

12/14/2021

To: San Simeon CSD Directors

Cc: SSCSD District Counsel

Subject: 1) Demand for Brown Act Cure and Correct re: unauthorized SDRMA insurance claim or claims; (2) Cease and Desist re: additional invoices or claims to SDRMA; and 3) GES separation from insurance related activities.

The demands detailed below are focused on active insurance claims and potential litigation related claims, in particular, litigation against the District by Grace Environmental Services (GES). Three demands are made: 1) for Brown Act Cure and Correct regarding unauthorized Special Districts Risk Management Authority (SDRMA) claims; (2) cease and desist to stop further submission of claim invoices and new claims to SDRMA; and 3) immediate walling off/separation of GES from SDRMA insurance related duties, documents and contact.

Material violations of a central provision of the Ralph M. Brown Act have occurred. These violations jeopardize the finality of a number of actions taken by the San Simeon Community Services District (SSCSD) Board on some unknown date.

The nature of the violation is the unauthorized San Simeon CSD insurance claim that was made to the Special Districts Risk Management Authority (SDRMA). The date of loss was 10/30/2019 and was received by SDRMA on August 6, 2021. The claim is believed related to the Hather lawsuit, but this is unconfirmed.

There is no evidence that the SSCSD Board of Directors authorized filing this insurance claim. This means that a violation of the Brown Act occurred that must be cured and corrected.

Consistent with correction of this unauthorized SDRMA claim or claims, it is demanded that the board cease and desist submitting invoices against this insurance claim(s) until such time the board acting as body at a public meeting reviews, analyses, receives public comment and votes in public on the submission of this and any other insurance claims.

Proper handling of insurance claims is of particular concern because of the recent threat of litigation by Grace Environmental Services LLC (GES) for indemnification of its legal costs related to investigations by the Fair Political Practices Commission and the San Luis Obispo County District Attorney's Office.

Unfortunately for the community and its ratepayers, at a Special Closed Session Meeting of the Board on November 29, 2021, the Board voted unanimously to indemnify these costs and directed GES to present its legal bills for reimbursement without knowing the amount or detail.

A question arises as to whether an insurance claim has been opened or considered for opening with SDRMA for GES legal bills. (Please consider this letter also as a public record

request for any such claims, under the California Public Records Act.) Again, the district should cease and desist from any further related insurance claim actions or invoice submissions until the Board acting as a body review, analyze and receive public comment and votes in public on any/and all such claims.

Lastly, a serious concern is that the GES owner Charles Grace or his employees may be involved in any inquiries or actions with SDRMA related to possible or actual insurance claims related to GES itself. This would be a conflict of interest.

Given the formal threat of litigation by GES against the District, GES should immediately be advised to cease and desist from any involvement with the District's insurance provider SDRMA. Similarly, SDRMA should be advised that they should have no further contact with GES or its employees or representatives.

The GES related claims matters are further complicated by the new GES-SSCSD Agreement where in Section VIII. D. Insurance it states:

"SSCSD, its Board members, agents and attorneys, must be named as additional insureds under the General Liability, Vehicle Liability, and Employer's Liability policies."

As named insureds, the district must consider GES's insurance provider for claims presented by GES and coordinate all potential or actual claim actions with SDRMA and GES's insurance provider.

Again, GES and its employees must be prohibited from working with SDRMA in any way and must recuse themselves in all related insurance activities including but not limited to records keeping and document/writings access including access to the district's legal invoices.

Given GES control of district administration, there is also a matter of the SSCSD Internal Controls Report submitted to SDRMA that will need to be reviewed and as necessary revised and resubmitted to SDRMA.

Due to the bundled operations, administration, and management services arrangement with GES, potential GES litigation against the district is a complex and abnormal situation. GES administration and management must immediately be walled off to establish a proper separation of duties, restricted document access, and internal controls for insurance and district legal services. Even the appearance of conflict-of-interest involving potential or actual GES-SSCSD litigation is unacceptable.

Summary of Demands

As provided by Section 54960.1, the District has 30 days from the receipt of this demand to either cure or correct the challenged action or inform me of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave me no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case I

would also ask the court to order you to pay my seek court costs and reasonable attorney fees in this matter, pursuant to Section 54960.5.

The SDRMA decisions identified above that were made in violation of the Brown Act must be set aside.

The District cease and desist in making further submissions of claims invoices and new claims to SDRMA.

The District immediately wall off/separate GES from SDRMA insurance related duties and documents including district legal bills to avoid even the appearance of conflict of interest.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry Krzciuk". The signature is written in a cursive, flowing style.

Henry Krzciuk
San Simeon Resident