richard Sweet or Paul J. Karp; Susan Wells Employee organization: Service Employees International Union (SEIU) Local 620

Discussed, no reportable action.

- 8B. CONFERENCE WITH LEGAL COUNSEL: ANTICIPATED LITIGATION:** significant exposure to litigation pursuant to **paragraph (2) of Government Code Section: 54956.9 (d), paragraph 2, and (e)(5):** Three Items

Discussed, no reportable action.

- 8C. CONFERENCE WITH LEGAL COUNSEL: ANTICIPATED LITIGATION:** significant exposure to litigation pursuant to **Government Code Section: 54956.9 (d), paragraph 2, and (e)(4):** One Item

Discussed, no reportable action.

The Board reconvened the meeting at 8:46.

9. ADJOURN MEETING

The meeting was adjourned at 8:47 p.m.

**The next regular Board of Directors meeting is scheduled for
September 20, 2017, 6 pm at the
Arroyo Grande City Council Chambers,
215 E. Branch Street, Arroyo Grande, California 93420**



SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT

Post Office Box 339 Oceano, California 93475-0339

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www.sslocsd.org

STAFF REPORT

Date: September 20, 2017

To: Board of Directors

From: Technical Consultants

Subject: **JOINT INVESTIGATION WITH ARROYO GRANDE; PRESENTATION BY LIEBERT CASSIDY WHITMORE (LCW); DIRECTION TO STAFF**

RECOMMENDATION:

That a representative of Liebert Cassidy Whitmore present its findings on the Joint Investigation with the City of Arroyo Grande and that the Board provide direction to staff.

BACKGROUND AND DISCUSSION:

On March 1, 2017 Board meeting, the Board approved a request from the City of Arroyo Grande to participate in an independent joint investigation of alleged misconduct by the Mayor of Arroyo Grande concerning his representation on the District Board. The investigation was performed by Liebert Cassidy Whitmore (LCW) and completed in early August and is available to the public at the District website (sslocsd.org).

At the September 6, 2017 District meeting, the Board chose to waive its confidentiality regarding a memo prepared by LCW which provides conclusions and recommendations. At the September 12, 2017 meeting of the Arroyo Grande City Council, Council acted to waive the confidentiality associated with the LCW memo. The LCW memo is now available to the public and is attached.

While the minutes of the meeting of the Arroyo Grande City Council are not available as of this writing, it appears, as identified through viewing of the live stream of the Council meeting, that the Council (3-2 with Hill and Brown dissenting) chose to request the following actions:

- Adoption of a new password policy

- Recommendation that the Mayor participates in one-on-one training, preferably with CJPIA.
- Ask the Mayor to step down from the Sanitation District Board; Assign the Mayor Pro Tem to attend meetings.
- Request that the Sanitation District implement the recommendations of LCW.
- Encourage other Councilmember to attend the one-on-one training.
- Compare policies and expectations with the Sanitation District.
- Develop a voluntary code of ethics signed by Council members and Commissioners.
- Update email policies.
- Establish a protocol for staff communications.
- Provide job descriptions and expectations for City Council, Planning Commission, ARC and HRC, including roles and protocols.

Attachment: Conclusions and Recommendation by LCW

August 7, 2017

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION/WORK PRODUCT

SENT VIA U.S. MAIL & EMAIL

Heather Whitham
City Attorney
City of Arroyo Grande
300 E. Branch Street
Arroyo Grande, CA 93420

Gil Trujillo
Wendy Stockton
District Counsel
South San Luis Obispo County Sanitation District
1600 Aloha Place
Oceano, CA 93445

**Re: *Final Legal Conclusions and Recommendations following Allegations of
Brown Act Violations by Arroyo Grande Mayor Jim Hill***

Dear Ms. Whitham, Ms. Stockton, and Mr. Trujillo:

Pursuant to your requests, the following are my written legal conclusions and recommendations regarding Scott Nelson's ("Investigator") Investigative Report ("Report") into allegations that Arroyo Grande ("City") Mayor and South San Luis Obispo County Sanitation District ("District") Board Member Jim Hill engaged in the following misconduct:

- (1) Disclosed confidential City and District closed session communications to third parties;
- (2) Disclosed confidential City and District attorney-client communications to third parties;
- (3) Acted unilaterally and outside the scope of his legislative role as Mayor and Board Member, including involvement in personnel matters; and
- (4) Disclosed confidential City and District personnel information to third parties.

On or about January 24, 2017, two members of the public alleged during a City Council meeting that Hill disclosed confidential information and acted outside the scope of his legislative role as both Mayor and the City's representative on the District's Board. A member of the community alleged during open session that Hill gave his City email password to his wife and allowed her to access confidential information, disclosed confidential attorney-client communications, and openly discussed closed session matters at a public restaurant. The City and the District commenced a joint investigation into the community members' complaints.

I. INVESTIGATIVE FINDINGS

The Investigator spoke with City and District employees and elected representatives, as well as City residents and District ratepayers. However, information learned from closed session or attorney-client communications were not summarized in the Report in detail and comments and statements made by witnesses during the investigation were not attributed to someone by name. Hill also refused to participate in the investigation.

A. Allegation Hill Disclosed Information from City and District Closed Session

Witnesses stated Hill spoke about City and District closed session matters at a local restaurant *"with little regard to the fact that the information was confidential."* Witnesses also stated that Hill provided his wife access to his City email.

1. Disclosure of City's Closed Session Communications

Witnesses stated they heard Hill tell other people about former City Manager Dianne Thompson's separation from the City at a local restaurant. According to the witnesses, the terms of Thompson's separation from the City were discussed during closed session one evening and after closed session concluded, Hill was at a local restaurant and spoke about Thompson's release from the City *"for cause"* due to her failure to complete *"a 45 day review"* of her priorities as City Manager and her *"general lack of qualifications."* The witness stated Hill would preface his comments about closed session information by saying, *"Hypothetically speaking..."* and would *"have this little grin"* on his face.¹ However, the witnesses were not able to provide any more information about Hill's alleged disclosure of information learned during closed session. Additionally, other witnesses were not able to corroborate Hill's alleged disclosure of facts pertaining to Thompson's separation.

Although Hill did not participate in the investigation, he made several comments about the investigation to the local press. In a Cal Coast News article, he stated he did not disclose the specifics of information learned in closed session. *"Talking about closed session items: I may have spoken generally about a subject but not specifically confidential or attributable information."*

The Investigator **did not sustain** the community members' allegations that Hill disclosed closed session information to third parties. The Investigator concluded that given the witnesses' inability to provide any specific detail and lack of corroboration, there was insufficient evidence to prove Hill disclosed confidential closed session information by a preponderance of evidence.

¹ The Investigator concluded that the specifics of Thompson's separation from the City could not be verified. However, if Thompson was separated from the City via some form of severance agreement, the City should consider whether a confidentiality clause was included in the severance agreement. Possible disclosure of the reasons behind Thompson's separation may constitute breach of contract if the City and Thompson entered into a severance agreement with a confidentiality provision.

Re: *Legal Conclusions and Recommendations following Allegations of Brown Act Violations by Arroyo Grande Mayor Jim Hill*

August 7, 2017

Page 3

2. Disclosure of District's Closed Session Communications

Witnesses alleged Hill: (1) blind copied the future District Administrator and a District clerical employee on an email dated August 11, 2015 regarding hiring a new District Counsel; (2) blind copied the future District Administrator on an email dated August 26, 2015 to the outgoing District Administrator; and (3) used one of his supporters to leak documents from a closed session meeting in June 2012 to the press and members of the public.

The Investigator determined that Hill blind copied the future District Administrator in August 2015 – just a few weeks before the previous District Administrator resigned. Additionally, the clerical employee blind copied on the August 11, 2015 email was, in part, responsible for personnel matters. Finally, the witness interviewed regarding the June 2012 notes had no direct knowledge or direct evidence that Hill leaked the notes. Additionally, the June 2012 notes were disclosed to the public by a newspaper article and have been in the public domain since 2015. Therefore, the Investigator **did not sustain** allegations that Hill disclosed or distributed closed session information to third parties.

B. Disclosure of Confidential Attorney-Client Communication

1. Attorney-Client Communication from City

The Investigator determined that there was no support in either the witnesses' statements or documents provided by the City that suggested Hill intentionally disclosed attorney-client communications between the City's attorneys and any third party. Therefore, this allegation was **not sustained**.

2. Attorney-Client Communication from District

Hill sent multiple communications to District Counsel Gil Trujillo and Wendy Stockton about District personnel and legal matters and copied third parties. He also forwarded emails between District Counsel Trujillo, Stockton, and himself to third parties. On September 15, 2016, Hill sent an email to District Counsel Trujillo, the District Administrator, and the District Superintendent regarding a District employee's complaint about a then-sitting Board Member and the possible liability resulting from the Board Member's conduct. Hill copied the complaining employee on the email. On October 5, 2016, Hill emailed the District Administrator and District Counsel about the Administrator's refusal to comply with a Public Records Act request from an employee of the Jeff Edwards Company and copied the requester on his email.

On November 15, 2016, Hill forwarded an email from a complaining employee who requested to speak to the Board about his/her allegations to District Counsel Trujillo and demanded the employee's grievances be placed on the closed session agenda. Hill also copied the complaining employee on that email. On January 17, 2017, Hill sent an email to District Counsel Stockton and Trujillo and blind copied a community member regarding his "*demand*"

Re: Legal Conclusions and Recommendations following Allegations of Brown Act Violations by Arroyo Grande Mayor Jim Hill

August 7, 2017

Page 4

that the District stop wasting money on an investigation into a community member's complaint about the District Superintendent. The January 17, 2017 email included a string of emails between District Counsel and Board Members.

The Investigator **sustained** allegations that Hill disclosed confidential attorney-client communications to third parties, including District employees and members of the community. Hill carbon copied, blind copied, or forwarded confidential emails between District Counsel and the Board about personnel matters to people outside the attorney-client relationship.

C. Hill Unilaterally Acted Outside his Legislative Role

1. **Conduct as Mayor**

The complaining community members cited three possible instances wherein Hill unilaterally acted beyond his legislative role as Mayor: (1) Hill communicated with the Federal Trade Commission ("FTC") in his role as Mayor about a local business; (2) Hill communicated with State Assembly Members and Senators in his role as Mayor; and (3) Hill communicated with developers involved in the Courtland-Grant Development Project outside the presence of City Council.

a. *FTC Correspondence*

Hill sent a letter to the FTC on February 23, 2016 identifying himself as the Mayor of Arroyo Grande. Hill's stated purpose for his letter to the FTC was to "*express his concern regarding the effect of the Albertson's-Von's grocery store merger and associated divestiture on our community.*" Hill stated that Spencer's Fresh Markets had been working to acquire land for a grocery store but were stymied by Albertson's attempt to re-acquire the same property in violation of the FTC's previous divestiture. Hill stated Spencer's Fresh Foods was a "*viable alternative*" to Albertson's attempts to violate the divestiture.

Members of the community alleged Hill sent this letter on behalf of Spencer's Fresh Markets because its owners are political supporters. Hill also represented himself as Mayor of Arroyo Grande without notifying the rest of the Council of his plans to send the letter. Hill also included his home phone number but the City Hall address. Hill responded to this allegation in the media by stating he only wanted "*transparency in the process.*"

The Investigator found that Hill exceeded his legislative role in corresponding with the FTC on behalf of Spencer's Fresh Markets without notifying the City Council. As a result, the City Council has since enacted rules requiring disclosure to the full Council whenever a member represents him or herself as a member of the Council.² The Investigator determined that Hill's attempt to explain his conduct as only seeking transparency did not seem credible given that he intentionally concealed his correspondence from the rest of the Council by listing

² See City of Arroyo Grande City Council Operational Manual, Chapter 9, enacted May 24, 2016.

Re: Legal Conclusions and Recommendations following Allegations of Brown Act Violations by Arroyo Grande Mayor Jim Hill

August 7, 2017

Page 5

his home phone number on the bottom of the letter. He did not inform the Council or seek their approval before representing himself as the Mayor of Arroyo Grande to the FTC on behalf of Spencer's Fresh Markets.

b. Communication with State Representatives

Hill allegedly initiated two meetings with Sen. Bill Monning and Assembly Member Jordan Cunningham regarding homelessness in Arroyo Grande without notifying the City Council or the Interim City Manager. Hill admitted in open session that he met with Sen. Monning and Assembly Member Cunningham about homelessness "*earlier this year.*" However, City officials interviewed as part of the investigation stated they did not see Hill's meetings with Monning and Cunningham as a "*sinister act.*" Another official stated Hill should not have met with state officials without City Council's approval; however, he admitted it was not necessarily inappropriate to do so.

The Investigator concluded Hill did not act outside the scope of his legislative authority as Mayor when he met with Sen. Monning and Assembly Member Cunningham in their Sacramento offices. There was no evidence Hill advocated or lobbied for a particular piece of legislation or initiative when he met with his state representatives and his communications included official City policies on homelessness.

c. Courtland-Grand Development Project

Hill also allegedly acted unilaterally and outside his legislative role when he negotiated terms of agreement with the project developer at his home without the City Council's knowledge. However, upon further examination, the witness who alleged this complaint stated that Members of the Council knew about Hill's role in negotiating terms for the project or that he participated in negotiations in the past. **Therefore, the Investigator concluded that further investigation of this claim was not necessary as it appeared the City Council knew Hill was involved in negotiations with the project developer.**

2. Conduct as Board Member

In addition to disclosing confidential attorney-client communications, Hill's emails also demonstrate his alleged unilateral involvement in matters beyond his legislative authority, including personnel matters.

a. Unilateral Involvement in Personnel Matters

In the September 15, 2016 email, Hill passionately advocated on behalf of the District employee who complained about another Board Member. He stated he was "*very concerned*" by the Director's conduct and that the employee's complaint created liability for the District. Hill's October 5, 2016 email admonished the District Administrator for not complying with the "*spirit of*" the PRA and demanded the District Administrator provide "*the requested records*

Re: Legal Conclusions and Recommendations following Allegations of Brown Act Violations by Arroyo Grande Mayor Jim Hill

August 7, 2017

Page 6

immediately.” Hill even copied the community member who lodged the PRA request on the October 5, 2016 email. **The Investigator concluded that Hill unilaterally acted outside his legislative role when he instructed the District Administrator to provide the documents requested.**

Hill’s November 15, 2016 email similarly pertains to his involvement in District personnel matters. Hill emailed the District’s Counsel about an employee’s request to appear before the Board regarding his complaint against the District Administrator. Hill’s email appeared to advocate on behalf of the employee and stated his complaint should be added to the District’s closed session agenda. **The Investigator determined that Hill acted unilaterally and outside his legislative role by involving himself in a personnel matter when he demanded the District Administrator add the employee’s complaint to the closed session agenda.**

Between December 2016 and January 2017, Hill communicated multiple times with District Counsel, the District Superintendent, the District Administrator, and members of the public about a personnel complaint at the District. On or about December 30, 2016 at 2:01 p.m., a member of the public sent an email to the District Administrator, the Board of Directors, legal counsel, and two San Luis Obispo County officials entitled “*Formal Complaint.*” The complaint pertained to a Board meeting in Oceano in December 2016 and the actions of the Board Superintendent.

Shortly after receiving the complaint, at approximately 3:54 p.m., Hill forwarded the complaint to the Board Superintendent and told him “*your friends Mary and Nancy are at it again.*” Hill then emailed Board Counsel Trujillo about his wife Lin’s version of events recounted in the December 30, 2016 email and stated “*there is a lot of false and misleading material here.*” Hill then forwarded the email he sent to District Counsel Trujillo to the District Superintendent at approximately 4:18 p.m. On or about January 16, 2017, District Counsel Stockton informed the Board about the pending investigation into the December 30, 2016 complaint and advised the Board not to communicate with anyone other than counsel. District Counsel Stockton also provided a Notice of Investigation to the Board Superintendent.

At approximately 8:32 p.m., on January 16, 2017, Hill responded to District Counsel Stockton’s email and stated, “*This issue doesn’t warrant any investigation.*” ...*Mr. Trujillo was informed what happened that night. The Sheriff’s office declined to investigate. We need to follow their lead and not waste any more money or time on this.*”³ Despite District Counsel Stockton’s representation that the District “*has no choice in the matter,*” Hill “*demand*ed” the District “*stop this phony investigation.*” He also blind copied members of the public known to support him. He later told District Counsel Stockton “*stop the harassment of our employee now!*” On or about February 3, 2017, Hill contacted District Counsel Stockton again about the

³ Although the Investigator does not disclose the nature of the complaint, he correctly points out that simply because a law enforcement agency does not pursue an investigation, does not mean the District is not required to investigate a claim. For instance, the Sheriff’s Department would have little interest in a complaint about sexual harassment, but under the Fair Employment and Housing Act, the District would be obligated to investigate.

Re: *Legal Conclusions and Recommendations following Allegations of Brown Act Violations by Arroyo Grande Mayor Jim Hill*

August 7, 2017

Page 7

investigation into allegations against the District Superintendent and said the investigation was not authorized or required by the Board's Personnel Manual. Based on all the incidents described above, the Investigator **sustained** the allegation that Hill repeatedly unilaterally engaged in personnel matters outside the scope of his investigative role.

b. Unilateral Involvement in Operational Matters

On November 21, 2016, Hill emailed the District Administrator about funds spent on a temporary trailer for the District and instructed him not to *"expend any additional funds on the trailer..."* The Investigator concluded Hill's instruction to the District Administrator was beyond his legislative role as an individual Board Member.

On or about December 16, 2016, Hill met with the District Administrator about District business. No other Directors were present. The District Administrator told the Investigator that the *"first 20 minutes to half an hour were very tense and very dictatorial."* The District Administrator stated Hill demanded him to *"do this or that"* and *"I want it done now. Why aren't you doing it?"* Hill also objected to not being notified when a District Attorney Investigator requested documents from the District even though staff was instructed only to communicate with the Board Chair and legal counsel. The Investigator concluded that since Hill declined to participate in the investigation, the District Administrator's version of events was un rebutted and Hill acted unilaterally and outside the scope of his legislative role.

On or about January 13, 2017, Hill also intervened in a communication between District Counsel Wendy Stockton and the District Superintendent about a contract extension between the District and a consultant on a long range planning project. District Counsel Stockton emailed the District Administrator indicating that she spoke to Hill about the contract, and the District Administrator confirmed that Hill inquired about the contract extension. Since Hill refused to participate in the investigation, the Investigator determined that this incident may be considered in determining whether Hill acted unilaterally and outside his legislative role. Based on these events, the Investigator **sustained** allegations that Hill acted unilaterally and outside his legislative role on operational, non-personnel matters.

D. Allegations that Hill disclosed Confidential Personnel Matters

1. Actions as Mayor of City

The Investigator initially concluded that with the exception of Hill allegedly disclosing confidential information about Thompson's separation from the City, there is no other evidence Hill disclosed confidential personnel information. However, the Investigator pointed out that Hill shared his City email password with wife—who in turn, shared confidential information she learned from Hill's emails with others. The Investigator reviewed text messages between one of Hill's supporters and one of his critics. When Hill's critic asked why Hill's wife needed his City email password, the supporter stated, *"for the same reason I know John's email password – not*

Re: Legal Conclusions and Recommendations following Allegations of Brown Act Violations by Arroyo Grande Mayor Jim Hill

August 7, 2017

Page 8

any bad intent, but as a matter of convenience. John will have me go into his [email] occasionally and forward an email of some such thing." Hill's supporter also goes on to state "...what is really wrong was for Lin not to keep her mouth shut. She shouldn't have shared ANYTHING with you or me or whoever, but she can't keep quiet."

However, when Hill's supporter was interviewed about these comments, he denied having any information about Lin Hill communicating any confidential City information or having access to Mayor Hill's City-issued iPad or email address. All Hill's supporter would say is that if Lin Hill had access to Mayor Hill's City email account, it was only because Mayor Hill was so busy during the day and has no access to a phone or email. *"Married people act as a team sometimes in these situations."*

Another City resident told the Investigator that she saw Lin Hill type in a password and access Mayor Hill's City-issued iPad and that Lin Hill often forwarded emails critical of Hill to third parties. Additionally, shortly after the City Council learned Hill communicated with the FTC, one of the City Councilmembers contacted Hill via email and complained about his conduct. Within a couple of hours, a City resident submitted a Public Records Act for all communications between Hill and the City Councilmember who sent the email criticizing Hill for his correspondence with the FTC.

The Investigator also confirmed with the person who actually submitted the PRA request that Lin Hill told her to submit the request because she was *"over the top upset"* about the Councilmember criticizing Hill's communications with the FTC. Additionally, one City employee stated it was "protocol" to contact Lin Hill about City business during the workday because Mayor Hill was not available.

Finally, a City employee confirmed that Lin Hill has long been considered an *"administrative assistant"* for Hill. The employee stated it is not uncommon for Lin Hill to schedule appointments and pick up and drop off documents. The employee responsible for overseeing the City's information services also confirmed that Lin Hill asked him to provide her a secondary password for Hill's City webmail. Lin Hill approached the information services employee at City Hall without advanced notice and said, *"Jim needs to get into his email. He forgot his password."* The employee provided the information because *"she was the Mayor's wife."* In an article for the San Luis Obispo ("SLO") Tribune on March 3, 2017, Hill admitted he shared his personal email address with his wife and that he forwards documents and emails to his personal email in order to print and review them at home. Hill told the SLO Tribune he no longer forwards City emails to his personal account.

Although the Investigator did not sustain allegations that Mayor Hill intentionally disclosed confidential City personnel matters, the Investigator sustained the allegation that Lin Hill has access to Hill's email and possibly confidential personnel information, closed session information, and attorney-client communications.

Re: *Legal Conclusions and Recommendations following Allegations of Brown Act Violations by Arroyo Grande Mayor Jim Hill*

August 7, 2017

Page 9

2. Actions as Board of Director for District

Members of the public complained during the January 24, 2017 City Council meeting that Hill disclosed an “*employee contract*” before it was finalized and noticed on the Board’s agenda. However, the Investigator determined that it was actually the District Superintendent who emailed a copy of the District Administrator’s employment agreement to the members of the Board on or about April 6, 2016. After receiving the agreement, Hill forwarded it to the home email address he shared with his wife.

The email was then forwarded from the Hills’ shared account to someone in the community. The Investigator was unable to determine when the District Administrator’s employment contract was made available to the public because the District’s previous website was eliminated. A District employee stated it is customary to post on Friday for public meetings held the following Wednesday.

The Investigator determined the allegation that Hill disclosed confidential personnel information, specifically an employment agreement, was **not sustained**. The Investigator determined that the District Administrator’s employment agreement was not provided to a third party until at or near the time it was presented to the Board in open session. The Investigator stated there was no objective evidence that the agreement was released to any third parties before it was part of the public domain.

Therefore, the Investigators findings as to each allegation are as follows:

- As Mayor of the City, Hill disclosed and/or provided access to closed session communications to third parties. **Not sustained - There is insufficient evidence to determine whether the alleged conduct occurred.**
- As Mayor of the City, Hill disclosed confidential attorney-client and/or attorney work product privileged information/documents to third parties. **Unfounded - The investigation clearly established that the allegation is not true.**
- As Mayor of the City, Hill individually, and outside the direction of a majority of the Council acted unilaterally and outside his legislative role, including but not limited to becoming involved in and/or interfering in personnel matters. **Sustained - The alleged conduct occurred.**
- As Mayor of the City, disclosed confidential personnel matters to third parties. **Not sustained - There is insufficient evidence to determine whether the alleged conduct occurred.**
 - Special Finding: Hill more likely than not provided, permitted and/or was aware of access to his City email account by his wife, potentially exposing

Re: *Legal Conclusions and Recommendations following Allegations of Brown Act Violations by Arroyo Grande Mayor Jim Hill*

August 7, 2017

Page 10

a variety of confidential communications to an unauthorized third party.

Sustained - The alleged conduct occurred.

- As a Board Member for the District, Hill disclosed and/or provided access to closed session communications to third parties. **Unfounded - The investigation clearly established that the allegation is not true.**
- As a Board Member for the District, Hill disclosed confidential attorney-client and/or attorney-work product privileged information/documents to third parties. **Sustained - The alleged conduct occurred.**
- As a Board member for the District, Hill individually, and outside the direction of a majority of the Board, acted unilaterally and outside his legislative role, including but not limited to becoming involved in and/or interfering in personnel matters. **Sustained - The alleged conduct occurred.**
- As a Board member for the District, Jim Hill disclosed confidential personnel matters to third parties. **Sustained - The alleged conduct occurred.**⁴

II. LEGAL CONCLUSIONS

The Investigator's conclusions regarding Hill's conduct creates potential liability for both the City and the District. This is particularly true given the number of personnel investigations currently being conducted at the District and Hill's apparent insistence on involving himself in those matters. It seems clear from the Report that Hill is more aligned with the District Superintendent than the District Administrator, and many of Hill's actions appear motivated by that alliance.

A. Legal Issues Affecting the City

1. Conflict of Interest

Hill submitted correspondence to the FTC arguably advocating for Spencer's Fresh Market, a local grocery store and one of Hill's political supporters. Hill represented himself as the "*Mayor of the City of Arroyo Grande (population 17,000)*" in the letter. He also signed the letter as the Mayor and provided the City's business address. Hill's actions create a possible conflict of interest in decisions pertaining to business opportunities in the community that may benefit, or even appear to benefit, Spencer's Fresh Markets.

⁴ Although the Investigator determined Hill may not have disclosed the District Administrator's employment agreement before it was made public, the Investigator sustained an allegation that Hill disclosed confidential personnel materials that also included attorney-client privileged information. The Investigator cited multiple emails between December 30, 2016 and January 17, 2017 wherein Hill transmitted arguably confidential personnel information to members of the public.

Re: Legal Conclusions and Recommendations following Allegations of Brown Act Violations by Arroyo Grande Mayor Jim Hill

August 7, 2017

Page 11

a. Government Code section 1090

Government Code section 1090 prohibits government officers from being financially interested in a contract made in their official capacity. Section 1090 is concerned with public officials having any interest that would prevent them from exercising absolute loyalty and undivided allegiance to the public entity they serve.⁵ Its objective is to remove or limit the possibility of any personal influence, directly or indirectly, which might bear on an official's decision.⁶ Government Code section 1090 is aimed at eliminating temptation, **avoiding the appearance of impropriety**, and assuring the government of the officer's undivided and uncompromised allegiance.⁷

Government Code section 1090's statutory prohibition against making contracts cannot be avoided by having one member of the Council with the proscribed financial interest abstain from participating in the decision-making process.⁸ Under Government Code section 1090, the mere presence of one Councilmember with a financial interest in a transaction is sufficient to invalidate the transaction even if the member has not voted on the matter or participated in the discussions leading up to the vote. Thus, when it applies, Government Code section 1090 effectively disqualifies the entire Council from acting.⁹

An action undertaken in violation of Section 1090 is void and unenforceable.¹⁰ Where courts have found violations of Government Code section 1090, including cases where an official was found to have an indirect interest, the courts have consistently voided such contracts.¹¹ Upon finding that a contract is void and therefore unenforceable, the court may impose various remedies, including the requirement that the individual with the illegal interest forfeit and repay any wages earned as part of an employment contract or return to the agency any monies obtained through the contract.¹² Criminal sanctions for violations of Section 1090 *et seq.* are punishable by a fine of \$1,000, or by imprisonment in state prison.¹³ Moreover, a person found to have violated Section 1090 is "forever disqualified from holding any office in" California.¹⁴

The owner of Spencer's Fresh Market is one of Hill's political supporters and possible campaign contributor. It is not difficult to imagine how Hill could conceivably benefit if Spencer's Fresh Market expands its presence in the City. Although Hill stated he only sought transparency in the FTC's divestiture decision, he refused to notify the rest of the City Council,

⁵ *Thomson v. Call* (1985) 38 Cal.3d 633, 648.

⁶ *Finnegan v. Schrader* (2001) 91 Cal.App.4th 572, 579.

⁷ *Id.* at 579-580.

⁸ *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201, 211-212; *Thomson, supra*, 38 Cal.3d at 649.

⁹ *Finnegan v. Schrader* (2001) 91 Cal.App.4th 572, 581-582.

¹⁰ *Thomson v. Call* (1985) 38 Cal.3d 633, 646.

¹¹ *Id.* at 645.

¹² See *Finnegan, supra*, 91 Cal.App.4th at 583-584.

¹³ Gov. Code, § 1097.

¹⁴ Gov. Code, § 1097.

the City Manager, or the City's attorneys. If he had notified other City representatives, any correspondence with the FTC could have been drafted in a manner that made it clear the Council was not advocating on behalf of any City business and certainly not for a business that is a political supporter of the Mayor. If the City Council takes action on any resolution, policy, or contract that benefit Spencer's Fresh Market, even indirectly, the Council's decision may be void as a violation of Government Code section 1090.

b. Political Reform Act

The Political Reform Act of 1974 provides that "[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." The Political Reform Act is concerned with both actual financial conflicts of interest and the appearance of such conflicts.¹⁵ Hill's letter to the FTC could plausibly be viewed as advocacy on behalf of a political ally and possible campaign contributor.

A public official "makes a government decision" when he or she, while acting within the authority of his or her position, votes on a matter, appoints a person, obligates or commits his or her agency to any course of action, enters into any contract on behalf of his or her agency, or determines not to act in any of these matters, unless the decision not to act is due to a financial conflict of interest and the decision not to act is accompanied by an oral or written disclosure of the financial interest.¹⁶ "Participation" in the making of a decision is defined to include: (1) negotiations; and (2) advice by way of research, investigations, or preparation of reports or analyses for the decision maker, if these functions are performed without significant intervening substantive review.¹⁷ An official is "attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee, or consultant of the agency."¹⁸

As the City's Mayor, Hill is a "public official" within the meaning of the Political Reform Act. In his capacity as Mayor, he has the ability to make or vote on contracts or obligate the City to any course of action through his position. Unlike Government Code section 1090, if a public official has a conflict of interest under the Political Reform Act, the conflict does not preclude the governing body from making the decision, as long as certain conditions are met: (1) the interested official publicly identifies the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public; (2) immediately prior to the consideration of the matter, recuses himself from discussing or voting on the matter, or otherwise acting in violation of section 87100; and (3) leaves the room until

¹⁵ *Witt v. Morrow* (1977) 70 Cal.App.3d 817.

¹⁶ Cal. Code Regs., tit. 2, § 18702.1.

¹⁷ Cal. Code Regs., tit. 2, § 18702.2.

¹⁸ Cal. Code Regs., tit. 2, § 18702.3.

Re: Legal Conclusions and Recommendations following Allegations of Brown Act Violations by Arroyo Grande Mayor Jim Hill

August 7, 2017

Page 13

after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters.¹⁹

c. Common Law Conflict of Interest

In addition to statutory prohibitions from an official's participation in official acts or influencing decisions in which he or she has a conflict of interest, common law principles also apply. The common law consists of court decisions, Attorney General's Opinions, and other authority that have evolved over time and that bind the courts in analyzing the law. California common law has long recognized that public officials should not be interested in contracts made in their official capacity. The common law rule prohibits public officers and employees from acting for the public in any matters in which they have a private interest, which might conflict with their public duties.²⁰ California courts have held that a public official cannot place himself or herself in a position where he or she might be tempted by private interests to disregard the best interests of the public.²¹ Significantly, unlike its statutory counterparts, the common law doctrine extends to "non-economic" conflicts – including political conflicts; therefore, a conflict or the mere appearance of a conflict that is not related to a financial interest may prohibit participation although no money is at stake for the individual(s) involved.²²

The success of Spencer's Fresh Market is uniquely beneficial to Hill. Although he has not yet attempted to influence the City Council on any agreements or contracts, arguably lobbying the FTC for Spencer's Fresh Market may create the appearance of impropriety. The common law rule prohibits public officers and employees from acting for the public in any matters in which they have a private interest, which might conflict with their public duties.²³ California courts have held that a public official cannot place himself or herself in a position where he or she might be tempted by private interests to disregard the best interests of the public.²⁴ The City should consider Hill's conduct in this case before allowing him to participate in any votes that may, even indirectly, benefit Spencer's Fresh Market.

2. California Public Records Act ("CPRA")

Hill told the local press that he forwarded City emails to the personal email address he shares with his wife. He may also conduct City business via his personal email address. While it is not a violation of law to conduct City business via a personal email address, it may make it more difficult for the City to comply with a request for documents pursuant to the California

¹⁹ Gov. Code, § 87105(a)(1)-(3).

²⁰ See 58 Ops.Cal.Atty.Gen. 345, 354-355 (1975); 59 Ops.Cal.Atty.Gen. 604, 613-614 (1976).

²¹ *Noble v. City of Palo Alto* (1928) 89 Cal.App. 47, 51; *People v. Darby* (1952) 114 Cal.App.2d 412, 425; 40 Ops.Cal.Atty.Gen. 210, 212 (1962); *People v. Honig* (1996) 48 Cal.App.4th 289, 314.

²² *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152.

²³ See 58 Ops.Cal.Atty.Gen. 345, 354-355 (1975); 59 Ops.Cal.Atty.Gen. 604, 613-614 (1976).

²⁴ *Noble v. City of Palo Alto* (1928) 89 Cal.App. 47, 51; *People v. Darby* (1952) 114 Cal.App.2d 412, 425; 40 Ops.Cal.Atty.Gen. 210, 212 (1962); *People v. Honig* (1996) 48 Cal.App.4th 289, 314.

Re: Legal Conclusions and Recommendations following Allegations of Brown Act Violations by Arroyo Grande Mayor Jim Hill

August 7, 2017

Page 14

Public Records Act.²⁵ Even personal emails about City business are subject to production under the Public Records Act.²⁶

“Resolution of the question of whether a writing is [subject to production under the CPRA] particularly when writings are kept in personal e-mail or text message accounts, will often involve an examination of several factors, including the content itself; the context in, or purpose for which, it was written; the audience to whom it was directed; and whether the writing was prepared by an employee acting or purporting to act within the scope of his or her employment.”²⁷

In order to avoid the labor and expense of reviewing, compiling, and producing personal emails subject to production under the CPRA, all City representatives should be directed to communicate about City business only via the City’s email address. Otherwise, any CPRA request about City business may require a review of personal emails to determine if any are subject to production, particularly where an elected official has a recognized pattern of using personal email for City business.

3. Possible Violations of Brown Act and Privacy Issues in the Future

Although the Investigator did not sustain allegations Hill disclosed information learned in closed session to third parties or confidential personnel issues, it seems likely violations will occur in the future. Witnesses said Hill no longer forwards City emails to the personal account he shares with his wife. However, Hill also told the media he will continue to communicate with his wife about City business.

Since Lin Hill has access to Mayor Hill’s City email and his personal email, it seems likely she has seen or has access to confidential City information, including information shared in closed session, confidential personnel information, and confidential attorney-client communications. Even one of Hill’s supporters stated Lin Hill could not “*keep her mouth shut.*” If she discloses information learned from Mayor Hill’s emails, the City could suffer liability for either violations of the closed session privilege.²⁸ Any person who improperly discloses confidential information may be subject to the following sanctions: (1) Injunctive relief to prevent disclosure of confidential information...; or (2) Referral of a member of a legislative body who has willfully disclosed confidential information to the grand jury.²⁹ Simply because there was insufficient evidence to prove that Mayor Hill violated the Brown Act in this case does

²⁵ Gov. Code, §§ 6250, *et seq.*

²⁶ *City of San Jose v. Superior Court (Ted Smith)* (2016) 5 Cal.5th 608, 616

²⁷ *Id.*, at 618.

²⁸ See Gov. Code, § 54963, subd. (a).

²⁹ Gov. Code, § 54963, subd. (c).

not mean he will not violate the Brown Act or disclose confidential personnel information in the future.

4. Violation of the City Council Operational Manual and Municipal Code

Hill's conduct may also violate the terms of the City Council Operational Manual and Municipal Code. Chapter 3, paragraph 2(A) states,

“City Council gives direction only as a convened body. Share opinions and views, but refrain from providing direction without the participation of the full Council. Do not individually attempt to influence the decisions or recommendations of staff.”

Section 2.08.080 of the City's Municipal Code is similar to Chapter 3, paragraph 2(A) in that it prevents the City Council from issuing direct orders to any employee under the supervision of the City Manager.

Although the Investigator sustained allegations that Hill unilaterally acted outside his legislative role on City matters, there is no evidence he issued direction to staff or attempted to influence their recommendations. As a result of Hill's communications with the FTC, the Council adopted Chapter 9 of the Operational Manual that expressly prevents Members from communicating in their official capacity, without notifying the remainder of the Council. The Operational Manual provisions pertaining to electronic communications also do not expressly prohibit a Member from giving his or her password to someone else or allowing another to access City emails.³⁰ Therefore, given that Chapter 9 post-dates Hill's communications with the FTC and Members of the State Legislature and Hill never directly issued orders to City employees, Hill's conduct does not appear to directly violate the City Council's Operational Manual or Municipal Code.

B. Legal Issues Affecting the District

The Investigator sustained three out of four allegations against Director Hill for disclosing confidential attorney-client communications, confidential personnel matters, and for unilaterally acting beyond his legislative role in both personnel and operational matters.

1. Attorney-Client Communications

Hill disclosed confidential attorney-client communications to third parties on numerous occasions. He also commented on the veracity of employee complaints and compliance with the public records act to third parties. His actions violate the District's right to protect its attorney-client communications. The attorney-client privilege permits members of a local body to receive

³⁰ See Arroyo Grande City Council Operational Manual, Chapter 7.

Re: Legal Conclusions and Recommendations following Allegations of Brown Act Violations by Arroyo Grande Mayor Jim Hill

August 7, 2017

Page 16

written and verbal advice from counsel, and written correspondence is exempt from disclosure unless the privilege is expressly waived.³¹ The District's attorney-client privilege is held by the entire Board, not by any individual Board member or District representative. The attorney-client privilege may only be waived by majority vote of the Board, and not by any individual Board member.

Additionally, attorney-client privileged communications and documents are not subject to production pursuant to the PRA. Government Code section 6254, subdivision (k) allows public entities to withhold documents otherwise privileged under state or federal law. Attorney-client communications and attorney work product are privileges under both state and federal law.³² Courts have interpreted the CPRA as broadly preserving the attorney-client privilege between public entities and their attorneys.³³ Attorney-client privilege applies to communications in the course of professional employment and **that are intended to be confidential.**³⁴

Under the Evidence Code, a client holds a privilege to prevent the disclosure of confidential communications between client and lawyer. 'Confidential communication' is defined as including 'a legal opinion formed and the advice given by the lawyer in the course of that [attorney-client] relationship.' ... **Under the Evidence Code, the attorney-client privilege applies to confidential communications within the scope of the attorney-client relationship even if the communication does not relate to pending litigation; the privilege applies not only to communications made in anticipation of litigation, but also to legal advice when no litigation is threatened.** (Emphasis added.)³⁵

Email communications between District Counsel and members of the Board about employee complaints, personnel investigations, and CPRA requests are privileged communications because they are intended to be confidential and occur within the course of professional employment. Even after District Counsel Stockton advised the members of the Board not discuss a pending investigation into complaints against the District Superintendent with anyone other than counsel, Hill forwarded an email chain between the Board and District Counsel to the Superintendent himself. Hill does not have authority to waive the attorney-client privilege and he is violating a privilege held by the entire Board.

³¹ See *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363

³² Evid. Code, § 952; Fed. R. Civ. P. 501.

³³ *Sutter Sensible Planning, Inc. v. Sutter County Board of Supervisors, et al.* (1981) 122 Cal.App.3d 813, 824.

³⁴ *Holms v. Superior Court*, 42 Cal.2d 500, 506 (1954).

³⁵ *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 333-34.

Re: Legal Conclusions and Recommendations following Allegations of Brown Act Violations by Arroyo Grande Mayor Jim Hill

August 7, 2017

Page 17

Additionally, even though the privilege is held by the entire Board, if litigation results from any of the on-going personnel issues at the District, a plaintiff may allege the Board waived privilege when Director Hill forwarded confidential attorney-client communications to people not covered by the privilege. If a court agreed, communications and documents meant to be confidential may be admitted against the District. Furthermore, the purpose of the attorney-client privilege is to ensure open and honest dialogue between attorney and client. If either the attorney or the client have an active, well-placed fear that their communications will become public, it may impede the attorney's ability to effectively represent his or her client.

2. Confidential Personnel Matters

In addition to disclosing the District's confidential attorney-client communications, Director Hill also disclosed confidential personnel information. He actively communicated with the District Superintendent and members of the public about employee and community complaints against other District employees and Directors, including the District Administrator. Public employees have a privacy interest in their personnel matters.³⁶ Employees may bring suit against an employer for a violation of the right to privacy when there is a legally protected privacy interest, a reasonable expectation of privacy, and there is a "serious invasion of the right to privacy."³⁷

Additionally, the District's Personnel Rules state the Board of Directors may hear employee grievances after previous appeals to the District Administrator have been exhausted.³⁸ There are only three Directors on the District's Board. If a Director has an established opinion about the employee's grievance, he or she would likely have to recuse him or herself from considering the employee's grievance. If not, an employee or the District Administrator may allege bias and a violation of the Personnel Policies. Finally, the Public Records Act generally exempts the production of personnel records.³⁹ However, if those records are disclosed to a third person or become a matter of public record, the exemption is waived.⁴⁰

³⁶ Cal. Const. Art. I, § 1; *Life Technologies v. Superior Court (Timothy H. Joyce)* (2011) 197 Cal.App.4th 640, 652.

³⁷ *Pettus v. Cole* (1996) 49 Cal.App.4th 402, 439, citing *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 26.

³⁸ District Personnel Policies, Chapter 5010, subd. (4)(D).

³⁹ Gov. Code, § 6254, subd. (c).

⁴⁰ Gov. Code, § 6254.5 ("Notwithstanding any other law, if a state or local agency discloses a public record that is otherwise exempt from this chapter, to a member of the public, this disclosure shall constitute a waiver of the exemptions...")

Re: *Legal Conclusions and Recommendations following Allegations of Brown Act Violations by Arroyo Grande Mayor Jim Hill*

August 7, 2017

Page 18

3. Concern for Serial Meetings in Violation of the Brown Act

The Investigation revealed emails between Hill and Alternate Directors about personnel matters that may appear on a closed session agenda. Although it is not entirely clear from the emails produced by the Investigator whether Hill emailed Board Members about matters that have already appeared on the Board's agenda, it is possible that Hill is violating or has violated the Brown Act by engaging in serial meetings.

The Brown Act requires "meetings" of legislative bodies of local public agencies to be open and public. The District's Board of Directors includes three Directors and two Alternates. A majority and quorum is present when two out of three members are present. A "meeting" under the Brown Act is a congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item within the subject matter jurisdiction of the legislative body or its local agency.

The Brown Act defines meetings, among other things, as including any use of direct communication, personal intermediaries, or technological devices (e.g., telephone conference or email) employed by a majority of members of a legislative body to develop a collective concurrence.⁴¹ A "serial meeting" involves communications by individual members of the Board which ultimately involves a majority of members.⁴²

4. Violation of District Policies

Hill may be in violation of multiple provisions of the District's Board of Directors Bylaws. Hill may be guilty of the following violations:

- Section 6.2 states Members "shall exercise their independent judgment on behalf of the interest of the entire District, including the residents, property owners and the public as a whole."
- Section 6.4 states "Directors should at all times conduct themselves with courtesy to each other, to staff, and to members of the audience present at Board meetings."
- Section 6.8 states "Directors are cautioned when using email communications. Any communication from the District Administrator, or the District's legal

⁴¹ 63 Ops.Cal.Atty.Gen. 820 (1980).

⁴² Gov. Code, § 54952.3, subd. (a). An example of a serial meeting would be where the District's Board of Directors consists of seven members. On next week's Board Agenda is a matter involving a decision on whether to approve a building contract. Member A is unsure about the name of a building contractor that submitted a bid on the contract and emails Members B, C, and D asking them if they know the name of the contractor. The email communication between Members A, B, C, and D involves discussion of an upcoming agenda item and is a serial meeting because it involves four out of seven Board members (or more than a majority of the Board members).

Re: Legal Conclusions and Recommendations following Allegations of Brown Act Violations by Arroyo Grande Mayor Jim Hill

August 7, 2017

Page 19

counsel, or from other members of the Board of Directors, in each case the Director in responding to that email shall not respond to ‘all,’ as that could constitute a violation of the Brown Act for a serial meeting or other provisions.”

Hill has not acted in the District’s best interest by repeatedly violating the attorney-client privilege. He has openly advocated for complaining employees in a manner that may be admissible against the District as a whole in future litigation and appeared to endorse a community member’s accusation that the District violated the Public Records Act. Rather than directing his concerns to the entire Board in closed session or communicating with District counsel only, he insists on inserting himself in confidential District matters in a way that may result in substantial District liability in the future.

Hill has also engaged in discourteous conduct toward the District Administrator and Counsel. Hill repeatedly demanded District Counsel to “*stop the harassment of our employee now!*” and “*Stop the phony investigation. Stop wasting our time and resources!!*” Hill’s conduct as a Board Member may be viewed as threatening; it is certainly discourteous. The District Administrator also stated that Hill was “*dictatorial*” during the December 16, 2016 meeting.

Finally, as explained above, Hill has not demonstrated caution when using email communications. He forwarded confidential attorney-client communications to District employees and members of the public and may have discussed legislative matters with other Board Members in a manner that violated the Brown Act.

III. RECOMMENDATIONS

As an elected official, the City and District are limited in what steps may be taken to correct Hill’s conduct. However, the District in particular should consider some action against Hill given the seriousness of his conduct.

A. Recommendations for Both the City and the District

1. Public Censure

Censure would allow the District Board of Directors and City Council to publicly condemn Hill’s conduct. The Board and City Council may discuss its objections to Hill’s conduct in open session so long as the statement of censure does not include any otherwise confidential information. As a general matter, any complaint brought against an elected official **may not** be discussed in closed session unless there is significant exposure to litigation.⁴³ However, even if there is a significant exposure to litigation, the facts and circumstances of the closed session will likely need to be stated on the agenda or stated publicly before going into closed session pursuant to Government Code section 54956.9, subdivision (g).

⁴³ 61 Ops. Cal. Atty. Gen. 10 (1978); See *Page v. Mira Costa Community College Dist.* (2009) 180 Cal.App.4th 471, 498-4899.

Re: Legal Conclusions and Recommendations following Allegations of Brown Act Violations by Arroyo Grande Mayor Jim Hill

August 7, 2017

Page 20

There does not appear to be any "significant exposure to litigation" at this stage, so the Board of Directors and the City Council could address Hill's conduct in full view of his constituents. Hill is not entitled to any due process in advance of public censure; however, if the City and District decide to impose a public censure, both should consider providing Hill notice and sufficient information about the allegations underlying the censure for him to defend himself in open session.⁴⁴

Public censure similarly is not prohibited by the common law and statutory prohibitions for defamation. Although Hill may argue that negative comments made about him in open session constitute defamation, the law expressly provides an exception for statements made in an open legislative process.⁴⁵

Section 6.9 of the District's Bylaws provides express guidance on handling complaints between Board Members. "Any Director may complain to the District about another Director's conduct." Section 6.9 requires that the complaining Director submit a written complaint to the District Administrator and District Counsel. The District is required to notify the accused Director within five days of receiving a written complaint. After reviewing the complaint, the District Administrator and Counsel is required to submit a "preliminary report" to the Board. If the Board decides to take any action, it must be by resolution and "consistent with the elected officials' rights to free speech."

The District, in particular, should seriously consider public censure. Hill's repeated misconduct has exposed the District to considerable liability and it does not appear his conduct will change in the future. He has not admitted any wrongdoing and did not even bother to participate in the investigation.

2. Quo Warranto

The only legal option for removing a sitting elected official is an action in *quo warranto*.⁴⁶ An action in *quo warranto* may be authorized to test title to public office by evaluating whether the person lacks the essential qualifications.⁴⁷ However, in order for a private party to file an action in *quo warranto*, that party must first obtain the Attorney General's consent.⁴⁸

⁴⁴ Any matter discussed in open session must be noticed at least 72 hours in advance. (Gov. Code, § 54954.2, subd. (a).) Any matter discussed in closed session must be properly noticed on the Agenda 24 hours in advance. (Gov. Code, §§ 54957.2 and 54957.7.) Hill should be provided at least as much notice as is required under the Brown Act for notice to the public.

⁴⁵ Code Civ. Proc., § 425.16, subd. (e)(1) and (2); *Briggs v. Elden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1122.

⁴⁶ Code of Civ. Proc., § 803.

⁴⁷ 74 Ops.Cal.Atty.Gen. 26 (1991).

⁴⁸ 97 Ops.Cal.Atty.Gen. 12 (2014).

Re: Legal Conclusions and Recommendations following Allegations of Brown Act Violations by Arroyo Grande Mayor Jim Hill

August 7, 2017

Page 21

Furthermore, actions in *quo warranto* arise mostly where the plaintiff contends the elected official does not reside in the district or neighborhood he or she was elected to represent. There is no case law in support of the proposition that an action in *quo warranto* may be filed where the plaintiff alleges only inappropriate conduct.

3. Trainings

The Board of Directors and the City Council are required to take bi-annual ethics training. However, the District and City should consider requiring additional ethics, as well as Brown Act trainings and possible counselings about the importance of complying with the Brown Act and the requirements of the Political Reform Act. Hill's communications to the FTC demonstrate that perhaps he is not sufficiently familiar with the importance of avoiding even the appearance of impropriety in his advocacy for specific local businesses.

Additionally, although the Investigator did not sustain allegations that Hill violated the Brown Act by disclosing confidential closed session information, Hill may have violated the Brown Act by engaging in serial meetings. The Board of Directors and City Council should be given refresher training on the Brown Act.

B. Specific Recommendations for City – Email Security

Hill forwarded City emails to the personal email account he shared with his wife. His wife also asked a City employee to provide her with Hill's email password. The City should consider issuing new passwords for all City email accounts and advise all employees and elected officials not to share their passwords with anyone. The City should also consider updating the Council's Operational Manual to expressly prohibit any Councilmember from distributing his or her City email password or allowing anyone to view City emails. The City should explain that sharing passwords or allowing non-City employees or representatives to access City email accounts not only risks disclosure of confidential information but may affect the integrity of the City's computer servers.

C. Legal Conclusions and Recommendations are Privileged; However, the Investigation Report May be Disclosed under the PRA

An attorney's legal conclusions and recommendations to a public entity client are not subject to disclosure pursuant to either the California Public Records Act or the Brown Act and are considered confidential attorney-client communications.⁴⁹ However, the Investigation

⁴⁹ Gov. Code, §6254, subd. (k) ["public entity need not disclose '[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.'"]. (Italics added.); *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 377 ["We see nothing in the legislative history of the amendment suggesting the Legislature intended to abrogate the attorney-client privilege that applies under the Public Records Act, or that it intended to bring written communications from counsel to governing body within the scope of the Brown Act's open meeting requirements."].)

Re: *Legal Conclusions and Recommendations following Allegations of Brown Act Violations by Arroyo Grande Mayor Jim Hill*

August 7, 2017

Page 22

Report may be disclosed under the California Public Records Act. Although Government Code section 6254, subdivision (b) prevents disclosure of any document pertaining to pending litigation, that exemption only applies where the dominant purpose in preparing the document is pending litigation.⁵⁰

The Investigation Report was not prepared for use in litigation. Furthermore, this Investigation was squarely aimed at investigating an elected official. Courts will read the CPRA broadly and investigation reports into allegations against elected officials where at least some of the allegations are sustained have been ordered produced.⁵¹ If the City Council decides to release the Report, it should redact out employees' names and the names of private citizens. This Report only uses proper names on page 3. The remainder of the Report does not refer to witnesses by name.

IV. CONCLUSION

Based on the Investigator's findings, Hill has repeatedly disclosed the District's confidential attorney-client communications and meddled in personnel matters beyond the scope of his legislative role. His disclosure of confidential information to third party members of the community and employees may seriously harm the District if someone files a lawsuit. The District should consider public censure.

Hill's actions against the City are less serious and do not appear to directly violate provisions of the City Council Operational Manual. Although he acted outside the scope of his legislative role by contacting the FTC in support of Spencer's Fresh Market, the City Council amended its Operational Manual to prevent similar conduct in the future.

The City should also issue new email passwords and update its Operational Manual to prevent any City Councilmember from disseminating his or her password to anyone not employed by the City. Hill stated he no longer forwards City emails to his personal email account, so with updated passwords and policies, the risk to the City's email servers should be abated. Both the City and the District should require its elected officials to take updated training on the Brown Act and Government Ethics to ensure that Hill and other City and District elected officials understand the importance of complying with the law.

⁵⁰ *City of Hemet v. Superior Court* (The Press Enterprise Company) (1995) 37 Cal.App.4th 1411, 1419 [California Public Records Act (CPRA) provision allowing public agency to withhold records pertaining to pending litigation did not protect against disclosure to newspaper of police department internal investigation report where report was not prepared with dominant purpose relating to litigation and disclosure of report would not hamper city's ability to defend itself in lawsuit since disclosure of report to opposing party would inevitably be required anyway.".]

⁵¹ *Bakersfield City School Dist. v. Superior Court (The Bakersfield Californian)* (2004) 118 Cal.App.4th 1041, 1047; *Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250, 1276 ["In light of the investigator's factual findings, the District's conclusion based on those findings that Marken violated its board policy prohibiting the sexual harassment of students and imposition of discipline, the exemption from mandatory disclosure in section 6254, subdivision (c), is inapplicable; and release of the investigation report and disciplinary record (redacted as directed by the superior court) is required under the CPRA."].)

**Re: *Legal Conclusions and Recommendations following Allegations of Brown Act
Violations by Arroyo Grande Mayor Jim Hill***

August 7, 2017

Page 23

Please do not hesitate to contact me if you have any questions or wish to discuss in greater detail.

Sincerely,

LIEBERT CASSIDY WHITMORE

A handwritten signature in black ink, appearing to read 'Kimberly A. Horiuchi', written over the printed name.

Kimberly A. Horiuchi

SKB/KAH:slp



SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT

1600 Aloha Oceano, California 93445-9735
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<http://www.sslocsd.org/>

Date: September 20, 2017

To: Board of Directors

From: Paul Karp and Richard Sweet, Technical Consultants; Fanny Mui, Interim Plant Superintendent

Subject: **TECHNICAL CONSULTANTS AND PLANT OPERATION'S REPORT**

This report represents ongoing information on latest District staff activities on, major capital project and studies, programmatic initiatives, regional collaboration, NPDES discharge permit renewal, Plant Operation's report detailing our operation and maintenance activities. *Updates since the last report are provided in italics below:*

Major Capital Projects:

- **Cherry Ave. Arroyo Grande Sewer Bridge Project:**

CEQA: Status: Complete. Board approved MND at its September 7, 2016 meeting. Regulatory permits: Complete. All Regulatory permits received.

At the June 21, 2017 Board meeting, the Board awarded a contract to Brough Construction Inc. in the amount of \$280,200. Since then an Agreement has been executed by both parties. A bird nesting survey was recently commissioned in order for the project to initiate work on August 1st. *Project is 75 percent complete and will be completed by October 31st. Site visit by technical consultants verified project progress.*

Mechanical Bar Screen – Status: Operational.

During the week of July 24th, Duperon representatives were on-site to install additional components and address remaining operational issues. *A final change order for approximately \$6,000 is being processed. Contractor is installing devices to enhance the facility discharge. Final payment is pending completion to refine discharge.*

- **Redundancy Project:**

Design: On March 16, 2016, the Board approved a design contract with Kennedy/Jenks for Phase I of this project. On June 21st, the Board approved proceeding with the remaining phases under the contract, including final design. On July 5th, the Board approved Optional Task 1.4A – Alternatives for Future Production of Recycled Water. Several meetings are planned with Kennedy/Jenks on August 2nd to discuss both the design for flood mitigation and progress on optional recycled water task.

A meeting with the Design team and stakeholders was held on Wednesday, August 2, 2017 to define Flood Hazard Mitigation priorities. A phone conference between design team and Technical Consultants was held to define options and timeframes. Options will be presented to the board in late fall of 2017. Meetings with

Coastal Commission Permitting:

On May 10, 2017, the Commission voted unanimously to approve a 30-year Coastal Development Permit for the Project (see attached press release). The Commission approved revised Findings on June 7th finalizing their May 10th decision. The Notice of Intent to Issue a CDP was received from Coastal Commission staff on June 19th, and staff returned it acknowledging its receipt. Environmental Science Associates is under contract to develop the Coastal Hazard Plan, (one of the conditions contained in the CDP), and will be meeting/touring our facility on August 1st.

Financing:

State: All portions of the SRF loan package application have been submitted to SWRCB. On July 13th, staff attended a SWRCB SRF Policy and Prioritization workshop. At the workshop SWRCB staff presented the latest information on the program, future fund/loan availability (still more demand than funds availability), and suggestions from audience members on how to make the program more efficient. In addition, a conference call with SWRCB SRF loan staff was held on June 28th to discuss our application. Based upon the call, SWRCB staff has requested a number of submittals including recirculating the MND Addendum through the State Clearinghouse and Board re-adoption, updated cultural resources report, biological species lists for project area, and air quality modeling for construction. Staff will be bringing at a future meeting options to move forward on these submittals.

Federal: United States Department of Agriculture: On June 2nd, staff and MKN met on-site with two USDA representatives to discuss programs USDA administers for funding wastewater infrastructure. The meeting was very positive, with indications the District could be eligible for grants and loans up to one third of the amount needed for the Redundancy Project through a disadvantageous community program. A follow-up meeting and tour of our WWTP was held July 11th. Additional items they are requiring include a preliminary engineering report, updated alternative analysis consistent with NEPA, and preparation of a categorical exclusion.

- **Biosolids Concrete Slab:** Preliminary engineering and design work is complete. With Coastal Commission approval now received, this project can proceed to the next step,

with bid advertisement, and award. We anticipate construction of this project (approximately \$33,000) occurring in late 2017 or Spring 2018.

- **Primary Digester No. 1 Cleanout and Structural Evaluation:** The District has two primary digesters at its facility. Primary Digester No. 1 (constructed in 1965) is long overdue for its regular clean out and inspection (last completed in 2005). In addition, staff and our consultant engineering firm MKN, are concerned with its structural integrity. The first phase is for the cleanout of the digester. The second phase will involve, after cleanout, an inspection and structural survey to determine the digester's structural integrity. Recommendations for any repairs are also proposed as part of this second phase. At the April 5th Board meeting, the Board approved funding for 1st phase of this project. An executed Agreement was recently issued to Wastewater Solids Management for \$243,690 and work is expected to start on August 21st. The temporary centrifuge has arrived from Pace, and is operational. District staff continues to prepare the plant for the project. During the week of August 8th, staff repaired a valve necessary to redirect sludge from digester no. 1 to digester no. 2. *Project is well underway with primary digester drained approximately half way. MKN has been authorized to perform evaluation of structure integrity.*
- **District Control Building and Office:** Significant issues and problems are evident in the District's Operational and Administrative Building. The new concrete flooring for the building has been installed. The next steps are a thorough/deep cleaning of the building, replacement baseboards, interior painting and new furniture. Painting is complete, computer communication equipment has been installed and the facility is operational. *Phone system is being evaluated for efficiencies and enhancements.*

District staff executed a contract with an architectural firm for an audit/assessment of the existing building for disabled access and 2016 Building Code compliance. The Audit Report completed identifies a number of deficiencies that will need major and minor corrective actions. Surveying for the ADA ramps and project plans are projected to be completed in September.

Studies:

Recycled Water Planning Facilities Study Grant: Complete. Staff submitted the Final Study to SWRCB on June 9, 2017. We are awaiting SWRCB final acceptance and a letter allowing final reimbursement. Upon receipt of that letter, District staff will prepare the required documentation and invoice for submission.

Inflow & Infiltration (I & I) Study: The District's plant received significant increased flow this past wet weather season. A multiple phased I&I study approach is being utilized first with the installation of new flow meters to measure any increase flow from our member agencies collection system. Both Phase I and Phase II of the Study were included in the adopted Budget for Fiscal Year 2017-18. As the first step, District staff has purchased another flow meter to collect data for one of our trunk lines

Programmatic Initiatives

Outreach Initiative: At the June 19th Board meeting, the Board approved the Summer 2017 Newsletter. Next steps include printing and distributing the Newsletter through our member agencies utility bills.

Office Job Trailer: On August 31, 2017 the office job Trailer was removed from the site and returned to Atlas Performance Industries, Inc.

Records Management Initiative: At the May 3, 2017, Board meeting the Board adopted a comprehensive overhaul of our existing Records Retention Policy. Staff is also considering various options for housing our C-Train records, as the C-Train must be removed by September 1st per the Coastal Commission CDP waiver issued back in December 2016. These options are being coordinated through the SLO District Attorney's office. The Technical Consultants are considering options to allow the SeaTrain to remain onsite thereby allowing the records to remain onsite. The California Coastal Commission has been contacted to assess permitting requirements. The District is awaiting a response from the Commission.

Human Resources/Personnel Policy Manual Update: All Sections of PPM have now been reviewed (including legal input), updated with significant and comprehensive revisions. Subsequently, the entire revised and updated Manual was sent to SEIU employee union representatives. At the June 17th meeting SEIU representatives provided comments on all Sections of the Updated PPM, except the job descriptions. Comments on the latter are expected at the July 28th meeting.

The negotiation team met with SEIU representatives on September 14th to discuss and refine SEIU's latest proposals and revisions to the draft Memorandum of Understanding.

Strategic Planning Initiative: The Strategic Planning Workshop has been postponed to September.

Financial Initiative: Annual Fiscal Year 2015-2016 Audit: District auditors Glenn Burdette, continue to work with staff to complete our Audit. On July 21st, staff received another list of open items to complete, and have tasked our bookkeeper to work with our Auditors to complete the items as soon as possible. There has been a flurry of materials provided to Glenn, Burdett. Significant progress is being made towards completion of the audit.

Regional Collaboration

- Regional Groundwater Sustainability Project (RGSP): This project consists of a potential future regional recycling project in the South San Luis Obispo County area in conjunction with the City of Pismo Beach, and the District (with participation of our member agencies: Cities of Arroyo Grande, Grover Beach, and Oceano CSD). On June 20th, the MOU between the City of Pismo Beach and the District was approved by the Pismo Beach City Council. The City also awarded a contract for the joint EIR to Rincon Consultants at that same meeting. The Technical Consultants are meeting with the regional advisory group in September. *Technical Consultants met with Water System Consulting to be briefed on project status.*

- Northern Cities Management Area Technical Group - The NCMA TG, formed as a result of the Santa Maria Groundwater Basin (SMGB) Adjudication, is exploring various ways to protect and enhance future water supplies in the basin through groundwater monitoring, and the collection and analyzing of data pertinent to water supply and demand.
- Water Reuse, Central Coast Chapter - The Association is a not-for-profit association (501c6) of utilities, government agencies and industry that advocates for laws, policies and funding to promote water reuse and reclamation.
- Zone 1/1A Flood Control Advisory Committee – The Committee’s focus is to provide input and coordination on proposed improvements and maintenance of the Zone 1/1A flood facilities, working with the Coastal San Luis Resource Conservation District. *The Board appointed Paul Karp, Technical Consultant to the District, to the Flood Control Advisory Committee.*
- Integrated Regional Water Management (IRWM). IRWM is a collaborative effort with the County of San Luis Obispo to manage all aspects of water resources on a region-wide scale.
- San Luis Obispo County Flood Control and Water Conservation District Water Resources Advisory Committee (WRAC)
- Countywide Water Action Team/Water Management Efforts: Water managers throughout San Luis Obispo County meet quarterly to discuss and collaborate on water supply management solutions. *The next meeting is scheduled for September 22nd.*

RWQCB NPDES Permit Renewal

Based upon a recent conversation with RWQCB staff, a draft permit is not likely to be released for public review before late 2017.

In addition, staff revised the Sewer System Management Plan Audit Report to come in compliance with our General WDR. The WDR requires an Audit be completed every two years. Unfortunately, this Audit report was due last summer and was not timely completed. This Audit Report describes our planned activities under the Plan for the upcoming year.

District’s Brine Disposal Program:

District staff completed a revised Brine Disposal Plan this month, and submitted it to the RWQCB for review and evaluation.

Public Records Requests

- *During the month of September, the District received 2 Public Records Requests.*

Plant Operation's Report

During the reporting period of September 1st – September 13th, 2017, it is not yet known if the District's facility continues to regularly meet its Permit limitations as required under the State of California's National Pollutant Discharge Elimination System (NPDES) Permit. Due to renovation of the District's Office, lab analysis has been contracted out. Results from contracted labs take longer to receive than in house lab analysis. Data will be updated as lab results are received. *All process values (lab test results) were within permit limits.*

Monthly Plant Data as of September 13th, 2017

September 2017	INF Flow MGD	INF Peak Flow MGD	INF BOD mg/L	EFF BOD mg/L	BOD % Removal	INF TSS mg/L	EFF TSS mg/L	TSS % Removal	Fecal Coliform MPN/100mL	Chlorine Usage lbs/day
Low	2.24	3.4	360	22		410	29		4	203
High	2.72	5	370	24		460	57		1600	484**
Average	2.45	3.9	365	23	93.7	435	43	90.1	274	275
Sept 2016 AVG	2.26	3.6	472	29.3	93.8	453	40.5	91.1	125.9	230
Limit	5.0			40/60/90	>80		40/60/90	>80	2000	

Limit – 40/60/90 represent NPDES Permit limits for the monthly average, weekly average, and instantaneous value for plant effluent BOD and TSS.

**High chlorine usage due to filling of secondary bug box chlorine tote; filling of secondary bug box tote does not necessarily mean a large amount of chlorine was used that day.

The District's laboratory is expected to be up and running by mid-October. Safety meetings will resume in accordance to the District's Injury and Illness Prevention Program.

Operation and Maintenance Projects

- All Operations staff assisted in completion of daily operations, rounds, and reads
- Reviewed and checked U.S.A.'s near District trunk sewer lines
- Checked #1 Influent pump in Headworks and cleared the line of rags
- Fluid Resource Management removed old elbow to install new elbow for barscreen chute and orifice restrictor plate
- Pacific Petroleum California, Inc. transferred fuel from old diesel tank to new diesel tank. Removed and disposed old fuel tank to install new fuel tank
- Collected Quarterly Biosolids samples for testing by Fruit Growers Laboratory, Inc.
- Adjusted diaphragm and cleaned out cylinder on new polymer feed pump in H&M building
- Inspected and cleared out plugged flow meter at Brine Disposal Station
- Primary Digester Cleaning Project
 - Opened one 36" manway hatch
 - Pre-construction meeting with MKN and Wastewater Solids Management, Inc.
 - WSM completed mobilization and began cleaning operations
- Work Orders
 - De-ragged both primary clarifier sludge pumps

- Rinsed both primary clarifiers
- Test ran Emergency Generator and Bypass Pump
- Changed influent and effluent ISCO pump tubing

Training

- Operator De Leon attended WasteWater Technology Trainers Grade I/II Wastewater Operator Certification & Math Review course at San Jose-Santa Clara Regional Wastewater Facility

Call Outs

- No call outs to report for this reporting period

