



TRINITY COUNTY

Board of Supervisors

P.O. BOX 1613, WEAVERVILLE, CALIFORNIA 96093
PHONE (530) 623-1217 FAX (530) 623-8365

TO: The Honorable Michael B. Harper
Judge of the Superior Court

FROM: Trinity County Board of Supervisors

CC: Clerk of the Board of Supervisors

SUBJECT: Response to JUR 2022-001 – County Counsel Review

DATE: February 22, 2023

Remend 3/16/23 mth

mlc

The Grand Jury has requested a written response to their final report JUR 2022-001 – County Counsel Review. The response of the Trinity County Board of Supervisors is as follows:

Finding #1: A series of County ordinances enacted to regulate CCLs from 2016 through 2021 consistently failed to comply with CEQA requirements to identify and mitigate for the full range of environmental impacts associated with commercial cannabis cultivation. The BOS during that period relied on the current County Counsel for legal guidance.

Response: Agree

Finding #2: Failure of the County to properly address CEQA resulted in a lawsuit filed by concerned County residents (TAA) seeking to compel compliance. After an initial settlement in which the County paid \$95,000 in the litigant's attorney fees in 2019, the County failed to honor terms of the settlement and ultimately was ordered to pay an additional \$339,185 in costs and attorney fees in 2021. The current County Counsel provided legal guidance to the BOS throughout this period.

Response: Agree

Finding #3: As part of the 2021 Court Order in the TAA case, the County was ordered to desist from issuing or reissuing any CCL until CEQA compliance is achieved. Numerous Trinity County farmers found themselves unable to operate legally through no fault of their own, and several filed legal action against the County. In addition, numerous cannabis abatement cases against farmers

who continued to operate without licenses were filed by the County. These cases, both by the County and against the County, have and continue to represent significant additional legal costs to the County.

Response: Disagree wholly. After the court order in the TAA case no cannabis cultivators initiated new litigation against Trinity County. Additionally, legal costs associated with NOV's (Notices of Violation) are the responsibility of the violator to pay.

Finding #4: From FY2016-17 through FY2021-22, the County paid approximately \$4.5 million in legal costs. This total includes \$435,185 in settlements and award to litigants, \$94,641 paid to the Special Counsel retained for the TAA case, and nearly \$4 million paid directly to County Counsel.

Response: Disagree partially. \$216,287 passed through County Counsel to pay other outside counsel/investigations, leaving \$3.6 million being payed to County Counsel over a six-year period, or an average of \$600,000 per fiscal year.

Finding #5: During the period considered herein (2016-2022), the BOS and County Counsel displayed a tendency to conduct public business in secret. The BOS failed to consistently report decisions and actions taken in closed session as stipulated in State and County statutes, and County Counsel consistently invoked attorney-client privilege to conceal information ranging from services billed to the opinion of Special Counsel regarding the disposition of the TAA case.

Response: Disagree partially. The current board has no knowledge of decisions or actions taken in closed session prior to January of 2021, so cannot agree or disagree. Since January of 2021 any actions on the TAA case were voted on in open session, and discussion and legal advice leading to those actions are privileged information. On more than one occasion following the 2019 TAA settlement agreement, the Board of Supervisors was publicly, including by the Trinity Journal, asked to report out of Closed Session as to their vote regarding that settlement. It is acknowledged that the Board did not respond with the clarity that was requested.

Finding #6: The 2016-2017 Grand Jury also found that the BOS failed to provide meaningful or accurate reports regarding business conducted in closed session. In particular, the 2016-2017 Grand Jury found that the BOS reported that closed sessions for personnel evaluation of County Counsel were held 11 times in the span of one year.

Response: The current board has no knowledge of closed session meetings in 2016-17.

Finding #7: County Counsel advised the BOS to reject a potential \$30,000 settlement with TAA in 2021, ultimately resulting in a Court order for the County to pay TAA more than 10 times as much. In doing so, County Counsel stifled information casting doubt on County Counsel's advice and assumed full responsibility for the TAA case.

Response: Disagree Partially

Finding #8: County Counsel has been operating under the same contract for more than seven years, whereas State Government Code and County policy state that the term of County Counsel is four years.

Response: Disagree partially. State code states that County Counsel's term will be four years, and until his successor is appointed.

Finding #9: The contract under which County Counsel currently operates consists of base fees for assisting with certain County business, but also stipulates that County Counsel will bill for any litigation services at a rate of \$200 per hour. This contractual structure appears to incentivize legal actions that promote litigation, or at least could discourage actions that avoid unnecessary litigation.

Response: Disagree partially. County Counsel has an ethical duty to act in the best interest of the County.

Recommendation #1: We recommend that the BOS abide by State and County policy regarding transparency. While the Government Code recognizes the need to keep certain sensitive information confidential, the Brown Act makes it clear that secrecy is not intended to be the default mode of doing public business. Likewise, we recommend invoking attorney-client privilege selectively rather than as a blanket mechanism for the BOS and Counsel to avoid accountability.

Response: Recommendation has been implemented. The current BOS has abided by the Brown Act concerning closed sessions. The statement "direction given to staff" is sufficient when the BOS and Counsel are discussing ongoing litigation, and do not want to make public their legal strategy. Settlements voted on by members currently serving on the BOS have been made in public meeting and not in closed session.

Recommendation #2: We recommend considering establishing County Counsel as a full-time salaried employee of the County. Cases of litigation that arise beyond the capacity of County Counsel would then be managed through separate contracts with private attorneys. This business model would help to separate actions that lead to or discourage litigation from the financial reward of prosecuting litigation, thereby removing the appearance of a conflict of interest.

Response: Recommendation will not be implemented because it is not reasonable at this time. Because the job of County Counsel requires more than just an attorney, the county would also have to recruit and retain paralegal personnel, and administrative staff. The cost for this would far exceed the average \$600,000 per fiscal year currently paid to County Counsel.

Recommendation #3: If the County determines that retaining a contractor to serve as County Counsel is necessary, consider restructuring the contract to remove the appearance of a conflict of interest by decoupling ordinary County business from litigation. This could perhaps be done with two separate contracts with competing legal firms.

Response: Recommendation will not be implemented because it is not warranted. Because County Counsel cannot initiate litigation, or enter into a settlement, and must bring all settlement offers before the BOS, it is the responsibility of the BOS to ensure that counsel does not enter into avoidable litigation. Furthermore, because County Counsel has a fiduciary relationship with the County, they are bound by law to work in the best interest of the County.

Recommendation #4: If the County determines that County Counsel must be retained through a contract similar to the current contract with Prentice|Long, we recommend that such contracts be valid for a limited term, such as four years, and that bids from competing legal firms be solicited at the end of each term.

Response: Recommendation will not be implemented because it is not warranted. Because the contract with County Counsel allows the BOS to terminate the contract for any reason, or no reason, limiting the term of the contract is not necessary. The BOS will, however, begin to administer the yearly performance evaluations that are required by the contract.