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The Honorable David P. Warner
Presiding Judge, San Joaquin County Court
222 E. Weber Ave.
Stockton, CA 95202

Dear Judge Warner,

The Board of Trustees of the San Joaquin County Mosquito and Vector Control District has reviewed the 2012-2013 Civil Grand Jury Final Report concerning the operations of the District. In accordance with Penal Code section 933 the Board has the following responses.

The heading of the report of the 2012-2013 Grand Jury reads “**District Board Ignores the People’s Right to be Informed.**” In the summary of the report the Grand Jury questions the District Board’s commitment to complying with the Brown Act. The report states that the Grand Jury investigated two complaints. It found no violation of the Brown Act based on the first complaint and found that the second complaint was unsubstantiated. Despite those findings, the Report notes that the Grand Jury is concerned that the Board acts in ways to “limit the public’s ability to know about District related issues being considered and acted upon.” The Board believes that this ignores the everyday workings of the District regarding the Brown Act and unfairly characterizes the acts of the Board based on several minor instances.

The Brown Act is premised on the idea that “The people insist on remaining informed so that they may retain control over the instruments they have created.” The Act sets forth requirements for providing notice to the public of the actions taken by the Board. It is an important goal.

Compliance with the Brown Act requires staff time and resources. It takes time to draft, edit, print, post and mail the monthly agendas. (The County of Santa Barbara claimed that Brown Act compliance for meetings in 2005-06 cost \$78,044.) In order to avoid the cost of compliance, the State Legislature in 2012 adopted AB 1464 which suspended the following Brown Act provisions:

- Preparation and posting at least 72 hours before a regular meeting of an agenda that contains a brief general description of each item of business to be transacted or discussed at the meeting. (See Gov. Code § 54954.2(a).)

- Inclusion on the agenda of a brief general description of all items to be discussed in closed session. (See Gov. Code § 54954.2(a).)
- Disclosure of each item to be discussed in closed session in an open meeting, prior to any closed session. (See Gov. Code § 54957.7 (a).)
- Report in open session prior to adjournment on the actions and votes taken in closed session regarding certain subject matters. (See Gov. Code §§ 54957.1(a)(1)-(4), (6); 54957.7 (b).)

Thus, following the adoption of AB 1464 in July 2012, the District was not under a legal obligation to comply with a number of aspects of the Brown Act. Regardless of the change brought about by the suspension of the Brown Act, the District continued to follow the Brown Act regulations. This continued adherence is evidence of the commitment of the District and the Board of Trustees to keeping the people informed.

Despite the unfair characterizations, the 2012 report does contain some good recommendations regarding use of the website and the District will adopt those as described below.

In response to the specific findings, the Board responds as follows:

Finding 1.1 The Board of Trustees failed to comply with the Government Code section 54945.2(a) (1) by providing an inadequate description of agenda items proposed for discussion and action at a public meeting.

Response: The Board wholly disagrees with the finding.

The Brown Act requires that an agenda be posted “containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words.” For the January 15, 2013 meeting, in agenda item 6 the brief description read, “Review of Current Trustee Health Insurance Plan”. The report argues that this does not give the public notice that the Board would be discussing the Trustees’ participation in the “Trustee Health Insurance Plan”. The Board believes that a plain reading of the description does give notice.

Finding 1.2 - The District Board violated the requirements of California Government Code section 54953.3 by failing to have clearly indicated on its sign-up sheet that such requirement was a voluntary action for the public and that no adverse impact would result from failing to sign.

Response: The Board agrees in part with the findings.

Government Code § 54953.3 states that if an attendance sheet is circulated to persons present at a meeting, the sheet “shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.”

Visitors rarely attend Board meetings. Years can pass and no visitors show up. In January 2013, a visitor appeared. The secretary at the District office thought it would be a good idea to have the visitor sign his name and contact number for the minutes of the meeting. So she handed him pad with a name and address line and asked him to "Please sign this". It was a technical violation of 54953.3. It was not intended to intimidate the visitor and it did not prevent him from attending.

A short time after the meeting, management became aware of the sheet. Staff was directed to create a sign-up sheet that did state that signing it was voluntary. This sheet was in place in February when members of the Grand Jury visited.

Finding 1.3 - The District Board violated Government sections by failing to have the agenda materials provided to trustees available to the public at the same time as delivered to the trustees. It also placed restriction on the public's access to the material before and during Trustee meeting.

Response: The Board disagrees with this finding.

The incident described occurred when there were not sufficient copies of the Board material on hand to give to visiting members of the public. The secretary asked management what to do and was told to get the visitors some copies. The "finding" suggests that there are intentional "restrictions" in place. There are no such restrictions. Since that incident, staff is directed to have extra copies of the Board material on hand for visitors and to provide that upon request.

Finding 1.4 - At the time this investigation started, the only information on the District website was the current meeting agenda. Information about prior meeting agendas, agenda background materials and meeting minutes was not accessible on the website. This information has subsequently been added to the District website.

Response: The Board agrees that this is an accurate statement of the facts.

Comment: Regarding writings related to an agenda item, the government code provides that an agency also may post the writing on the local agency's Internet Website. It is not required. However, see response to Recommendation 1.4.

Recommendation 1.1.1 As a result of its violation of Government Code 54954.2 (a) (1), the Board of Trustees immediately rescind its action on Item NO. 6 Review of Current Trustee Health Insurance Plan of January 15, 2013 Board Meeting.

Response: As there was no violation of Government Code section 54954.2(a) (1), there is no basis for this recommendation. However, see response to Recommendation 2.1.1.

Recommendation 1.1.2 The District immediately expand the description of all items placed on the District's Board meeting agenda to fully comply with the requirements and intent of the Brown Act.

Response: The District will review the descriptions of items on the Board agenda and expand if needed to provide notice to the public.

Recommendation 1.2 *The District revise its District Board meeting sign-in sheet to clearly indicate that adding one's name is a strictly voluntary action.*

Response: The District has corrected its form sign-in sheet.

Recommendation 1.3.1 *The District immediately make available to the public a copy of all agenda materials as soon as is it provided to the Trustees, and that a copy be readily available for the public at the Board meeting location.*

Response: The District will have copies of material provided to the Board available to the public. (Material used in closed session will not be available.)

Recommendation 1.4 *No later than November 1, 2013 the District place on its website all agenda materials provided to the Trustees prior to the Board meeting.*

Response: By the September 2013 Board meeting, the District will post, prior to the meeting, agenda material which is to be provided to the Board and which was created by District staff on the District website.

Most Materials created by the District can easily be placed on the website. This includes information regarding District finances and expenditures, the annual report and annual audit, and staff reports regarding agenda items. The District recognizes that this would give the public greater access to the information and the District will begin placing information that is created by the District and is in a digital form onto the website unless it is pertains to a closed item.

Certain materials provided to the Board are not created by the District and are not easily transferred to the website. For instance, a previous Board packet contained a copy of the 'MVCAC NEWS' including a lengthy article entitled, "A Proposal to Monitor Mosquito Susceptibility to Microbial and Insect Growth Regulators Larvacides in California." In order to be placed on the website it would first have to be scanned by staff, then transferred to the website. Once placed on the website, it would probably remain unread. Thus a blanket policy of including on the website all material provided to the Board would place a burden on staff, clutter the website and be of little value to the public. A policy of placing District created material would be further public awareness at little extra cost to the community. Third party materials which provide information relevant to an action item on the agenda should be placed on the web site when feasible.

Issue: Lack of understanding about action related to health insurance benefits.

Finding 2.1.1 *A majority of the District Trustees, under sworn testimony, did not know the details of the health insurance program they were voting to grant themselves.*

Response: A review of the memories of the Trustees shows that most of the Board members were aware of the benefits that they personally were receiving whether it be medical, dental or vision. It is unclear from the finding the level of detail that was sought, but the trustees were aware of the general level of benefits received.

Finding 2.1.2 *A number of Trustees, under sworn testimony indicated that they thought they were voting for health insurance coverage for the trustee only and not for family members.*

Response: The Board will have to accept the finding as to what was said to the Grand Jury.

Recommendation 2.1.1 *The Grand Jury is recommending that the Board rescind the January 15 action. If reconsidered, a resolution be prepared containing details of the coverage to be provided, to whom it is available and the total costs.*

Response: The Board adopted the current Trustee Health Insurance Plan in 2009. The January 15, 2013 vote sought confirmation that the Board continued to support health insurance for Trustees and family members. Thus the January 15, 2013 vote did not create the Trustee Health Insurance Plan and a rescission of it will not affect the plan.

The District provides a service vital to protecting the health of the community. Taxpayer support is critical to providing the level of service necessary and thus it is equally critical that taxpayers have confidence in the decisions made by the Board. In order to dispel any appearance of confusion over that decision, the Board will reconsider that issue. Any new vote should be made on a roll-call basis after clear statement of the resolution before the Board.

Re Trustees' Knowledge of District Finances

Finding 3.1 *A majority of the Trustees lack a working knowledge of District finances.*

Response: The Board disagrees with this Finding. After a final report of the Grand Jury is released, the statements made to a civil grand jury are no longer confidential. This allowed the District staff to discuss with the Trustees their responses.

The majority of those Board members interviewed by the Grand Jury stated that they were not asked in any detail about the budget or about the reserves. One cautious member had reviewed the budget figures in detail in preparation for the grand jury interview. He remembers being surprised when there were no questions about the budget or reserves. He also remembers being shocked that the Grand Jury report cited the trustees for a lack of knowledge on a subject about which he was not asked. Another member recalls stating that the budget was approximately \$7.5 million. The Board believes that this is an acceptable response given that this member had voted on the budget 7 months earlier and the actual is \$7.7 million. Because trustees were not aware that they could bring material with them and they were not provided copies of the

financial material which the grand jurors had, the inquiry became something of a test of Trustee's memory rather than a meaningful discussion about the budget.

Board members come from a variety of different backgrounds and some of them hold numbers in their head longer than others. Given that the budget is proposed by the manager in conjunction with the bookkeeper, after receiving a revenue projection from the San Joaquin County Auditor/Controller, it is not critical that a board member be able to remember the exact size of the budget voted on 7 months earlier. For over 50 years this combination of professional staff and board of community members has guided the District finances as it provided an important service through good years and bad. The Board believes that this is evidence the Board effectiveness.

Finding 3.2 *The District website does not include basic financial documents for public review.*

Response: This finding is accurate. The Board notes that there is no requirement that such financial information be placed on the web site. However, see Response to recommendation.

Recommendations 3.1.1 *Beginning September 30, 2013 and quarterly thereafter, the District General Manager include an item on the District Board's agenda to provide information on the District budget, expenditures and reserves.*

Response: see response to 3.1.2

Recommendation 3.1.2 *Beginning with Fiscal Year 2014-2015, an explanation of the District reserve fund and their intended purpose should be included as part of the budget document.*

Response: The current budget does include a brief discussion of the reserve funds. An explanation of the reserve funds can be found in the notes to the audited financial reports. However, as reflected by the fact that the Grand Jury report itself erroneously reported the reserve amount, it can be difficult to understand how reserves figure into a budget. The reserve total is approximately \$7,434,861.00. (The District receives income twice a year, December and April. The funds used to carry it through the remaining months are termed 'reserves'. These reserves are reduced every month as the District uses them for operations.) The District Staff has been working with its outside auditor to adopt a "Fund Balance Policy". This policy would 1) state the purpose of the reserves, 2) provide the definitions of terms used for the various funds (i.e. committed v. assigned), and 3) provide operation guidelines for the use of District funds. The fund balance policy would help to identify the type of reserves so that the Trustees and the public can better understand their uses.

The District believes that maintaining reserve funds is a prudent course of action. Other governmental entities have encountered difficult fiscal times due to the lack of

adequate reserves. Reserves are especially important for a vector control district which may be faced with the outbreak of an epidemic such as West Nile Virus.

Recommendation 3.2 *The Grand jury has recommended that prior to October 1, 2013 the District include budget and current audited financial statements on its website.*

Response: The Board agrees that more financial information should be included on the website. It will be placing information on the District Budget, expenditures and reserves. The monthly Board packets do contain information on the District's finances. The monthly reports show expenses for the month, for the fiscal year to date, in comparison to budget, the dollar amount over or under budget and the percentage of the budget amount for that category. It also shows expenses by vendor summary. It provides a fund balance report for the general fund, benefit assessments, contingent fund, general fund and all funds total. The District will consider whether any additional information is needed in the Board packet. The District will consider whether the adoption of the monthly financial report should be removed from the consent calendar.

After the 2012/2013 audited financial reports are completed, the reports should be posted to the website.

Re Governance structure.

Finding 5.1 *Issues regarding non-transparent functioning and actions of the District Trustees bring into question of the need for the District Board as presently appointed by the cities and the County Board of Supervisors.*

Response: The Board disagrees with this finding.

The Grand Jury begins its discussion by saying, "In light of its investigation and those of prior grand juries..." the implication being that prior grand juries made findings that support its findings of "non-transparent functioning". This is not the case. There have been two other reports on the District in the last 14 years. The first such Grand Jury report regarding the District came out in 1999-2000 and it reads:

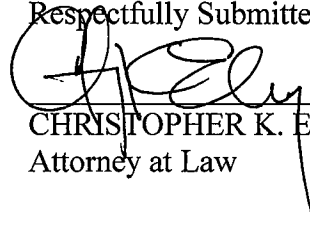
The management of the agency is well structured and able to direct human resources to changing conditions which are affected by weather, season and urban expansion. Because of these factors, the 1999-2000 San Joaquin County Civil Grand Jury is pleased to issue this laudatory report.

The other grand jury report also made no mention of governance issues. Thus the suggestion by the 2012/2013 grand jury that its recommendation is support by report "of prior grand juries..." is misleading. One misleading characterization in a report might be put down to a difference of opinion. But the successive mischaracterizations contained in the 2012/2013 report lead the Board to question the objectivity of the report. The Grand Jury has made some constructive recommendations regarding broader dissemination of the financial reports and more detailed discussion of reserve funds.

However, the suggestion that governance of the District as a whole should be changed is not supported by the investigation. The District has provided good service to the community for over 50 years.

This response was reviewed and approved by the Board of Trustees of the San Joaquin County Mosquito and Vector Control District at its regular meeting of July 16, 2013.

Respectfully Submitted,



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Cc: Clients