

**Preliminary Legal Evaluation of
Materials Submitted by Lisa Schicker Regarding
Paavo Ogren, Montgomery Watson Harza, and Related Matters**

Prepared by Warren R. Jensen, County Counsel, San Luis Obispo County
August 18, 2009

Materials Evaluated. Ms. Schicker submitted materials to the Board of Supervisors and/or County Counsel beginning on about April 7, 2009. Due to staffing constraints, and an increase in competing demands on our time beginning in early May, County Counsel has not been able to complete review of all of the materials submitted, which are now in excess of 1,300 pages. This evaluation is based on complete review of the materials submitted in April, 2009 and some of the other materials subsequently submitted. As time permits, or as the Board directs, we will complete our review of the remaining materials and announce our conclusions.

General Evaluation of the Materials. A variety of materials has been submitted by Ms. Schicker. Few of the documents evaluated so far are original source documents and few of the documents come from impartial sources. Many of the pages reviewed were authored by Ms. Schicker or others who have staked out partisan positions that are consistently at odds with County staff. Many of these documents would not be admissible in a civil action because they are inadmissible hearsay, and/or they are lay opinions without foundation, and/or they simply are not probative. Perhaps the materials submitted beginning in May 2009 will prove to be different, but a sampling indicates that they are not significantly different in character.

Preliminary Conclusions. Based on my review of the materials submitted before May 2009, and a sampling of some of the materials submitted thereafter, my preliminary conclusions are as follows:

1. No Conflict of Interest Proven for Paavo Ogren. Although Ms. Schicker repeatedly asserts her opinion that Mr. Ogren has various conflicts of interest, she does not provide specific identification of those conflicts or reliable evidence of such conflicts. The “evidence” she submitted consists almost exclusively of her personal opinions, without corroborating details or documentation. Such “evidence” would be inadmissible in court and does not seem substantial enough to warrant further consideration.
2. No Illegal Contract Proven Between LOCSD and MWH. Ms. Schicker has not provided all of the relevant original source documents, at least in the materials reviewed to date. If we accept the secondary materials that Ms. Schicker submitted at face value, the most that she has shown about the contract between LOCSD and MWH is that there was a procedural defect in the manner in which it was executed. Ms. Schicker’s materials completely fail to deal with the possibility that any such defect was subsequently cured by ratification of the contract. Such ratification is implicit in the LOCSD Board’s repeated subsequent payment of invoices submitted by MWH, including one invoice that expressly seeks payment for services provided before the September 1, 1999 effective date. In addition, the LOCSD Board repeatedly amended that contract, each time implicitly endorsing the original contract. Moreover, Ms. Schicker’s written materials completely ignore the concept of promissory estoppel, under which a government entity can be required to pay for services that are rendered prior to the execution of a written contract where the entity induced the contractor to provide those services based on

unwritten assurances that the work would be covered by a future contract. That appears to be exactly what happened according to the memo prepared by Bruce Buel, and included in the materials submitted by Ms. Schicker.

3. No Negative Inferences Justifiable, based on Pendency of Investigations. Ms. Schicker refers to various pending investigations and seems to draw the conclusion that the mere pendency of these investigations is a reason to avoid dealing with MWH. Logically, this makes no sense because anyone can trigger an investigation and therefore the mere pendency of an investigation means nothing about the validity of the triggering complaint. Only when a neutral investigative body has reached a conclusion is there a reasonable basis for negative inferences.
4. No Negative Inferences Justifiable, based on Cape Coral Situation. Ms. Schicker refers to a controversy involving a wastewater project constructed by MWH in Cape Coral, Florida. She submitted newspaper coverage reporting on allegedly excessive costs incurred and she submitted newspaper coverage of an Attorney General opinion criticizing the City of Cape Coral. No original source documents were included in the materials evaluated. Newspaper articles are not admissible evidence in court and are not substantial enough to warrant further investigation. Perhaps there are original source documents in the materials that have not yet been reviewed. If so, they will be considered. At this point, however, no negative inferences can reasonably be drawn from the materials evaluated.
5. No Negative Inferences Justifiable, based on MWH Filing of Bankruptcy Claims or Other Litigation. Ms. Schicker refers to the fact that MWH has filed a claim against the LOCSD in the Bankruptcy filed by the LOCSD and seems to draw the conclusion that the mere filing of a claim was improper. This is completely illogical. Two other creditors of LOCSD also filed claims against LOCSD. Were their claims improper too? The actual outcome of those claims, after arbitration, was that these two creditors had valid claims for \$10 million.
6. No Other Negative Inferences Warranted. Numerous other claims of impropriety are advanced by Ms. Schicker in the materials reviewed. Time does not permit detailed discussion at this point. In the interest of releasing this preliminary evaluation without further delay, suffice it to say that the materials evaluated did not support any other inferences of impropriety in the County's efforts pursuant to AB 2701.

Respectfully submitted,

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County Counsel