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Final Report of Investigation Concerning The San Luis Obispo County Integrated Waste Management Authority (IWMA)

September 22, 2021

This report is issued by the District Attorney's Special Prosecutions Division, Public Integrity Unit. District Attorney Dan Dow created the office's Public Integrity Unit soon after being sworn into office in 2015.

The citizens of San Luis Obispo County have the right to expect that their elected and appointed officials will carry out their duties in a lawful, ethical and professional manner. They also have the right to expect that administrators, supervisors and the immediate subordinates of elected and appointed officials, who play an integral role in achieving the mission of the office holder, will discharge their duties and obligations in the same lawful, ethical and professional manner.

The District Attorney created the Public Integrity Unit with a mission to ensure that public and appointed officials, and their subordinates, fulfill their legally mandated duties. To this end, the District Attorney's Office will use all resources at its disposal to detect, investigate and prosecute criminal misconduct at all levels of public service.

Through its efforts, the Public Integrity Unit's primary goal is to increase the public's level of trust and confidence in its elected and appointed officials serving in local agencies. The Public Integrity Unit will aggressively and proactively seek out public corruption at all levels of government. All matters referred to the Public Integrity Unit for consideration will be thoroughly and fairly reviewed. Criminal charges will be filed in all appropriate cases.

EXECUTIVE SUMMARY

The District Attorney's Office received three separate written reports from Carl Knudson[1] between February and June 2018 that allege misconduct by employees and mismanagement of the San Luis Obispo County Integrated Waste Management Authority (IWMA) and misconduct of individuals connected with the IWMA. After reviewing those three reports, meeting with Mr. Knudson, and reviewing public documents from the IWMA, the Public Integrity Unit opened an investigation into the allegations contained within the report.

Over three years, District Attorney Investigators devoted considerable time and resources to this investigation. This included serving 23 warrants, obtaining documents through the California Public Records Act, contacting multiple potential witnesses, and conducting 11 formal interviews, two in Kentucky. The District Attorney's Office hired a Certified Public Accountant and Certified Fraud Examiner with prior law enforcement experience to examine credit card purchases over four years on six IWMA credit cards.

Investigators conducted a forensic examination of eleven hard-drives and other IWMA devices containing 4.62 Terabytes of data. Those devices contained eleven million digital artifacts, a number which was narrowed to a manageable level using a key-word search, allowing investigators to review 263,000 emails and messages, 82,000 media-related items, 441 social media items, 282,000 web-related artifacts and 49,000 other documents.

The investigation has culminated with the filing of one felony criminal complaint against IWMA former employee Carolyn Goodrich for nine separate charges of embezzlement of public funds (Penal Code section 504) and one charge of destruction of public records and documents (Government Code section 6200).

The remainder of this report reveals additional important factual findings concerning disturbing practices and lack of proper oversight that should be reviewed by the IWMA Board of Directors and interested members of the public. These findings will assist governing board members in assessing what, if any, additional reforms should be put into place to ensure accountability and increased public trust in this agency.

Release of this report is consistent with the desired transparency and open government contemplated by the Ralph M. Brown Act, enacted in 1953:

> *"The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."* California Government Code section 54950.

[1] Carl R. Knudson is described as follows: "CFE, PI and former IRS special agent, and former "Big 5 Accounting Firm" Director. We combine knowledge, experience and the most competitive fees in delivering our work product to our clients. Mr. Knudson is a recognized fraud examiner, forensic accountant and successful expert witness in Fraud and Criminal Tax litigation." http://www.knudsoninvestigations.com/company.html (accessed September 22, 2021).

I.

INTRODUCTION

The purpose of this report is to provide a summary of findings by the Public Integrity Unit of the San Luis Obispo County District Attorney's Office into allegations of misconduct at the San Luis Obispo County Integrated Waste Management Authority ("IWMA"). Before doing so, two important qualifications to the scope of this report are in order.

First, the primary mission of the District Attorney's Office is to prosecute criminal—not civil—violations of the law. As such, the District Attorney does not prosecute every wrongful act, but only those that rise to the level of criminal conduct. As will be discussed in greater detail below, for criminal charges to be filed, a prosecutor must prove not only that improper conduct occurred, but that it was done with criminal intent, also called *mens rea*—a guilty mind.[2] Consequently, ordinary negligence—failure to exercise ordinary or reasonable care—will not give rise to criminal liability. As will be outlined below, many of the complaints about the IWMA do not rise to the level of criminal conduct and, therefore, are best directed to (and remedied by) the IWMA's Board of Directors.

On a related note, in addition to proving the proper mental state, a criminal offense must be proven beyond a reasonable doubt. As former Attorney General William Barr stated in an interview with the Wall Street Journal, the American system of criminal justice is "designed to find people innocent. It has a high bar."[3]

There has been a great deal of interest by the media and certain quarters of the public on the IWMA, its relationship with its contractors—primarily Charles Tenborg and his company Eco Solutions—including allegations of various types of misconduct over many years. At the same time, attention has been focused on William Worrell, the former manager of the IWMA.

In light of the forgoing considerations, this report will focus on those allegations that could give rise to *criminal* liability and, consequently, will not make recommendations on whether the IWMA should change its policies, its procedures or its operations. These are decisions which fall outside the purview of the District Attorney's Office and are ultimately the responsibility of the 13-member IWMA Board of Directors.[4]

The second qualification to this report has to do with former IWMA employee and Board Secretary Carolyn Goodrich. The District Attorney's Office has filed criminal

[2] The Judicial Council of California Criminal Jury Instructions state it as follows: "For you to find a person guilty of the crimes in this case, that person must not only commit the prohibited act, but must do so with wrongful intent. A person acts with wrongful intent when he or she intentionally does the prohibited act or fails to do a required act. . . ."

[3] https://www.wsj.com/articles/william-barr-one-standard-of-justice-11608318832?mod=theme_opinioncommentaryribbon

[4] It is worth noting that after the District Attorney's Office began its investigation the IWMA appears to have revised the manner it does business by tightening some of its policies, improving its system of checks and balances and by providing greater transparency. These changes will be commented on below.

charges against Ms. Goodrich in San Luis Obispo County Superior Court case 21F-04785, alleging violations of Penal Code section 504, Embezzlement by a Public Official and shredding of IWMA records in violation of Government Code section 6200.

As a general proposition, the fact that criminal charges have been filed limits the ability of the District Attorney to comment on matters that could affect the rights of a person against whom charges have been filed. Ethical rules for prosecutors prohibit the making of public statements which "the lawyer knows, or reasonably should know, will (i) be disseminated by means of public communication and (ii) have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter." [5]

Because of these ethical constraints, this report will not discuss facts and circumstances bearing on the allegations against Ms. Goodrich to the extent that such comment would reasonably have a substantial likelihood of materially prejudicing the case against her.

Finally, the method used in this report will be to address concerns in the order they are raised in three reports presented by Carl Knudson, a forensic examiner hired by a group named The Citizens Group of San Luis Obispo County. Those reports and their content are described below. However, before a discussion of those reports can proceed, background information about the IWMA, Tenborg and Worrell is necessary.

II.

THE IWMA AND ECO SOLUTIONS: BACKGROUND

The San Luis Obispo County Integrated Waste Management Authority is a government entity that was formed in 1994 and is overseen by a 13-person board made up of elected officials from San Luis Obispo County and the incorporated cities of Arroyo Grande, Atascadero, Grover Beach, Morro Bay, Paso Robles, Pismo Beach, San Luis Obispo and 10 special districts.[6] Its mission is to "manage hazardous waste, universal waste, solid waste, green/food waste and recycling for San Luis Obispo County."

In 1997 the IWMA entered into a contract with Charles K. Tenborg, owner of Eco Solutions to open and operate facilities at Chicago Grade and Cold Canyon landfills for the purpose of collecting, sorting and preparing for transportation household hazardous waste (HHW).[7] This contract was renewed over the next 15 years, during which time Eco Solutions' duties broadened. As of April 2013, when Tenborg sought renewal of the contract, Eco Solutions was receiving HHW at five facilities and had an annual contract

[5] California Rules of Professional Conduct, Rule 3.6, Trial Publicity
[6] https://www.iwma.com/about/. The Joint Powers Agreement which created the IWMA was entered into by the seven incorporated cities and SLO County in 1994. The special districts were added in 2001 by a Memorandum of Agreement.
[7] Common Household Hazardous Wastes include antifreeze, batteries, drain cleaners, electronic waste (TVs, computer monitors, cell phones, etc.), glue and adhesives, household cleaners, oven cleaners, pains, pesticides, pool cleaners, solvents, used oil, waste containing asbestos, wastes containing mercury (thermometers, fluorescent lights, etc.). https://dtsc.ca.gov/hazardous-wastes-in-your-home/

with the IWMA for $404,145. Tenborg has described Eco Solutions' areas of service to San Luis Obispo County as follows[8]:

- Permanent HHW collection facility operation, management and refurbishment;
- Conditionally Exempt Small Quantity Generator (CESQG)[9] Waste and Universal Waste Management;
- Regulatory compliance planning services;
- Retail take-back transportation services;[10]
- Management/technical expertise services

In 2014 Tenborg sold Eco Solutions, Inc. to 21st Century Environmental Management of California, L.P., a California limited partnership and wholly owned, indirect subsidiary to Stericycle, Inc. (hereinafter, "Stericycle.)[11]

III.

BACKGROUND: THREE REPORTS BY CARL KNUDSON

On February 25, 2018, Carl Knudson, a private investigator with a background in forensic accounting, met with District Attorney Investigator Neil Clayton, and provided a 20-page report dated February 6, 2018, entitled *Preliminary Report Citizens of San Luis Obispo County Re: Charles K. Tenborg ("Preliminary Report")*. This report includes 67 pages of attachments. Knudson also provided a document, dated February 18, 2018, entitled *Addendum to Preliminary Report Citizens of San Luis Obispo County Re: Charles K. Tenborg, ("Addendum")* a 16-page report with 533 pages of attachments.

The first two Knudson reports focused primarily on Charles Tenborg, former owner of Eco Solutions, Inc. These reports referenced the IWMA, but concentrate on Charles Tenborg and his companies and included allegations that Tenborg committed perjury. The perjury charges were alleged to have occurred in connection with a libel and slander lawsuit filed by Tenborg against Cal Coast News, Karen Velie and Daniel Blackburn in response to an article published by Cal Coast News November 14, 2012.

This report will address these allegations as set forth in Knudson's *Preliminary Report* and his *Addendum to Preliminary Report*.

[8] Eco Solutions, Inc., response to Request for Proposal, dated April 10, 2013. On May 8, 2013, the IWMA renewed or extended its contract with Eco Solutions for five years.
[9] CESQGs are, for instance, business that generate small amounts of hazardous waste, namely, less than 27 gallons or 220 pounds per month, or less than 2.2 pounds a month of acutely hazardous waste. These "generators" are responsible for transporting their waste to one of the collection sites manned by Eco Solutions staff.
[10] This appears to refer to a service provided by Eco Solutions where they pick up Universal Waste (batteries, florescent lights, electronic devices, etc.) from retailers, such as hardware stores, which are required to accept such items from their customers.
[11] The timing, price and nature of this sale became a dominant issue in a lawsuit filed by Tenborg against CalCoast News, Karen Velie and Daniel Blackburn, discussed below.

Finally, on June 6, 2018, Knudson provided the District Attorney's Office a third report entitled *Report on The Integrated Waste Management Authority of San Luis Obispo ("Report on IWMA")*, a 28-page report with 226 pages of attachments. This report was directed at the IWMA and will also be addressed, below.

IV.

INVESTIGATION BY DISTRICT ATTORNEY'S OFFICE

Based in part on the information provided by Knudson, the Public Integrity Unit of the District Attorney's Office initiated an investigation. While the inquiry initially focused on the matters raised in Knudson's three reports, the focus of the District Attorney investigation ultimately turned to concentrate primarily on the IWMA.

The District Attorney's Office had repeated contact with IWMA staff, initially with IWMA Manager William Worrell, IWMA Board Secretary Carolyn Goodrich and IWMA Program Director Patti Toews. Worrell retired August 23, 2018, and was replaced by Interim Manager Mike Giancola, who was followed in July 2019 by Executive Director Brooks Stayer. Carolyn Goodrich retired in the Fall of 2018 and Patti Toews remains at the IWMA.

District Attorney investigators devoted considerable time and resources to this investigation. This included serving 23 warrants, obtaining documents through the California Public Records Act, contacting multiple potential witnesses and conducting 11 formal interviews, two in Kentucky. The District Attorney's Office hired a Certified Public Accountant and Certified Fraud Examiner with prior law enforcement experience to examine credit card purchases over four years on six IWMA credit cards.

Investigators conducted a forensic examination of eleven hard-drives and other IWMA devices containing 4.62 Terabytes of data. Those devices contained eleven million digital artifacts, a number which was narrowed to a manageable level using a key-word search, allowing investigators to review 263,000 emails and messages, 82,000 media-related items, 441 social media items, 282,000 web-related artifacts and 49,000 other documents.

Finally, while the District Attorney's Office was able to obtain documents directly from the IWMA, the number of documents available for review was limited. This was the product of several factors, including documents in a storage unit that were reportedly destroyed due to black mold, a records-retention policy that allowed destruction of some records, and lack of clarity about whether the IWMA or the County Auditor-Controller's Office was responsible for maintaining records.

V.

PERJURY ALLEGATIONS RAISED IN THE FIRST TWO KNUDSON REPORTS

a. Introduction

Knudson's *Preliminary Report* and his second report, *Addendum to Preliminary Report,* both contain allegations that Charles Tenborg committed the crime of perjury. The allegations fall into two general categories. First, that in his capacity as owner of Eco Solutions Tenborg falsified documents that were submitted to California Department of Resources Recycling and Recovery (CalRecyle). Second, that he perjured himself at various times during a libel and slander lawsuit he filed against Cal Coast News, Karen Velie and Daniel Blackburn. The *Preliminary Report* and the *Addendum* include other matters, including allegations that waste was mishandled.[12] This report will first address the issues of perjury raised in the first two reports, followed by a discussion of any remaining matters and allegations.

b. Law of perjury

It is important to note that, standing alone, a lie or a misstatement does not amount to perjury. Consequently, an understanding of the law of perjury is important. As with all criminal charges, perjury must be proven beyond a reasonable doubt. [CALCRIM[13] Instruction 220] CALCRIM Instruction 2640 contains the requirements that must be proven for the crime of perjury:

1. The defendant testified or declared under penalty of perjury under circumstances in which such testimony was permitted by law;
2. When the defendant testified or declared he willfully stated that the information was true even though he knew it was false;
3. The information was material;
4. The defendant knew he was making the statement under penalty of perjury; and
5. When the defendant made the false statement, he intended to testify or declare falsely while under penalty of perjury.

CALCRIM 2640 provides the following important qualifications to the law of perjury:

- Information is material if it is probable that the information would influence the outcome of the proceedings, but it does not need to actually have an influence on the proceedings. (emphasis added)
- If the defendant actually believed the statement was true, the defendant is not guilty of this crime even if the defendant's believe was mistaken.

[12] In addition to Knudson's reports, Karen Velie sent a number of emails to the District Attorney's Office with instances where she contends Tenborg committed perjury. Those contentions will be addressed alongside those raised by Knudson.
[13] CALCRIM are the pattern jury instructions used throughout California for educating juries on California Law.

- If the defendant attempted to correct the statement after it was made, that attempt may show that the defendant did not intent to testify or declare falsely.

c. Perjury charges cannot be filed against Charles Tenborg based on inaccurate information placed on 17 claim forms submitted to the California Department of Resources Recycling and Recovery (CalRecyle) that were signed under penalty of perjury

One of Teborg's businesses, CEC Electronic Waste Recycling, Inc., ("CEC") recycles products such as computers, televisions, VCRs, copiers, fax machines that are nearing the end of their useful life. CEC submits claim forms to CalRecyle and is compensated based on the weight of eligible products it processed.

Knudson's February 6, 2018, *Preliminary Report* recommends that Tenborg be prosecuted for "making false statements on seventeen (17) consecutive payment claims to the CalRecyle during the period to March 2014 to July 2015 which were made under penalty of perjury."

The 17 forms in question were submitted by Tenborg as owner of CEC to CalRecyle seeking payment for electronic waste that CEC processed from March 2014 through July 2015. The forms, signed by Tenborg under penalty of perjury, state the amount of waste processed by CEC over the course of a month and the amount CEC is seeking from the state.[14]

On February 6, 2017, the Department of Resources Recycling and Recovery sent Tenborg a Notice of Violation stating that Tenborg had "repeatedly made false claims" by seeking payment for "non-cathode ray tube (non-CRT) CEWs that had not been cancelled (processed or dismantled) and were not eligible for payment." As a result, CEC had "falsely claimed in excess of $30,000." The Notice of Violation goes on to state that "corrective action" had been taken by Tenborg and—important to this analysis—makes the following statement: "CEC acknowledged that it did not fully understand the reporting requirements for cancelling non-CRT CEWs and that the weight `errors' were the result of inadequate oversight and staffing. . . ." (emphasis added). Less than two weeks later Tenborg and CalRecyle entered into an agreement where Tenborg agreed to pay back $34,643.08.[15]

Perjury charges cannot be filed for Tenborg signing these 17 forms. As a threshold matter, the three-year statute of limitations prevents charges from being filed.[16]

However, even if the statute of limitation did not foreclose prosecution, perjury cannot be proven beyond a reasonable doubt under these circumstances. As stated

[14] For example, for the month of June 2014 CEC submitted a claim for $84,641.92 for processing of 192,368 pounds of electronic waste.
[15] Although the Notice of Violation is dated February 6, 2017, the discrepancy had been discovered by at least November 2015. A November 19, 2015, email by Tenborg provides an explanation for why he claimed more compensation than CEC was entitled to.
[16] The three-year statute for perjury had expired for most of the 17 documents before Knudson's report was submitted to the District Attorney's Office.

above, a perjury charge in this matter would have to be based on Tenborg providing false information under penalty of perjury about the amount of electronic waste CEC had processed and how much he was entitled to receive from CalRecycle for that waste. The inaccurate information provided on the form appears to have come from misunderstanding on the part of Tenborg and/or his staff about whether certain items that CEC was recycling were eligible for payment. In a letter written by Tenborg in November 2015 he provides an explanation, including a statement acknowledging his misunderstanding of the reporting requirements for the specific types of electronics involved (non-CRT flat panels) and offering to reimburse for the overpayment.[17] And, as noted above, in its February 6, 2017, Notice of Violation, **CalRecycle accepted his explanation and within two weeks the parties entered into an agreement for Tenborg to pay back the amount of overpayment.**

For perjury to be proven, guilt must be established beyond a reasonable doubt, which is defined as "proof that leaves you with an abiding conviction that the charge is true." [CALCRIM 220]. Proof of perjury requires, among other elements, that a person make a statement which the person knew to be false. [CALCRIM 2460 element 2]. In addition, a defendant who "actually believed that the statement was true" is not guilty of perjury, even if his belief was mistaken [CALCRIM 2640].

This is Tenborg's claim—that he believed he was providing accurate information at the time he filled out the forms. While the argument could be made that Tenborg actually knew the information he provided on the forms was false when he filled out the forms, no evidence to support such an allegation has been discovered or presented; conjecture about what Tenborg might have known will not support criminal charges.

d. Perjury charges cannot be filed based on testimony, declarations and other statements made by Tenborg in his libel lawsuit arising from a CalCoast article

Carl Knudson's February 18, 2018, *Addendum to Preliminary Report*, concentrates almost entirely on allegations of perjury committed by Charles Tenborg. These allegations stem from a libel lawsuit brought by Charles Tenborg against Karen Velie, Daniel Blackburn and Cal Coast News in response to an article in 2012 written by Velie and Blackburn. In sum, Knudson alleges that during the pre-trial discovery portion of the case Tenborg made false statements under penalty of perjury during depositions, in answering interrogatories, in declarations as part of court filings, and during his testimony at trial.

The civil matter went to trial in San Luis Obispo in March 2017 and resulted in a judgment in favor of Mr. Tenborg in the amount of $1.1 million, which included a

[17] His letter states "In summary, the attached table shows an overpayment from CalRecycle totaling $34,642.46. We have corrected how we report cancellation of non-CRT flat panels as part of and since our August 2015 claim and have provided additional training to staff on data recovery. I did not fully understand the reporting requirements of the flat panel cancellation process which resulted in using a collection number instead of adding up the weights from the specific cancellation worksheets. CEC Electronic Waste is prepared to reimburse CalRecycle for the overpayment. I want to again express our good faith efforts in immediately changing our methodologies to comply with CalRecycle regulations. . ."

$500,000 judgment against Velie for punitive damages. The case was appealed, and the judgment was affirmed. The written, but unpublished, opinion[18] by the Court of Appeals is important, as it helps to identify the issues that were truly in dispute, and therefore "material" within the meaning of CALCRIM instruction 2640, element 3. As referenced above, an untrue statement made under penalty of perjury does not amount to the crime of "perjury" unless that statement is also *material to the outcome*. In the opinion, Justice Perren identified five statements made in the Cal Coast News article that Tenborg said were untrue and which were the basis for the libel lawsuit:

> "In the mid-1990s, Tenborg was fired for undisclosed reasons from his job with the San Luis Obispo Environmental Health Certified Unified Program Agency (CUPA)."
>
> "Mr. Tenborg was awarded a no-bid contract that was required by law to go out to bid since it was over $15,000."
>
> "Mr. Tenborg encourages member public agencies to ignore state law by filling out IWMA forms that allege the municipality is a small generator and he then transports the loads himself in violation of state law."
>
> "Mr. Tenborg illegally transports hazardous waste."
>
> "Mr. Tenborg transported radioactive waste [as pictured[19]]."

With respect to the trial itself, the first several days of trial, which included testimony, were not transcribed by a court reporter. [20] As a result, there is no transcript for the motions in limine, jury selection, opening statements, the direct testimony of Charles Tenborg and the first part of his cross-examination. The *unreported* portion of Tenborg's testimony began mid-afternoon March 8, 2017, and continued into the next day, ending at noon. The lack of a transcript for this portion of Tenborg's testimony complicates the ability to evaluate an allegation of perjury. Court of Appeals Justice Perren—with apparent frustration—highlighted the lack of an adequate trial record as a reason the appellate court could not evaluate the defendants' claim of insufficient evidence of malice to support an award of presumed damages against Blackburn or the award of punitive damages against Velie.[21]

In sum, with respect to Tenborg's testimony at trial, the determination of whether he committed perjury is limited to testimony on cross-examination and his very brief rebuttal testimony.

In addition to trial testimony Knudson and Velie have identified other statements made by Tenborg prior to trial where they contend he may have perjured himself. These

[18] *Tenborg v. Calcoastnews/uncoveredSLO.com et al 2019 WL 351434*
[19] The article contained an image of a drum with a radioactive waste label.
[20] Unlike a criminal case where the testimony during trial are transcribed by a court reporter, litigants in a civil trial can waive the court reporter.
[21] *Tenborg v. Calcoastnews/uncoveredSLO.com et al 2019 WL 351434*

include occasions where Tenborg testified in a deposition and statements he made in written declarations that were under penalty of perjury. These allegations will be addressed first, followed by those relating to testimony taken during trial.

1. Allegation of perjury cannot be sustained based on statements contained in the Declaration of Charles Tenborg in Support of Plaintiff's Opposition to Defendants' Special Motion to Strike Under Anti-SLAPP statute (Tenborg's Declaration)

In his *Addendum* report, Knudson points to three violation notices by the California Department of Toxic Substances Control (DTSC) which he contends "seem to" contradict a statement in Tenborg's Declaration. This declaration was signed by Tenborg under penalty of perjury on October 2, 2013. As a threshold matter, the statute of limitations for perjury is three years from the time the statement was made, or within three years after discovery[22] that a statement contained perjury. Based on this, the statute of limitations has run for perjury committed in 2013.

However, even if the statute of limitation had not expired, the statement itself does not amount to perjury. In the declaration, Tenborg states in paragraph 54:

> "Up until this Article was published, I had an excellent reputation in the community. To this day, I have never been the subject of an enforcement action by the California Department of Toxic Substances and [sic]Controls and have a wealth of experience proudly servicing entities throughout California." (emphasis added)

The three DTSC violations referenced by Knudson are set forth on Department of Toxic Substances Control form and include a statement of the violation and corrective action to be taken. The first offense occurred on September 17, 2008, and was for failing to have adequate containers to prevent electronic waste from breaking and failing to label how long electronic devices had been located at CEC Electronic Waste Recycling's facility. Tenborg's company was given 15 days to correct the violation. The second offense occurred on October 28, 2009, and involved failing to obtain an EPA ID number, inadequate aisle spacings at the facility, failing to immediately clean up broken electronic devises, and failing to label electronic devices. The remedy for these cases was to correct the violation. The last violation occurred on September 20, 2011, and involved four drums containing batteries that were mislabeled as "Excluded Recyclable Materials" rather than "Universal Waste Batteries," boxes of lamps that were similarly mislabeled, four bins of laptop computers and two pallets of electronic devices that were not labelled. No action was required by DTSC after staff correctly labelled those items.

The issue presented here is whether these violations—each of which appear to be minor in nature and do not appear to have resulted in fines or other disciplinary action—rise to the level of an "enforcement actions," as that term is used in Tenborg's declaration. A visit to the Enforcement Cases section of Department of Toxic Substances Control

[22] Penal Code section 803(c) allows a statute of limitation to be tolled for fraud-related offenses, including perjury, until "the discovery of the offense." However, "discovery" of the offense requires that a victim (or law enforcement) exercise "due diligence" in their efforts to discover the offense.

website[23] reveals that "enforcement actions" involve formal proceedings taken against an offender that can result in fines, penalties, orders and other punitive actions. This site also lists the names of entities that have been subject to DTSC enforcement action. Of note, the names CEC Electronics, Eco Solutions and Charles Tenborg do not appear on the roster of "Enforcement Cases" found on that site.

If perjury allegations were filed, Tenborg would likely claim that he, as someone with years of experience in the environmental community, understood "enforcement actions" to be the types of serious formal actions such as those found on the DTSC website, and not seemingly technical violations, some of which were remedied while inspectors were present on site. As such, he could reasonably (and credibly) claim that he did not "know the information was false" [CALCRIM 2640, element 2].

Moreover, even if the statements by Tenborg were found to be untrue, based on the issues at the heart of the civil trial it is highly questionable whether they would rise to the level of being "material." [24] Again, the following were identified by the Court of Appeal as being the key issues at trial:[25]

> "In the mid-1990s, Tenborg was fired for undisclosed reasons from his job with the San Luis Obispo Environmental Health Certified Unified Program Agency (CUPA)."
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> "Mr. Tenborg was awarded a no-bid contract that was required by law to go out to bid since it was over $15,000."
>
> "Mr. Tenborg encourages member public agencies to ignore state law by filling out IWMA forms that allege the municipality is a small generator and he then transports the loads himself in violation of state law."
>
> "Mr. Tenborg illegally transports hazardous waste."
>
> "Mr. Tenborg transported radioactive waste [as pictured[26]]."

Whether or not there were three DTSC violations would have little, if any, bearing on these key issues at trial. Thus, even if Tenborg intentionally lied when he said he had not been the subject of an "enforcement action," the fact that there had been three minor violations would not be a "material" fact likely to affect the outcome of the trial.

A related allegation of perjury has been made based on two other paragraphs contained in Tenborg's October 2, 2013 Declaration. These were raised in an email to the

[23] https://dtsc.ca.gov/enforcement-cases/

[24] "Information is material if it is probable that the information would influence the outcome of the proceedings, but it does not need to actually have an influence on the proceedings." CALCRIM 2640

[25] As noted above, these were the issues in controversy identified by Justice Perren in his Court of Appeals decision

[26] The article contained an image of a radioactive waste drum in the margin.

District Attorney's Office by Karen Velie. In Paragraph 43 of his Declaration Tenborg states:

> "Both my company and I have always complied with the application regulations regarding this program, such as completing any necessary bills of lading, and an assertion to the contrary by Defendant's is wholly false." (emphasis added)

The context for this statement is important. This paragraph is contained within a section of Tenborg's Declaration where he is discussing transportation of universal waste. The reference to "this program" is to his "Universal Waste Collection Program." Velie suggests that the DTSC violations (listed above) contradict his declaration, but those three violations do not involve transportation of universal waste but rather how they were labelled and kept at Tenborg's processing site. As such, this statement in his declaration cannot be a basis for perjury.

The same conclusion follows for similar language found in Paragraph 45 of the Declaration where Tenborg discusses occasions where his company transports Household Hazardous Waste:

> "In those circumstances where we have had to transport such Household Hazardous Wastes between IWMA facilities . . . we have always complied with the proper environmental regulations, including having proper manifests when necessary."

Again, the context for this statement is important. This statement pertains to the transportation of HHW, whereas the DTSC violations listed above deal with the manner in which they were stored, labeled and otherwise kept at Tenborg's processing site. Therefore, this statement does not provide a basis for a perjury allegation.

A separate, but related, issue is raised by an attachment to Knudson's report, a DTSC Report of Investigation dated August 26, 2014. This report involves an investigation into allegations that Tenborg was improperly transporting and disposing of hazardous waste. However, the report, which is very brief (about half a page of text), concludes that the "no criminal intent could be established and the allegation was unconfirmed." The matter was "closed" and was not submitted to the Attorney General, the District Attorney or any other prosecuting agency for prosecution. The investigator medically retired apparently before she could complete her investigation and later died. Nonetheless, her supervisor—who authored the report—states she reviewed the case with the investigator and that she (the supervisor) "agreed with the findings that no criminal intent could be established and the allegation was unconfirmed." Of note, the report is dated August 26, 2014, after Tenborg's October 2013 Declaration had been signed.

Finally, this DTSC investigation was known to the parties by the time of civil trial in 2017 and the gravamen of the investigation was fleshed-out before the jury. Ms. Velie was permitted to testify about her communications with the investigator and provide some detail about the allegations.

When asked about his knowledge of the investigation, Tenborg testified he first became aware of the investigation in October 2016 after the defendants in that case provided a copy of the report to him during the course of discovery. The defendants had evidently obtained the report as the result of a Public Records Act request made to the DTSC. Tenborg's testimony about first learning of the investigation in October 2016 does not appear to have been contested at trial. As such, it appears Tenborg was not aware of the investigation when he executed his Declaration on October 2, 2013.

Ms. Velie has also pointed to the 17 violations for improperly prepared claim forms, a subject addressed in detail above, as evidence that, contrary to the statement in his October 2, 2013, Declaration, Tenborg had in fact been the subject of an "enforcement action." However, those violations occurred in 2014 and 2015 and were not brought to Tenborg's attention until late 2015, all of which occurred after Tenborg signed the Declaration on October 2, 2013. As such, they cannot be used as a basis for proving perjury.

Finally, Ms. Velie notes that during closing arguments at trial Tenborg's attorney argued that Tenborg had an "unblemished career." The arguments of counsel—which are not under oath—cannot be used as a basis for perjury against themselves, much less against their clients.

2. Allegations of perjury cannot be filed based on Tenborg's deposition testimony relating to the transportation of universal waste

Ms. Velie has identified statements made by Tenborg during his September 21, 2016, deposition that she contends amount to perjury. As a threshold matter, the three-year statute of limitations has run as to any perjurious statements made during these depositions.

However, even if the statute had not run, these statements do not amount to perjury. In sum, Ms. Velie takes issue with Tenborg's statement during the deposition that "We continued to transport universal waste up until I sold the company" [Page 19:13-14]. Tenborg then testified that he sold Eco Solutions in 2014.[27] [Page 12:15-18]. He also testified that once he sold Eco Solutions he discontinued his registration with the Department of Toxic Substances Control that permitted him to transport hazardous waste. [Page 23]. Tenborg also noted that no special licensing was required to transport "electronic waste," something his brother was doing for Tenborg's company CEC Electronic Waste Recycling. [page 25:22-26:10]

To this, Ms. Velie states that Tenborg "continued to work with hazardous wastes including universal waste for the IWMA in 2011, 2012, 2013, 2014, 2015, 2016, and 2017." First, Tenborg's above-referenced testimony was qualified: this dealt with transportation

[27] As referenced elsewhere, the transcript is equivocal on the year of sale. The question and his answers are as follow:
Q: Okay, When did you sell Eco Solutions?
A: 2014
Q: Okay
A: If I'm – '15, '16

of universal waste and does not indicate that he ceased entirely working with hazardous waste. Rather, at trial when asked what companies he owned, he responded "I own the Cleaner Earth Company and CEC Electronic Waste Recycling . . . and Eco Solutions[28] as well." Likewise, during the 2016 deposition he testified that the "Eco Solutions" was at that time providing "appliance recycling services." In sum, Tenborg's deposition testimony is not contradicted by the fact that after he sold (the goodwill of) Eco Solutions to Stericycle he continued to process electronic and other waste.

3. Perjury allegations against Tenborg cannot be sustained based on statements by Tenborg under penalty of perjury about storage and handling of "vault waste"

In his *Addendum* Knudson contends that during the course of the civil case Tenborg provided information about "vault waste" which Knudson argues is false or inaccurate[29]. The subject of "vault waste" was also raised in the *Preliminary Report*, but from the perspective of whether it was being handled appropriately.

During his deposition and at trial Tenborg provided information about "vault waste" and his company's handling of it. In sum, Tenborg's company Eco Solutions had a contract with PG&E to transport vault waste, which it performed two or three times a year.[30] Tenborg described "vault waste" as dirt and debris that accumulated over time in underground vaults that housed electrical transformers. The accumulation would typically be the result of the activity of gophers, rain or other environmental factors. As dirt accumulates in the vault it affects the ability of the transformers to cool themselves, requiring the periodic removal of this debris from the vaults.

PG&E was responsible for testing the debris in the vaults for contaminants; if testing revealed the soil to be hazardous another contractor, PSC, would handle that soil. The soil removed by Eco Solutions was placed in drums and transported to a "staging" area at or near the Household Hazardous Waste facility, which is located at the Cold Canyon Landfill. The soils would be disposed of at the landfill. The landfill was permitted to take soils containing minor contamination. Vault waste he was hauling for PG&E could contain minor quantities of contamination, like oil, but it was not considered hazardous.

Knudson appears to take issue with Tenborg's representation that the soils were "clean" or "clean non-hazardous." Knudson bases this on an email dated November 20, 2015, from Benjamin Gray of Waste Connections to Ryan Lodge at the California Water Resources Control Board regarding an incident in 2013. In that email Gray described learning in May 2013 that Eco Solutions had dumped some soil in a non-lined area near the HHW facility at Cold Canyon Landfill. This matter was discussed with Tenborg who told Gray the soil was "`build up' from wind and animals in transformer boxes owned by PG&E that EcoSolutions had serviced." (ie., vault waste). The "Environmental

[28] As referenced elsewhere, Tenborg has stated he sold the "goodwill" of Eco Solutions, but retained the name.
[29] Knudson does not call it perjury, but states that documentation from the Water Board "seems to contradict" Tenborg's sworn statement and testimony.
[30] Tenborg testified he was hauling soils for PG&E for two years, 2013-2014. He also states that PG&E was one of Eco Solutions' early customers in approximately 2001, though it is unclear what type of work Tenborg was providing at that time.

Specialist for the Western Region" (evidently for Waste Connections) examined the analytical data provided by Tenborg (likely from PG&E) and determined that the material did not meet the "unrestricted" use and needed to be placed into the lined portion of the landfill. Of note, in his email Gray states "[t]he material was not hazardous waste but could not be dumped in the area that it had been." The email further states that Tenborg then obtained a special waste permit, cleaned up the soils and disposed of them into the Cold Canyon Landfill.

It is unclear how this email—or the circumstances described therein—conflicts with the sworn testimony of Tenborg. Rather, Tenborg clarified that vault waste hauled by Eco Solutions could contain minor contamination. If PG&E's testing showed greater contamination, the waste would be removed by another company, PSC. In sum, the information contained in Gray's November 20, 2015 email is generally consistent with Tenborg's sworn testimony and cannot provide a basis to charge the crime of perjury.

As an aside, in his *Preliminary Report* Knudson makes a recommendation that law enforcement investigate whether "hazardous waste" was being collected at the PG&E vaults and transported and stored at the HHW site without proper permitting. This recommendation appears to be premised on the incident in 2013 that was the subject of Gray's email but, contrary to that email, assumes that the vault waste in question is actually "hazardous waste." The email itself confirms this is not the case.

As to Knudson's suggestion that investigation is necessary, the email illustrates that enforcement—albeit by the private company Waste Connections—was undertaken: the improper dumping was detected and remedied. Further, as referenced above, DTSC inspectors visited Tenborg's HHW facility at Cold Canyon Landfill, presumably on a regular basis, to monitor the site for violations.

In sum, waste management appears to be a highly regulated industry and Tenborg's companies are subject to that enforcement. Knudson's recommendation for law enforcement to examine the facility to determine whether Tenborg improperly handled "hazardous waste" does not appear justified based on the information provided. The email itself contradicts the premise that the vault waste that was handled by Tenborg was "hazardous waste."

4. Charges of perjury cannot be filed based on Tenborg's testimony about the sale of Eco Solutions to Stericycle

Knudson's *Preliminary Report* appears to question Tenborg's testimony that he sold Eco Solutions[31] to Stericycle. Knudson also points to apparent contradictions as to the sale date as further evidence of perjury.

[31] The name "Eco Solutions" was used in testimony, although full name of this company appears to be "CEC Eco Solutions." IWMA's contract was with CEC Eco Solutions. Tenborg testified during trial in March 2017 that as of that time he still owned Cleaner Earth Company, CEC Electronic Waste Recycling and Eco Solutions, but that his sale of Eco Solutions to Stericycle in 2014 did not include the name, only the goodwill.

In his lawsuit Tenborg alleged that the November 14, 2012, article by Velie and Blackburn harmed his reputation and, by extension, that of his company, Eco Solutions. In sum, he claimed that due to false statements in the article he was not able to sell Eco Solutions for the amount he believed it was worth.

As a preliminary matter, it should be noted that many of the important details about the sale of Eco Solutions to Stericycle by Tenborg do not appear to have been obtained during the course of discovery in the civil matter and have not been provided to the District Attorney's office.[32] At trial the focus appear to have been primarily on whether or not Tenborg had been libeled, with little attention devoted to the amount of Tenborg's loss or how it was substantiated. The circumstances leading up to the sale and the value of the company appear to have been established by Tenborg's testimony alone without any rebuttal evidence.[33] Missing information includes the actual sales contract, the date of the sale and the extent to which Tenborg's other companies continued to operate after the sale of Eco Solutions. The lack of this type of information makes it difficult to assess a claim of perjury. To the extent there is uncertainty in the underlying material facts, perjury cannot be proven.

According to information provided by Tenborg during trial and in discovery, the services Eco Solutions provided were specialized, and his was one of only three companies in California providing the same type of work. Tenborg testified at trial that as of January 2013 Eco Solutions had long-term contracts[34] totaling $3.8 million and he thought one of Eco Solutions two competitors would have "snatched us up," but they did not. At his deposition he testified that in 2014, prior to the sale, Eco Solutions had made about $850,000.[35] In response to Form Interrogatories, Tenborg stated that as of the time of the "Incident" (presumably the printing of the article) he was earning $240,000 per year from Eco Solutions.

[32] An assumption has been made that the District Attorney's Office could obtain a search warrant for these records. However, a search warrant must be based on probable cause that a crime has been committed. Based on the information provided to this office and obtained through investigation, insufficient evidence is available to establish probable cause to believe a crime has been committed.
[33] As referenced elsewhere, the first three days of trial, which included Tenborg's direct testimony, were not transcribed. It is not known what additional information he provided during that time about the sale of Eco Solutions to Stericycle.
[34] Tenborg testified that Eco Solutions had contracts in other counties, not just with the IWMA.
[35] In communications with the District Attorney's Office Karen Velie questioned veracity of these figures. She referenced his 2012 divorce and financial statements where he made $313,836, evidently in 2012. However, using this number as a basis to prove perjury is problematic. First, the $3.8 million dealt the with value of long-term contracts, which is distinct from Tenborg's income. Second, the earnings of his company ($850,000) does not equate to personal earnings, nor does the transcript indicate whether this was gross or net earnings. During his deposition Tenborg was first asked what his "annual income" was in 2014 from Eco Solutions, to which an objection was raised and he did not give an answer. He was then asked how much "revenue you were getting in 2014 before you sold Eco Solutions," to which another objection was raised and again he did not answer. Then the following questions were asked: Question: "How much money was Eco Solutions making in 2014 before you sold it?" Answer: "About 850,000." This line of questioning was precise: it did not involve Tenborg being asked what his personal income was—that question was never answered—but rather what Eco Solutions was earning. Finally, these three figures deal with different years—2012, 2013 and 2014, making any meaningful comparison questionable. Finally, at the time of trial the defendants had the ability to impeach Tenborg with his response to Form Interrogatories where he states that his annual earnings from Eco Solutions prior to the "incident" was $240,000—an amount less than $313,836—but did not do so.

Tenborg attributed the lack of interest by purchasers to the article which he said received significant attention within the waste-hauling community.[36] He testified he first started looking for a buyer in January 2013, but it was not for 19 months before Stericycle bought him out. He believed the company was worth $2.4 million, but ended up selling it for $1.3 million and that the article and pending litigation was leverage Stericycle used against him. Stericycle did not purchase the name Eco Solutions, but Eco Solution's goodwill including its contract with the IWMA.[37]

Turning to the allegations of perjury, Knudson appears to attack Tenborg's statements and testimony about whether the sale occurred and, if it did, when it occurred. Of note, the precise date of the (purported) sale does was not disclosed at trial nor in the documents later obtained by Knudson. Rather, Knudson makes a point of stating in his *Addendum* "we have not seen a copy of the purported sale agreement…"

During his deposition Tenborg testified at one point the sale occurred in 2014[38] but later that he sold it either in mid-2013 or early 2014. At trial he testified about a process that began in January 2013 when he began pursuing purchasers that culminated "about" 19 months later (ie., "about" July or August 2014) when he sold to Stericycle. Taking these statements alone, they are general estimations containing no clear contradicting testimony that could serve as the basis for an allegation of perjury.

Knudson points to a number of documents which he contends raise suspicions about whether a sale in fact occurred. First, he points to an April 10, 2013, Response to Request for Proposal by Tenborg on behalf of Eco Solutions. This document was submitted for the purpose of extending IWMA's contract with Eco Solutions for five years. Knudson points out that there is no reference to a "pending sale to Stericycle, rather the memo indicates that Stericycle would be a subcontractor." However, according to Tenborg's testimony, in April 2013 he would have still been seeking a buyer and did not reach an agreement with Stericycle until over a year later. As to Stericycle being a "subcontractor," the document identifies Stericycle as a subcontractor used by Eco Solutions to collect a very specific type of waste—"sharps."[39] This does not raise suspicions, but rather seems to confirm a prior relationship between Stericycle and Tenborg/Eco Solutions.

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[36] In a declaration, Tenborg described the article being distributed in a "widely read California Department of CalRecyle intranet list-serv called `Morning Coffee'" the day after the CalCoastnews article was published. He states "[T]his site is available to all state and local government employees who deal with hazardous waster and thus are peers and/or potential clients of Eco Solutions."

[37] The purchase contract was never produced during the civil litigation. Based on a RFP dated April 10, 2013, Eco Solutions was at that time operating in the counties of Amador, Imperial, Madera, Santa Barbara, San Luis Obispo and Tehama. It is unclear whether Stericycle obtained those contracts as well.

[38] What precisely was conveyed by during this part of the deposition is unclear. The exchange between Tenborg and the defendants' attorney follows:

Q. Okay. When did you sell Eco Solutions?
A. 2014.
Q. Okay.
A. If I'm – '15, '16"

[39] "Sharps waste" is statutorily defined as "waste generated by a household that includes a hypodermic needle, syringe, or lancet." California Public Resources Code § 40190.4

Knudson references a September 10, 2014, document in which Tom O'Malley, then President of the IWMA, "consents" to Eco Solutions' assigning its contract with the IWMA to Stericyle, Inc. Rather than raise doubts as to whether a sale occurred, this is evidence that a sale did occur and within the timeframe testified to by Tenborg.[40] The next document relied on by Knudson is a letter on Eco Solutions letterhead received at the IWMA October 20, 2014, co-signed by Tenborg and Charlie Alutto, President and CEO of Stericycle, to William Worrell of the IWMA. The letter discusses the transition of operations from Eco Solutions to Stericycle. Knudson takes issue with the statement in the letter that "CEC Eco Solutions, Inc., will now be part of Stericycle Inc." noting that "there is no mention of a sale in the letter." Nonetheless, the letter demonstrates a transition to Stericycle.

Evidence that a sale actually occurred is found elsewhere. For instance, in the board packet for the March 11, 2015, meeting is a memo regarding a proposed amendment to the contract between the IWMA and "21st Century Environmental Management, L.P., a California limited partnership and wholly-owned, indirect subsidiary of Stericycle, Inc." That memo recounts the May 8, 2013, contract between the IWMA and CEC Eco Solutions and the subsequent approval of the IWMA to the assignment of that contract to Stericycle on September 10, 2014.

Next, Knudson references a payment record from the IWMA to Eco Solutions and Stericycle. This document reflects the IWMA paying Eco Solutions up until February 4, 2015, several months after the October 20, 2014, letter discussing the transition. It is not known how long the transition from one company to the other took to occur. Whatever the reason for delay in payment, these records provided by Knudson do ultimately show a shift in payment from Eco Solutions to Stericycle.

Along the same lines, Knudson refers to Certificates of Liability provided to the IWMA demonstrating that Tenborg's companies (The Cleaner Earth Company, Eco Solutions and CEC Electronic Waste Recycling) were insured and that the IWMA was listed on that policy as an additional insured. For the policy period from July 9, 2013, through July 9, 2014, all three companies were listed as insured, but for the policy period July 9, 2014 to July 9, 2015, only The Cleaner Earth Company is listed. This is again consistent with a sale of Eco Solutions to Stericycle.

Finally, Knudson makes reference to billings from CalRecycle for CEC Electronic Waste Recycling dating from 2008 up until 2017, noting that there did not appear to be a drop in that company's revenue following the Cal Coast News article. However, Tenborg's lawsuit was directed to the impact of the article on his sale of Eco Solutions, not CEC Electronic Waste Recycling. As of the time of the trial he still owned CEC Electronic Waste Recycling.

In sum, lacking a copy of the sales agreement with Stericycle, there is no basis from which to demonstrate that Tenborg perjured himself when testified that he sold Eco

[40] The May 8, 2013, five-year agreement between the IWMA and Tenborg requires written consent by the IWMA in order for Tenborg to assign Eco Solutions' contract.

Solutions and that he sold the company in 2014. Rather, the IWMA's consent to the assignment of its contract with Eco Solutions to Stericycle suggests that a sale indeed occurred within the general timeframe to which Tenborg testified.

VI.

KNUDSON'S REPORT ON THE IWMA

Knudson's third and final report focuses on the IWMA and contains various allegations regarding the formation and overall management of that entity. Some of the issues raised, including unexplained expenses on IWMA credit cards and other spending, resulted in focused investigation by the District Attorney's Office. These issues will be addressed separately in later portions of this report.

As to other issues raised by Knudson, some will not be addressed at all or will be given only light treatment as they are not likely to reveal criminal conduct. As referenced above, the primary mission of the District Attorney's Office is to investigate and prosecute criminal conduct.

a. Creation of Executive Committee was required by the Joint Powers Agreement which established the IWMA

The first question raised by Knudson is whether the IWMA's Executive Committee was properly formed.[41]

As referenced above, the IWMA was the product of a Joint Powers Agreement ("JPA") entered into May 10, 1994, by seven incorporated cities and the County of San Luis Obispo. Section 7.6(c) of the Joint Powers Agreement mandates that "Standing Committees shall include an Executive Committee . . ." (emphasis added). It is unclear what significance Knudson attaches to the manner in which the Executive Committee was formed. But in any event, it is clear that the JPA requires that an Executive Committee be established.

b. The hiring of William Worrell as General Manager by the IWMA appears to have been conducted properly

Knudson next raises issues about hiring of former General Manager William Worrell: "I believe Mr. Worrell has been the manager of the IWMA for over twenty-years and I have seen no indication that the contract awarded to Mr. Worrell was put out for competitive bidding." The Joint Powers Agreement specifically requires that the Manager be selected using "an open competitive process."[42]

Knudson's contention that Worrell's contract was awarded without competitive bidding is without merit. A review of the IWMA board agenda and attachments for the

[41] Knudson raises the issue in this manner: "I have been advised by Mr. Wayne Hall, former San Luis Obispo County Official, that the IWMA Executive Committee was never legally formed because an amendment to the JPA agreement would be required in order to legally delegate or usurp any of the "authority" created in the original agreement?" Of note, the District Attorney's Office Public Integrity Unit met with both Wayne Hall and Carl Knudson.
[42] See JPA section 7.5

January 11, 1995, meeting indicates that Worrell was selected as Program Manager following a recruitment conducted by the San Luis Obispo County Personnel Department.[43] According to a report dated January 11, 1995, by Greg Luke, the Interim Manager, the IWMA Executive Committee directed staff to advertise the position "in the western United States, using newspapers, trade journal, and *Jobs Available* to notify potential applicants of the job opportunity."

Luke's report outlines a detailed interview process that was to be undertaken and his report included several attachments, including an announcement for the position that appears to have been placed online. Luke recommended that, pending sufficient applications, six to eight candidates were to be interviewed for the position. Taken at face value, it would appear the position was broadly advertised, and that Worrell was the successful candidate.

c. Competitive bidding was not required in the hiring of legal counsel Raymond Biering

Knudson next takes issue with the 2006 contract between the IWMA and Raymond Biering, former legal counsel for the IWMA, and questioned whether his contract had ever been put out for competitive bidding.

California Government Code section 53060 permits "any public or municipal corporation or district" to enter into contracts for, among other specifically enumerated profession, "legal" services so long as the person is "specially trained and experienced and competent" to perform the special services. This section has been recognized as creating an exception to the general requirement for competitive bidding on public works contracts. (See e.g., *Cobb v. Pasadena City Board of Education* (1955) 134 C.A.2d 93). As to Mr. Biering's qualifications, he reportedly worked for San Luis Obispo County Counsel during which time he was legal counsel for the IWMA. Based on GC section 53060 and Mr. Biering's prior legal experience, there was no requirement his contract go out for competitive bidding. Finally, the JPA authorizes the IWMA to hire legal counsel. [JPA sec. 5.2(a)]

d. Hiring of Glenn Burdette Certified Public Accountant did not require competitive bidding

The Joint Powers Agreement requires the IWMA to hire an "independent certified professional accountant to conduct annual fiscal audits..." (JPA sec. 9) In July 1995 IWMA replaced its prior CPA firm and hired the firm of Glenn Burdette Certified Public Accountants. Based on a review of the board agenda packets for that meeting, the circumstances leading to the replacement of the prior firm with Glenn Burdette are not known. The original contract was for three years ($4,500 for the first two years and $4,000 for the following two years) and has continued to be renewed regularly since then.

Knudson states in his report that "there does not appear to be a bidding process to award the auditing work to that company." California Government Code section 53060

[43] This department was evidently renamed and is now the San Luis Obispo County Human Resources Department.

permits "any public or municipal corporation or district" to enter into contracts for "services and advice in financial, economic, accounting, engineering, legal, or administrative matters" (emphasis added) so long as the person is specially trained and experienced and competent" to perform the special services. As noted above, this section has been recognized as creating an exception to the general requirement for competitive bidding on public works contracts. (See e.g., *Cobb v. Pasadena City Board of Education* (1955) 134 C.A.2d 93). Because Glenn Burdette CPA is providing accounting services, competitive bidding is not required.

e. It is unclear whether the contract to hire Mike Di Milo in 1997 involved competitive bidding

Knudson also raised issues about the contract between the IWMA and Mike Di Milo. Di Milo runs the Education Program for the IWMA. The primary focus of this program are students in grades K-12 and involves education about landfills, recycling, waste reduction, and a variety of similar subjects. Di Milo was first awarded the contract in July 1997 when the previous contractor with whom he had worked did not seek renewal of the contract. DiMilo's contract renewed annually until 2001. In May 2001 De Milo and the IWMA entered into a new contract that would "continue until terminated." Thereafter, on an annual basis Di Milo submitted proposals that were included in the annual proposed IWMA budget. His proposals offered justification for increases in the amount of the contract and provided details about the services to be provided in the coming year.

It is unclear whether the July 1997 contract was the result of competitive bidding. It is also unclear whether the educational services provided by Di Milo would require competitive bidding, though arguably they would because educational services is not a subject specifically listed in California Government Code section 53060. However, even if the contract required competitive bidding, and even if competitive bidding did not occur, this failure would not amount to criminal conduct but, even if it did, the passage of nearly 25 years precludes prosecution.

It is important to note that regardless of the origins of the original contract, every year the budget packet contains detailed information about Di Milo's program and a breakdown of how IWMA funds will be spent in the coming year. These materials are presumably reviewed by members of the board and provide a basis for the board to approve funds for this program.

f. Criminal charges against William Worrell cannot be filed based on destruction of IWMA records

1. Background

In his *Report on the IWMA* Knudson states he made a request under the California Public Record Act to the IWMA for billing records for Charles Tenborg and his companies.[44] When he received the records, he found they went back only to 2013 even

[44] Based on Knudson's *Preliminary Report,* this request was made "in or about October 2017."

though he had requested records back to 2009. According to Knudson, IWMA Manager William Worrell informed him that records between 2009 and 2012 had been destroyed and later told Knudson that he believed the record retention policy for invoices and billing was two years. Knudson stated that, as a Certified Fraud Examiner, he believed that destruction of public records is not permitted without prior approval and that the retention period for "accounting records" is five years. As an example, Knudson noted that the San Luis Obispo County Auditor has a policy requiring accounting records to be retained for five years.

On July 6, 2018, William Worrell responded by letter to a public records request by the District Attorney's Office during which he discussed the subject of record retention. He stated that the IWMA did not have a records retention and destruction policy, but instead that the County Controller is responsible for maintaining IWMA records. In his letter he refers to Section 9.2 of the JPA, which provides in part as follows:

> 9.2 Controller. The Auditor-Controller of the County of San Luis Obispo shall be the Controller for the Authority. The Controller shall:
>
> a) Draw warrants to pay demands against the Authority when the demands have been approved by the Authority Board and/or the Manager. He/She shall be responsible on his/her official bond for his/her approval of the disbursement of Authority money.
>
> b) *Keep and maintain records and books of accounts* including keeping separate sub accounts of tipping fee surcharges and other revenues deposited into the Sold Waste Authority Trust Fund and expenditures made therefrom on the basis of generally accepted accounting principles.
>
> c) *Make available all such financial records of the Authority* to a certified public accountant or public accountant contracted by the Authority to make an annual audit of the accounts and records of the Authority. . . . (emphasis added)

In his letter, Worrell further states that, with respect to payments, the IWMA submits to the Auditor's Office a document entitled Authorization to Draw a Warrant and attaches the original credit card statement and supporting documents. The Auditor's Office then pays the bill. He further stated that the IWMA followed the direction of the Auditor's Office by keeping copies of the Authorization to Draw for two years following the completion of the fiscal year.

When William Worrell was later interviewed by the District Attorney's Office, he provided additional background information. In sum, he maintained that the Auditor-Controller was the custodian of "official" records, that the copies maintained by the IWMA were copies of the official records. In support of this position, he provided a document he said Carolyn Goodrich obtained from the Auditor-Controller's Office. The following is a portion of that document:

ADMINISTRATIVE OFFICE RECORDS RETENTION SCHEDULE

TITLE & DESCRIPTION OF RECORDS	RETENTION LENGTH	LOCATION	REMARKS
Accounting files - Financial forms, Correspondence, Travel claims, Purchase Orders, and Requisitions	FY + 2 Years	Office	Originals maintained at Auditor-Controller
Administrative files – Rules and regulations, Agreements, Contracts, Procedure instructions, Departmental Policies and Procedures, Manuals, Employee Handbook, and Correspondence for establishing policy	When Superseded	Office and Admin Server	Per Secretary of State Records Management Guidelines
Annual Report (County)	When Superseded plus 2 years	Office, and Admin Server Current Report on the County Website	Per Secretary of State Records Management Guidelines

When asked about destruction of documents, Worrell said that in one instance black mold was found on documents stored in a seatrain container and that these records were destroyed due to their condition. He was unclear on exactly when this occurred, but said the damaged records were from Fiscal Year 2011-2012. He said records were shredded on another occasion, which he believes was in August 2017, and these would have included records from Fiscal Year 2012-2013. Worrell maintained that as of the time Knudson requested documents from the IWMA in early 2018 that the IWMA provided the previous four fiscal years and the first half of fiscal year, i.e., records dating back to fiscal year 2013-2014.

On the question of which entity had the duty to maintain the records, the Auditor's Office disagreed with Worrell. As background information, staff at the Auditor's Office explained that for offices of the County (viz., Sheriff-Coroner, Public Health, Public Works, District Attorney, etc.) the Auditor's Office exercises significant fiscal oversight. By contrast, the IWMA, as an independent agency, is not an office of the County and the Auditor did not provide the same level of oversight. Rather, the Auditor's Office functioned more like a bank: it would issue payment if the authorizations to draw warrants appeared to be in order. Auditor staff did not audit invoices that accompany warrant requests. Rather, internal controls were left to independent agencies such as the IWMA.

As to document retention, the Auditor's Office would scan and digitally store whatever documents were provided in support of authorizations to draw warrants, but the records it stored were limited to those submitted. According to the Auditor-Controller's Office, it remained the duty of the IWMA to keep its own copy of its records.

The forgoing reveals a conflict of sorts between the IWMA and the Auditor's Office with respect to which agency was responsible for maintaining records. According to Worrell, the Auditor's Office was responsible for maintaining the IWMA's official records; according to the Auditor-Controller's Office, it would store digital copies of whatever the IWMA submitted, but only what had been submitted.

As to the records processed through the Auditor-Controller's Office, Worrell claims he was not personally involved in submitting authorizations to draw warrants. Rather, those documents were compiled and submitted by Carolyn Goodrich, who handled the finances for the IWMA.

2. The California Public Records Act offers no remedy for destroyed records

Knudson's request for public records from the IWMA was made under the CPRA. As a threshold matter, the "judicial remedy" set forth in the CPRA is available *only* to a person or entity who is seeking disclosure of those records (ie., Knudson). [See *County of Santa Clara v. Superior Court* (2009) 171 C.A. 4th 119. In addition, the CPRA only requires a governmental agency to provide records that are in its possession and does not require the agency to create a new set of records. [See *Sanders v. Superior Court* (2018) 26 C.A.5th 651]. As such, if the IWMA destroyed the records—even if improperly so—the CPRA does not offer a remedy because it only applies to record that are in existence.

3. Charges for destruction of public records under Government Code section 6200 cannot be filed against William Worrell

Government Code Section 6200 is a criminal statute making it a felony for an office to destroy government records. It states:

> Every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his or her hands for any purpose, is punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years if, as to the whole or any part of the record, map, book, paper, or proceeding, the officer willfully does or permits any other person to do any of the following:
> (a) Steal, remove, or secrete.
> (b) Destroy, mutilate, or deface.
> (c) Alter or falsify.

Taken at face value, this code section creates a crime for a government "officer" who "destroy(s)" a government "record."

(A) The billing records sought by Knudson may constitute "public records" within the meaning of Gov. Code section 6200

The definition of "public record" as used in Government Code section 6200 covers only limited types of documents.[45] "Public records" as used in GC 6200 have been defined as follows:

> [A] 'record' within the meaning of sections 6200 and 6201, as interpreted by judicial decisions, is properly defined as a thing which constitutes an objective lasting indication of a writing, event or other information, which is in the custody of a public officer and is kept either (1) because a law requires it to be kept or (2) because it is necessary or convenient to the discharge of the public officer's duties and was made or retained for the purpose of preserving its informational content for future reference.

[45] By contrast, the California Public Records Act contains an expansive definition of "public records" that includes most, if not all, records maintained by a public agency.

64 Ops. Cal. Atty. Gen 435 (1981) quoting *64 Ops. Cal. Atty. Gen 317* (1981). This definition is derived from *People v. Tomalty* 14 C.A. 224 (1910).

Applying this definition to the records sought by Knudson, they do not appear to fall within the first "prong" of this definition, namely, records required to be kept by law. For example, California Government Code section 34090 *et seq* sets forth the rules for how a *city* government must maintain its records, and under what conditions they may be destroyed. Government Code section 26200 *et al* establishes similar rules for *county* governments. Likewise, Government Code section 60200 *et al* establishes a similar framework for the retention and destruction of records by *special districts*. There does not appear to be equivalent rules for agencies like the IMWA which were created by a Joint Powers Agreement under Gov. Code section 6500 *et al.*

Turning to the second "prong" of this definition, the billing records sought by Knudson may fall within the second category, records which are "necessary or convenient" to the discharge of an official's duties. The services provided by Tenborg's companies play a dominate role in satisfying IWMA's mission and, consequently, records reflecting payment for those services would likely be considered "necessary and convenient" to the IWMA.

(B) There is no evidence Worrell improperly destroyed documents

Government Code section 6200 requires that destruction of documents be "willful." Jury instructions define "willful" as an act being done "willingly" or "on purpose." A plain reading of this statute (and common sense) would imply that destruction of documents is permissible when copies exist.[46] Despite lack of clarity about the IWMA's record retention policy (discussed below), Worrell has maintained that the IWMA provided billing records to the Auditor-Controller's Office and the Auditor-Controller's Office was responsible for maintaining those records, a position supported by Section 9.2(b) of the JPA (cited above). The Auditor's Office confirmed that it permanently stored digital copies of whatever documents the IWMA submitted for payment of warrants, but that it stored only copies of what was provided. Worrell has taken the position that the Auditor-Controller's Office maintains the "official" records and, therefore, the IWMA was permitted to destroy its copies.

In addition, Worrell has also referenced the Administrative Office Records Retention Policy (see chart, above) applicable to "Accounting files" which states "Originals [of documents are] maintained at Auditor-Controller" and that the "Retention Length" for records is the fiscal year plus two years.

Based on the information obtained, there is no basis for prosecuting William Worrell for allowing these older IWMA records to be destroyed. In sum, some records appear to have been justifiably destroyed due to black mold. Other records were destroyed after they had been retained for at least two years plus the current fiscal year, consistent with

[46] For instance, Gov. Code section 60200 allows special districts to authorize the destruction of duplicate records.

the policy Worrell said the IWMA obtained from the Auditor-Controller's Office. Finally, based on the language of the JPA, Worrell would be entitled to argue that the Auditor-Controller's Office—not the IWMA—was obligated to maintain the records.

As discussed in the next session, charges have been filed against Carolyn Goodrich for destruction of records. However, these charges do not arise out of the destruction of the records discussed above, but shredding of documents in August 2018.

4. Charges have been filed against Carolyn Goodrich for destruction of public records and embezzlement.

As referenced above, criminal charges have been filed against Carolyn Goodrich in San Luis Obispo County Superior Court, case 21F-04785. The Complaint against alleges the following ten violations, all felony offenses:

Count 1: Embezzlement (Penal Code section 504), during the year 2014 by using public funds to pay personal AT&T bills in the amount of $3,120;

Count 2: Embezzlement during the year 2015 by using public funds to pay personal AT&T bills in the amount of $2,749;

Count 3: Embezzlement during the year 2016 by using public funds to pay personal AT&T bills in the amount of $3,624;

Count 4: Embezzlement during the year 2017 by using public funds to pay personal AT&T bills in the amount of $3,951;

Count 5: Embezzlement between January and May 2018 by using public funds to pay personal AT&T bills in the amount of $737;

Count 6: Embezzlement in January 2015 by using public funds to purchase a Turbo Tax program for personal use;

Count 7: Embezzlement in December 2017 by using public funds to purchase a Turbo Tax program for personal use;

Count 8: Embezzlement between April 2014 and March 2018 by using public funds to purchase goods at Lowe's Home Improvement for personal use;

Count 9: Embezzlement between January 2015 and April 2018 by using public funds to purchase online services of Truthfinders, Peoplefinder and Pacer.gov;

Count 10: Destruction of public records in violation of Government Code section 6200 occurring on August 19, 2018.

For the reasons discussed in the Introduction to this memorandum, the District Attorney's Office will not discuss the facts underlying the allegations against Ms. Goodrich here in this report.

5. Addendum: The IWMA has improved internal controls

When the District Attorney's Office contacted the San Luis Obispo County Auditor-Controller's Office in February 2019, staff there reported that the Auditor-Controller's Office was exerting more oversight than it had in the past.

Of note, the Auditor's office conducted an evaluation of the internal controls at the IWMA. This involved making inquiries of IWMA staff, reviewing documentation and sample testing of financial transactions. On September 3, 2019, the Auditor's office prepared a report which offered seven recommendations to strengthen controls. On February 23, 2021, the Auditor's Office prepared a follow-up report which identified the seven areas and progress on implementing those recommendations. The following is a chart by the Auditor's Office detailing the progress:

September 3, 2019 Recommendations	***Current Status***	***Action Remaining***
1. Add a fiscal staff member	Implemented	None
2. Segregate duties between cash receipting, recording, and depositing functions	Implemented	None
3. Reconcile the Union Bank account monthly and document management approval	Implemented	None
4. Reconcile Cal-Card purchases monthly and document management approval	Implemented	None
5. Strengthen controls over payroll, specifically to document the use, authorization, and reporting of leave time	Implemented	None
6. Maintain inventory logs, perform physical counts, and reconcile to the general ledger	In Progress	Document Management Review
7. Create policies for cash handling, travel, and IT security	In Progress	Finalize Cash Handling Policy

It bears noting in November 2018 the IWMA adopted the following records retention policy:

2. Policy Details

Description of Record	Retention Length	Location
Accounting Files – Financial forms, Correspondence, Travel Claims, Purchase Orders, and Requisitions	5 Years	Office and Scanned to Server
Administrative Files – Rules and regulations, Agreements, Contracts, Procedure Instructions, Departmental Policies and Procedures, Manuals, Employee Handbook, and Correspondence for establishing policy	Indefinitely or until Superseded	Office and Scanned to Server
Annual/Quarterly/Monthly Reports and Supporting Documents	5 Years	Office and Scanned to Server
Budget Documents – Fees and Supporting Documentation	5 Years	Office and Scanned to Server
General Administration Projects – Surveys and Questionnaires, Studies and Analysis Notes	5 Years	Office and Scanned to Server

g. Competitive bidding was not required when the IWMA first contracted with Tenborg

1. Introduction

Knudson next raises the issue of competitive bidding, focusing on Charles Tenborg. In 1997, the IWMA retained Tenborg to manage and operate the IWMA's household hazardous waste program. The relationship lasted over 15 years. Yearly, the IWMA Board would approve a proposal with its annual budget. There was no competitive bidding process, a point with Knudson takes issue with.

As explained below, competitive bidding does not appear to have been required for this contract. It is important to note that even if competitive bidding was required at the time the contract was entered, the passage of time precludes criminal prosecution.

2. Background

The IWMA was formed under a Joint Powers Agreement (JPA) in 1994 to regionalize waste management efforts and comply with the new requirements of the California Integrated Waste Management Act. In 1997, the IWMA entered into a one-year agreement with Charles K. Tenborg (Eco Solutions) to manage and operate the IWMA's household hazardous waste program. The IWMA Board either renewed or amended the contract each year, resulting in a relationship lasting over 15 years. The IWMA's manager, William Worrell, included the contract as a part of the Authority's annual budget package. None

of the Tenborg-company agreements were approved by the IWMA through a competitive bidding process.

The agreements provided that Tenborg's company receive, store, segregate, and prepare household hazardous waste to be shipped offsite to other recycling centers or landfills. The company operated out of seatrain containers located at Cold Canyon Landfill. As years passed, the company also began staffing regional household hazardous waste collection sites throughout the County as a convenience for county residents to dispose of household hazardous waste. During some years, the company would also pick up waste such as batteries and fluorescent light bulbs from businesses. The pick-up service ended in 2010.

The cost of household hazardous waste management increased throughout the years. In 1997, the company charged just under $15,000. By the end of the relationship, IWMA paid over $400,000 per year. As detailed above, the relationship ended in approximately 2014 when Tenborg sold Eco Solutions to Stericycle and Stericycle assumed the contact with the IWMA.

3. The California Integrated Waste Management Act (the Act)

The Act is a comprehensive program for solid waste management throughout the State, reflecting the legislative concern that ever-increasing amounts of disposable waste, combined with diminishing waste disposal capacity, posed a threat requiring an "aggressive new integrated waste management program." (California Public Resources Code section 40000.)

Under the Act, the responsibility for solid waste management is shared by the state and local governments (PRC section 40001), with solid waste handling services to be provided by one or any combination of the following: the local entity itself, another local entity, or a private waste collection enterprise. (PRC section 40058). A significant component of the Act is the reduction of waste entering landfills. To meet waste diversion requirements, the Act requires cities and counties to develop and implement integrated waste management plans providing for the reduction, recycling, and reuse of solid waste, to the maximum extent feasible, in an efficient and cost-effective manner. (PRC section 40052 and section 40900.) These plans also include adding a household hazardous waste collection, recycling, and disposal program. (PRC section 47100.)

The Joint Powers Agreement that created the IWMA references the Act repeatedly, making it clear that the purpose in creating the IWMA was to allow the cities and County to satisfy their duties to comply with the Act. The preamble of the JPA states as much:

> WHEREAS, the CITIES and COUNTY believe that by combining their separate powers they can achieve their waste diversion goals and satisfy the requirements of the Integrated Waste Management Act more effectively than if they exercise those powers separately . . .

In turn, the IWMA contracted with Eco Solutions to provide some of the services required under the Act. The issue then turns to whether the Act itself speaks to the issue of whether contracts such as that with the IWMA require competitive bidding.

a. Unlike many public contracts, the Act permits local agencies to enter into franchise agreements concerning "aspects of solid waste handling" without competitive bidding.

Before the Act's passage in 1989, nearly a century of case law affirmed the authority of cities and counties to enter into contracts for exclusive waste collection and disposal privileges with private enterprises. (*Waste Management of the Desert, Inc. v. Palm Springs Recycling Center, Inc*. (1994) 7 Cal.4th 478, 494.) In essence, the Act recognizes the value of a local government being able to determine who is going to show up and pick-up garbage from its residents. With respect to competitive bidding, PRC section 40059 provides in part:

> (a) Notwithstanding any other provision of law, each county, city, district, or other local governmental agency may determine all of the following:
>
> (1) Aspects of **solid waste** handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services.
>
> (2) Whether the services are to be provided by means of nonexclusive franchise, contract, license, permit, or otherwise, **either with or without competitive bidding,** or if, in the opinion of its governing body, the public health, safety, and well-being so require, by partially exclusive or wholly exclusive franchise, contract, license, permit, or otherwise, **either with or without competitive bidding**. The authority to provide solid waste handling services may be granted under terms and conditions prescribed by the governing body of the local governmental agency by resolution or ordinance. (**bolding** added for emphasis.)

As such, the Act leaves it up to counties, cities, districts and "other local government agenc[ies]" whether or not they will require competitive bidding for the handling of "solid waste." The IWMA would be included in the class of "other local government agenc[ies]."

Of note, PRC section 40059 refers to "solid waste" but does not mention "household hazardous waste." Consequently, additional analysis is required to determine whether a contract for the handling of "household hazardous waste"—which is the primary

service provided by Eco Solutions—is covered under the umbrella of "solid waste." If so, PRC section 40059 authorized the IWMA to contract without competitive bidding.

At first blush, "household hazardous waste" does not appear to fall within the definition of "solid waste." "Solid waste handling," as used in PRC section 40059 under the Act, is defined as "the collection, transportation, storage, transfer, or processing of solid wastes." (PRC section 40195.) "Processing" is, in turn, defined as "the reduction, separation, recovery, conversion, or recycling of solid waste." (PRC section 40172.) "Solid waste" is defined as "all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse… which is not hazardous waste . . ." (PRC section 40191(b)(1). While "hazardous waste" is excluded from the definition of "solid waste," common sense dictates that there is a difference between "hazardous waste" and "household hazardous waste." The later term is defined as follows:

> "Household hazardous waste" means hazardous waste generated incidental to owning or maintaining a place of residence. Household hazardous waste does not include waste generated in the course of operating a business concern at a residence." (Health and Safety Code section 25218.1(e))

Thus, by its definition, "household hazardous waste" is a type of "hazardous waste." However, it is clear the legislature intended that the Act address the problems created when "households" improperly dispose of common "hazardous wastes," items such as batteries, antifreeze, solvents and the like.[47] A court would most likely determine a contract concerning "household hazardous waste" as an "*aspect* of solid waste handling." The intent of the legislature on this issue is evident from a reading of the Act.

For instance, Part 2 of the Act, "Integrated Waste Management Plans," Chapter 3.5 covers "Household Hazardous Waste Elements," requiring cities and counties to prepare a household hazardous waste element. (PRC sections 41500 & 41510.) Notably, these sections direct cities and counties to develop a plan for the "recycling, treatment, and disposal of "hazardous wastes" that are "generated by households" so that they can be "separated from the solid waste stream." This language reflects an intent by the legislature that the Act intended to cover hazardous waste found in the household setting.

Likewise, Part 7, "Other Provisions," Chapter 1 regulates "Household Hazardous Substance Information and Collection." Within Chapter 1, the Legislature finds the disposal of hazardous substances by households dangerous (section 47001) and that each household should have easy access to dispose of the waste (section 47002) with the aid of state and local governments (section 47003). The Chapter also requires the development of a plan for household hazardous waste collection, recycling, and disposal programs (section 47105), and it permits a local government to "authorize an increase in solid waste

[47] https://dtsc.ca.gov/hazardous-wastes-in-your-home/

collection fees" to offset costs of household hazardous waste collection programs (section 47109.)

While the foregoing analysis identifies some statutory conflict, it appears that handling of "household hazardous waste" is a subject meant to be addressed by the Act. Consequently, while it could have sought competitive bids for the contract, the IWMA was not obligated to do so under PRC section 40059 and was within its authority to contract with Eco Solutions outside of the competitive bidding process.[48]

Finally, critics of the IWMA no-bid award of the Eco Solutions contract have referred to bidding requirements that apply in other contexts. For instance, in his June 6, 2018 *Report on the IWMA,* Knudson takes issue that there were "[n]o contracts proposed (RFPs) for substantial projects including those exceeding $10,000. . . ."

While he does not cite legal authority, this appears to be a reference to Public Contracting Code section 20150.4, which requires "formal bidding procedures" for "public projects" exceeding $10,000 (in counties of a population less than 500,000). However, a "public project" is defined to include "the erection, improvement, and repair of public buildings and work." (PRC 20150.2(a)). The IWMA's contract with Eco Solutions is not a "construction project," so this section of the Public Contracting Code does not apply.

Likewise, the article by Karen Velie and Daniel Blackburn in CalCoastNews.com entitled "Hazardous waste chief skirts law" states the IWMA was "required by law to put work of more than $15,000 out to bid and to avoid using public resources to support private business." No legal authority was provided in the article, but given the figure of $15,000, this may have come from Public Contract Code section 20803. That code section applies to bids involving sanitary districts, which has no application here.[49]

PRC sections 49019-49020 have also been cited for the proposition that competitive bidding is required. While these sections do require competitive bidding, they apply to "garbage disposal districts." The creation of a "garbage disposal district" is an involved process, which includes having a county board of supervisors, by resolution, propose to form a district (section 49006) and then have the residents within the boundary of the proposed district approve the formation in an election (section 49010). By contrast, the IWMA was created through a Joint Powers Agreement entered into between the County and cities: the IWMA it is not a garbage disposal district. But even if PRC sections 49019 and 490020 were applicable, those sections, which require competitive bidding, would still need to be squared with PRC section 40059, which does not require competitive bidding.

[48] A different analysis would have followed if the IWMA had sought competitive bids. See PRC §§ 49200 through 49205, and *Eel River Disposal & Resource Recovery, Inc. v. County of Humboldt* (2013) 221 Cal.App.4th 209, which discusses the interplay between these sections and § 40059.
[49] Of note, during the defamation trial this matter was the subject of testimony by both Charles Tenborg and William Worrell. Worrell said that IWMA legal counsel Ray Beiring stated the contract was not required to go out to bid.

This conflict was addressed in a published opinion by the California Attorney General, *79 Ops.Cal.Atty.Gen* 28 (1996). In that matter the Attorney General was asked to resolve "an apparent conflict" between two separate statutory schemes: PRC sections 49200-49205 appears to require a county to obtain competitive bids before awarding a trash collection franchise, whereas PRC section 40059 allows a county to award a trash collection franchise without first obtaining competitive bids. Ultimately, the Attorney General concluded that the competitive bidding requirements of sections 49200-49205 must "yield" to the authority provided in section 40059. [50]

The same statutes were later addressed in *Eel River Disposal vs. County of Humboldt*, 221 C.A.4th 209 (2013). The court in that case did not view the two statutes as conflicting, but complementary. The court concluded that if a county *chose* to employ a competitive bidding process—as it permitted to do per PRC section 40059—it was then obligated to comply with the competitive bidding process of PRC sections 49200 through 49205 (which had not been done by the County of Humboldt).

4. Competitive bidding was not required

In summary, the IWMA was not required to bid out the Tenborg contract because PRC section 40059 grants discretion to local governments about whether to require competitive bidding. While "hazardous waste" is specifically excluded from the definition of "solid waste," the Legislature developed programs to handle "household hazardous waste" within the Act. Therefore, a logical interpretation of the scope of PRC section 40059 would include an application to contracts relating to *all* elements within the Act, including "household hazardous waste."

Because the conclusion of this report is that the contract with Tenborg did not violate the competitive bidding laws, it is unnecessary to engage in a further analysis about whether a theoretical violation of competitive bidding laws could have resulted in criminal liability on the part of Worrell or members of the board.

Finally, the fact that the District Attorney's Office has reached this conclusion should not be viewed as an *approval* by this office for the lack of competitive bidding—the decision of whether or to require competitive bidding remains a political decision left to the Board.

h. The purchase, lease and disposition of four Chevrolet trucks and an Isuzu box van were properly authorized

In his *Report on the IWMA* Knudson notes the existence of four 2015 Chevrolet Silverado pickup trucks and raises concerns about the purchase of those vehicles, stating he was unable to locate any "resolution that authorizes the purchase of the trucks."

[50] It is important to note that the sections referenced here—PRC §§ 49200-49205—are contained within the same portion of the Act as PRC § 49019: both are found in Part 8 of the Act. Significantly, the Attorney General noted that the Legislature had determined that if there was any conflict or inconsistency in the Act, that Parts 1 to 7 of the Act (which includes § 40059) would prevail. This was part of the rationale for the Attorney General concluding that §§ 49200-49205 must "yield" to § 40059.

Knudson's suggestion that these trucks were purchased without the Board's approval or awareness is inaccurate: minutes from the May 14, 2014, board meeting reflect otherwise, stating "Bill Worrell reported that the IWMA applied for a Used Oil Competitive Grant and was awarded $368,407" and that grant funds would be used in part "for CNG pickup trucks. . .."

1. Background

In 2011, the IWMA Board of Directors by resolution authorized the IWMA to seek grants from CalRecyle to further the state's mission to "reduce, recycle and reuse solid waste generated in the State thereby preserving landfill capacity and protecting public health and safety and the environment. . . "[51] In 2014, the IMWA obtained a grant from CalRecycle for the purchase of four 2015 Chevrolet Silverado Compressed Natural Gas (CNG) trucks. The IWMA then leased these trucks to San Miguel Garbage Co., South County Sanitary Services, Inc., Paso Robles Waste Disposal Inc. and USA Waste of California Inc. (d.b.a. Atascadero Waste Alternatives).[52] The leases had six-year terms, which expired in September 2020. Each truck was to be used to provide "curbside collection of used motor oil and oil filters" within the company's franchise area. At the end of the lease term, "*the Contractor shall have the option to purchase the CNG vehicle for one dollar*."

The IWMA also used CalRecycle grant money to purchase a CNG Isuzu 18-foot box truck. This truck was leased for five years to 21st Century Environmental Management of CA, LP, f/d/b/a Stericycle in 2014. According to the lease, Stericycle was required to use the truck to "service retail and business locations in San Luis Obispo County," which involved collecting hazardous waste from retail store take-back locations. Unlike with the Chevrolet trucks, this lease agreement contained no option for Stericycle to purchase at the contract's conclusion. This truck was returned to the IWMA at the expiration of the lease.

2. Discussion—"public purpose"

As to the four Chevrolet trucks, the issue raised is whether, after obtaining the trucks, it was appropriate for the IWMA to lease them to franchised waste haulers to be used to collect used motor oil and oil filters and then allow them to purchase the trucks at the end of the lease for one dollar. The same question is raised about the IWMA leasing the Isuzu box truck to Stericycle.

A political corporation may not gift "a thing of value" to a private person or corporation. (Cal. Const. Art. XVI, sec. 6.) A "gift" can occur when an expenditure is provided without any consideration *and* it does not fulfill a public purpose. (*County of Alameda v. Janssen* (1940) 16 Cal.2d 276, 281.) Thus, when no money is exchanged, the

[51] See Resolution 11-01 of the San Luis Obispo County integrated Waste Management Authority Authorizing the Submittal of Applications to CalRecyle for all Available Grants for the Period of March 9, 2011 to March 8, 2016

[52] It does not appear that any of these haulers were required to pay anything the IWMA, though contract obligated them to insure and maintain the trucks.

analysis hinges on whether there is a public purpose in the transaction between the agency and the private party:

> It is well settled that the primary question to be considered in determining whether an appropriation of public funds is to be considered a gift is whether the funds are to be used for a public or private purpose. If they are to be used for a public purpose, they are not a gift within the meaning of this constitutional prohibition. *(Jordan v. California Dept. of Motor Vehicles* (2002) 100 Cal.App.4th 431, 450.)

The determination of what is a "public purpose" lies with the legislative body. A court will liberally approve a legislative action unless it is totally arbitrary. (*Mannheim v. Superior Court* (1970) 3 Cal.3d 678, 691.) The determination of what constitutes a "public purpose" is primarily a matter for the legislative body that will not be disturbed by the courts so long as that determination has a reasonable basis. (*County of Alameda v. Janseen* (1940) 16 Cal.2nd 276, at 286). A court may infer what the intended public purpose is from extrinsic matter, such as legislative history. (Westly v. U.S. Bancorp (2003) 114 C.A.4th 577). In determining whether a public purpose exists, only the legal propriety of the expenditure should be examined, not economic or governmental wisdom. (*City of Oakland v. Oakland Raiders* (1982) 32 Cal.3d 60, 73.)

Courts have sanctioned expenditures for a wide variety of public purposes, including funds used to promote patriotism, to celebrate anniversaries of important historical events, to restore rivers to their former conditions and to prevent flooding, to support poor and destitute persons, to aid reclamation districts, to protect public health and to provide care of indigent sick.[53]

As an example, *Patrick v. Riley* (1930) 209 Cal 350 involved a dairy farmer who sought reimbursement from the state after two of his cows were slaughtered by the state following a positive tuberculin test. The director of agriculture provided the owner a memorandum obligating the state to pay for the two animals. The legislature had specifically authorized the director to make payment under these circumstances. However, the state controller refused to pay, taking the position that director of agriculture could have ordered destruction of the animals under its police power without any compensation to the owner, and that the payment for losses of stock was a gift, "a pure gratuity." *Riley* at 352-353

The California Supreme Court agreed that while the state could have destroyed the animals without compensation, the legislature was acting within its authority in deciding that compensation would serve the greater interest of the public. Knowing that they would be compensated for their loss, owners of diseased stock would be less likely to be "blinded by their pecuniary loss" and deny "the medical theories upon which the act of destruction is based." *Riley* at 357. The court stated:

> [T]he fundamental test of the constitutionality of a statute requiring the use of public funds is whether the statute is designed to promote the public

[53] See 58 Cal. Jur. 3d, State of California § 90

> interests, as opposed to the furtherance of the advantage of individuals; and such a statute should not be declared unconstitutional because of the fact that, incidental to the main purpose, there results and *advantage to individuals*.

Id. (emphasis added.) In this matter, the benefit to the franchisees is clear—use of vehicles at very little cost, and, with respect to the four Chevrolet trucks, the ability to purchase them for $1 each at the end of the lease. Despite the "advantage to individuals," the purchase, distribution and use of these vehicles were in keeping with the IWMA's general mission to "reduce, recycle, and reuse solid waste" and to lessen the amount of waste going into landfills. These were vehicles obtained through a CalRecyle grant and were used for a designated purpose—to assist in the goal of removing certain types of hazardous waste from the solid waste stream. While the sale of the four trucks for $1 each at the conclusion of the six-year lease benefitted the individual franchisees, a court reviewing this transaction would likely find a public purpose.[54]

i. Use of the IWMA credit card will not lead to charges against William Worrell.

A significant issue raised by Knudson in his *Report on the IWMA* focuses on the use of IWMA US Bank credit cards. Knudson states that during a nine-year period (2009 to 2018) there were purchases of $537,607.68 on the cards. He does not draw conclusions, stating that because he had not been able to obtain supporting documents from the IWMA for those purchases he was unable to complete his investigation.

As mentioned above, embezzlement charges have been filed against Carolyn Goodrich arising from her use of the IWMA credit cards. For the reasons discussed above, this section of the report will not address alleged fraudulent charges attributable to her. This report will address William Worrell's use of the card. As to him, for the reasons stated below, criminal charges are not warranted.

1. <u>Background</u>

[54] As to the option to purchase the trucks for $1 at the conclusion of the lease, an option to purchase is an enforceable contract only if supported by legally sufficient consideration. (Civ. Code §1550, subd. (4).) By statute, "a written instrument is presumptive evidence of a consideration." (Civ. Code § 1614.) Broadly speaking, the optionee gives legally "sufficient" consideration by performing an act, incurring a detriment, or rendering a return promise that is bargained for in exchange for the optionor's irrevocable offer to sell. (*Steiner v. Thexton* (2010) 48 Cal.4th 411, 420-421.) In other words, not much is required to demonstrate sufficient consideration. For instance, an option given for 25 cents was held as "sufficient" consideration. (*Marsh v. Lott* (1908) 8 Cal.App. 384, 389-390.) $1 option was also held as adequate. (*Wheat v. Morse* (1961) 197 Cal.App.2d 203, 206.)

Here, four of the truck leases offered the waste hauler an option to purchase the CNG 2015 Chevy Silverados for $1 at the end of the six-year lease. Given that courts have held that 25 cents and $1 options to purchase were sufficient consideration, there is no gift of public funds. But even assuming consideration is lacking, the public purpose exception would apply as discussed above.

A. IWMA Credit Card Policy

The IWMA Board of Directors adopted a formal credit card policy on March 8, 2000.[55] Taken as a whole, use of the IWMA's credit card was to be limited and was only to be used by the IWMA Manager. According to the policy, the Manager was to use it "on expenses solely related to the operation of the IWMA." During all times in question, the Manager of the IWMA was William Worrell. According to the policy, IWMA staff could use their own credit cards and seek reimbursement, but this was to be a rare occurrence. The Manager's use of the IWMA credit card was to be limited. The Policy states:

> At times there are purchases which are time sensitive and can not [sic] be made using the County warrant system. Examples include travel expenses or small purchases of supplies or equipment.[56]

The Credit Card Policy repeats this again, stating "[c]redit card use should be limited to those expenditures which cannot be processed through the normal request for payment system."[57]

Finally, expenses made on the card were to be processed through the Auditor's office on a monthly basis: "An Authorization to Draw Warrant shall be submitted monthly to the auditor's office with supporting documentation. An example of supporting documentation is copies of applicable receipts."

B. US Bank records obtained by the District Attorney's Office and independent forensic examination

The District Attorney's Office initially obtained US Bank records from the IWMA through a California Public Records Act request. The records provided by the IWMA were only for two years, July 2016 through June 2018. A review of the statements reflected a range of purchases, a sampling of which includes Staples, Mission Linen, Amazon, Stamps.Com, Solid Waste Association, The UPS Store, The Home Depot and payments to AT&T. Many appeared to relate to IWMA business (e.g., payment to Solid Waste Association), some appeared personal (e.g., Amazon video on demand) and many could have been either (e.g., The Home Depot).

The District Attorney's Office later obtained seven years of records from US Bank through search warrants.[58] Investigators also obtained through search warrants records from companies listed on the US Bank credit card statements, including Amazon, Quill Corporation, Square, Inc., and AT&T. These and other records were then provided to an independent forensic accountant, Scott Weitzman, for analysis. Based on the volume of

[55] San Luis Obispo County Integrated Waste Management Authority, Policies and Procedures, Policy No. F-4, Credit Card Policy, signed by Mike Ryan, President, attested to by Carolyn Goodrich, Board Secretary, and dated March 8, 2000.
[56] San Luis Obispo County Integrated Waste Management Authority, Policies and Procedures, Policy No. F-4, Credit Card Policy, dated March 8, 2000.
[57] The "normal request for payment system" appears to refer to having payments processed through the SLO County Auditor.
[58] DA Investigator was informed that US Banks retained records for only seven years.

records, the projected cost for the analysis and other considerations, the scope of the forensic evaluation was limited from January 1, 2014, to August 1, 2018.

During this four-year period the IWMA had a total of six credit cards associated with a single line of credit with US Bank. The number of cards alone is not significant—some were replacement cards due to fraud complaints and one was for Carolyn Goodrich when she was added as an authorized user. During this four-year period, the forensic accountant hired by the District Attorney's Office found 1520 transactions using US Bank credit cards totaling $280,600.83. Of those transactions, he was only able to locate 331 supporting receipts. However, he noted that some transactions, such as credits and reoccurring fees, would not necessarily have generated receipts.

As referenced above, until recently, warrant requests by the IWMA to the Auditor's Office often did not contain supporting documentation. While credit card statements were provided, invoices and other supporting documents for purchases often did not accompany the statement. For reasons discussed above, the Auditor's Office viewed its relationship with the IWMA as similar to a bank and would disperse funds once a proper warrant request was submitted. It took the position that the IWMA was responsible for its own internal oversight and controls.

Thus, although the IWMA Credit Card **policy** required "supporting documentation" to be provided to the Auditor's office, this was not occurring. Consequently, while the Auditor's Office scanned and retained copies of whatever documents the IWMA submitted for later review, that documentation was only as complete and helpful as what had been submitted.

2. Criminal charges cannot be filed against William Worrell

Based on a review of the records and the forensic analysis, a number of observations are in order.

A. The Credit Card Policy was violated because persons other than the Manager used the credit card

The Credit Card Policy authorizes only the Manager (William Worrell) to use the IWMA credit card. However, Carolyn Goodrich, was also issued a card. While providing her with a credit card was a violation of policy, a policy violation alone is an administrative matter that does not rise to the level of a crime.

B. The credit card was used improperly to pay monthly IWMA expenses

The Credit Card Policy reflects an intent that the credit card use should be infrequent and reserved for circumstances where the normal process (i.e., submitting warrant requests to the Auditor's office, which would then pay vendors) was unavailable. The policy listed examples of proper use of the card, such as "travel expenses or small purchases of supplies or equipment." While the credit card was used for these proper expenses, it was also used to pay what appear to be regular, re-occurring bills such as AT&T, Charter Communications, Executive Janitorial, Impulse Internet Service, Mission

Linen, PG&E, Rainscape, Rayne Water Conditioning, San Luis Garbage and United Staffing Associates.

Over time, these reoccurring monthly bills constituted a significant portion of charges to US Bank cards. For example, between January 2014 and June 2018 charges to Charter Communications for (mostly) internet service totaled $5,651.37. Again, during the same period of time charges on the card for Executive Janitorial were $10,632 and were $16,176 for United Staffing Associates.

Little justification has been offered for why these and other expenses, which do not appear to be "time sensitive," were placed on the credit card rather than submitting them through the County warrant system. When interviewed by the District Attorney's Office, Worrell stated that the decision to use the credit card to pay bills was a practical one, that they had a total of three staff members and that Carolyn Goodrich, who dealt with finances, had other duties as well. He stated it was more efficient to pay utility and other bills together on the card, rather than submitting each one individually through the warrant system.

It bears noting that it does not appear that these reoccurring bills were fraudulent or otherwise inappropriate; rather they were regular bills that an agency such as the IWMA would expect to incur. That they were placed on the credit card instead of submitted to the Auditor's office for payment was a violation of the Credit Card Policy, but such a violation of policy alone will not provide a basis for criminal charges.

C. The credit card was used improperly to pay for purchases of goods that should have gone through the warrant system with the County

The credit card was also used for numerous purchases of goods. While the Credit Card Policy does permit "small purchases of supplies or equipment" such purchases are subject to the caveat that they must be "time sensitive" and cannot be made using the County warrant system. Based on the passage of time and lack of proper documentation it is not possible to know the circumstances leading to the vast majority of purchases and whether they involved "time sensitive" purchases that could not be made through the County's warrant system. The following is a sampling of purchase for various goods made on the credit cards:

- Twelve purchases from the Apple Store between April 2015 and December 17, ranging in cost from as little as $31.32 to as much as $1,697.16, totaling $5,234.58;
- Two purchases at Aggson's Paint & Glass in 2015 totaling $6,023.32, apparently for windows;
- Two purchases at Best Buy for electronics totaling $712.73;
- A purchase at B&B Steel and Supply in 2017 in the amount of $678.24;
- Eleven purchases from Avangate BitDefenders.com totaling 879.53;

- Membership and conference registration fees for California Resource Recovery Association from January 2014 through June 2018 of $5,052;

- Four purchases of Dell products, totaling $4,688.

Again, as to these and many similar purchases, they appear to be related to the business of the IWMA, but it is unclear what would make these types of purchases "time sensitive" and unable to be processed through the County's warrant system. As noted above, the credit cards bills were themselves processed through the County warrant system for payment, often without supporting documentation. Lack of supporting documentation was not viewed as suspicious by the Auditor's Office.

Similar to payment of monthly bills (see above), many of the items purchased using the credit cards appear to be legitimate purchases for the IWMA and therefore will not result in criminal charges. However, charges to Amazon merit further discussion.

D. Amazon Prime charges by William Worrell lack evidence of criminal intent and therefore will not support filing of criminal charges

The IWMA paid $106.92 annually for an Amazon Prime membership, which included free shipping. The Amazon account was used for office supplies, computer products, electronics and similar items which appear related to IWMA business.

When the District Attorney's Office examined the Amazon Prime account, it discovered that in addition to the IWMA US Bank credit card, other credit cards—personal credit cards—were also connected to the account. Amazon Prime allows multiple persons access to an account, but use their own credit cards to take advantage of the free shipping. A person using an account with multiple connected credit cards is able to choose which card to charge a particular purchase.

In reviewing the Amazon account, there were a number of items charged to the IWMA credit card in 2016 that are plainly personal and were shipped to William Worrell's home address. These include a Lego set, a girl's toy and four advent calendars. In addition, there were also five purchases in November and December 2016 which were either returned or credited back to the IWMA credit card. These included a book, a surge protector, underwear and an electronic device.

In reviewing IWMA records, DA Investigators located a memorandum by Worrell dated July 6, 2018, that was addressed to "Worrell Personnel File." In his memorandum Worrell discusses the Amazon account, noting that in December 2016 Carolyn Goodrich had brought to his attention charges on the Amazon account that did not belong there. He determined that he had mistakenly used the IWMA credit card for personal items, attempted to get the charges reversed and, when unsuccessful, wrote a check for $115.01 to the IWMA for the charges. He states he later obtained Amazon records going back to 2000 and discovered additional charge of $419.12, all from 2016, and wrote another check to the IWMA for those charges. He did not identify the items purchased in his memo.

When later interviewed by the District Attorney's Office he stated that due to what happened he removed his personal credit card from the account in January 2017.

The question this raises is whether Worrell can be subject to criminal charges for making what he claims to be unintended personal charges to the IWMA credit card on the Amazon account. While the timing of his memorandum—several months after media attention had been placed on him and the IWMA for financial irregularities and one month before he was placed on administrative leave—is suspect, a charge of embezzlement cannot be proven under these circumstances. A charge of embezzlement—as with any other criminal charge—must be proven beyond a reasonable doubt. If charged, Worrell would be entitled to argue the defense of "mistaken fact," that he thought he was charging those items to his own credit card even though that was not the case. [59] He will also be entitled to a jury instruction stating that if there are two reasonable conclusions to be drawn from the credit card charges, one pointing to guilt and the other pointing to innocence, that the jury "must accept the one that points to innocence." [60]

Other charges to the US Bank credit cards include 35 videos on demand through Amazon. These occurred between July 2016 and February 2017, with charges ranging from $1.99 to $5.99 per video. Ten of these charges were reversed, apparently the same day the video was charged, consistent with someone ordering and then cancelling the video. The total sum was $70.85. However, based on the records obtained it is unknown who viewed these videos. If they were viewed by William Worrell, it is unknown if these were charges for which he claims he made restitution. As referenced above, Worrell has maintained that charges to the Amazon account were by accident. Based on the lack of information about these videos, insufficient evidence exists to prove embezzlement by proof beyond a reasonable doubt.

3. Changes in credit card use, policies and increased transparency over the past two years.

The foregoing demonstrates that for years the IWMA credit card was used more than originally intended and in violation of IWMA policy. Overuse of the card, failure to supply complete documentation to the Auditor's office, failure of the IWMA to maintain invoices and other documents all combined to create an atmosphere where theft or misuse of funds could occur undetected.

Nonetheless, aside from allegations related to Carolyn Goodrich, the use of the card appears to have been for IWMA purchases. However, it bears repeating that the forensic investigator hired by the District Attorney's Office reviewed only four years' worth of credit card records. As to those, he was unable to locate receipts for the majority of those purchases, making it difficult to discern which purchases were for the IWMA and which

[59] CALCRIM 3406 states in part: "If the defendant's conduct would have been lawful under the facts as he reasonably believed them to be, he did not commit [embezzlement]"
[60] CALCRIM 224, dealing with circumstantial evidence

were personal. For many items that determination was simply not possible. Whether theft occurred using the credit card prior to that time is unknown.

In January 2020 the IWMA revised its credit card use policy to require employees to sign a Credit Card Use Agreement which outlines the limitations on the use of the card, including requirements to obtain supervisor approval for purchase and keeping (and submitting) receipts. In addition, far more information has been made available to the Board of Directors about spending. For example, included within the board agenda packet for the February 10, 2021, is an expense report itemizing each credit card purchase, including the date, the merchants, the amount of the purchase, the name on the card, and an explanation for the purchase. This expense report reflects modest use of the card—a total of six purchases (four computer software subscriptions, a computer cable and a monitor).

In addition to an expense report for the credit card, the agenda packet now contains a payables worksheet which lists each vendor, the amount paid, a description of the purchase, the purchase date and the account to which the payment is attributed. This level of detail now offers the board (and the reviewing public) greater insight into how the credit card is being used.

In sum, the use of the credit card has been limited, with far more information being provided to the board about how IWMA funds are being spent.

VII.

ADDITIONAL ISSUES

As mentioned above, the investigation by the District Attorney's was prompted by Knudson's reports and concerns expressed by others in the community, but the investigation extended into other areas as well. The following are additional issues, some of which were mentioned in Knudson's reports, though others were not.

a. There is no basis for criminal charges against William Worrell for spending beyond his authority as General Manager

Underlying many—if not most—of the assertions by Knudson concerning spending at the IWMA is that Worrell did not act with the Board's approval when he made various purchases. An example of this is Knudson's assertion that the trucks were purchased without board approval. Although for reasons discussed above the allegation regarding purchase of the trucks is unfounded, it does highlight the necessity that purchases by the General Manager must be authorized.

As a matter of background, unauthorized purchases can potentially lead to criminal prosecution for a violation of Penal Code section 424(a), misuse of public funds. As such, a discussion of this criminal code section is warranted.

1. Penal Code section 424(a) prohibits spending of government funds for purposes not authorized by law

Penal Code section 424 provides in pertinent part:

> (a) Each officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who either:
>
> 1. Without authority of law, appropriates the same, or any portion thereof, to his or her own use, or to the use of another; or
>
> 2. Loans the same or any portion thereof; makes any profit out of, or uses the same for any purpose not authorized by law;
>
> . . . .
>
> Is punishable by imprisonment in the state prison for two, three or four years and is disqualified from holding any office in this state. (emphasis added)

Penal Code section 424 casts a wide net, applying not only to "officers" of a public entity, but those charged with the handling of public funds. It applies to those having "some degree of control over public funds, and that control need not be the primary function of the defendant in his or her job." *People v. Groat* (1993) 19 C.A.4th 1228, 1232.

> Courts have recognized the Legislature's intent to hold public officers specially accountable. Those "who either retain custody of public funds or are authorized to direct the expenditure of such funds bear a peculiar and very grave public responsibility, and ... courts and legislatures, mindful of the need to protect the public treasury, have traditionally imposed stringent standards upon such officials. *Id*

Unlike embezzlement and other forms of theft where money or property is taken for one's one personal benefit, an "appropriation" in violation of section 424(a)1 can occur when the (mis)use of funds benefits another person. *People v. Hubbard* (2016) 63 C.4th 378, involved a school superintendent who authorized a $500 a month car allowance and a $20,000 stipend for the director of planning and facilities for extra work she performed in overseeing a construction project. Because the superintendent failed to obtain approval for these disbursements from the school board, he was properly convicted of a violation of Penal Code section 424(a)1. The California Supreme Court upheld his conviction.

Section 424 (a)2 is even broader than section (a)1, as it criminalizes use of public funds for ". . . any purpose not authorized by law." It is enough that the official simply takes the money or sets it aside without authority. The requirement that spending must be "authorized by law" places a check on officials to prevent spending for purposes that have not been approved by a legislative body.

> We start with the general principle that expenditures by an administrative official are proper only insofar as they are authorized, explicitly or implicitly, by legislative enactment. Contrary to defendant's contention below, such executive officials are not free to spend public funds for any "public purpose" they may choose, but must utilize appropriated funds in

> accordance with the legislatively designated purpose. *Stanson v. Mott* (1976) 17 C.3d 206; 213. [use of public funds to promote passage of a bond]

Albright v. City of South San Francisco (1975) 44 CA3d 866, involved the city paying its councilmen and mayor $50 and $75 per month for miscellaneous un-itemized expenses incurred while in the performance of their duties. Of significance, the court noted there was no resolution or ordinance fixing these amounts or providing for their payment:

> [W]e are not faced with an issue that had such ordinance existed, it could constitute a legislative determination that these amounts were actually and necessarily expended each month – a determination with which a court could not interfere or substitute its own judgment for that of a legislative body.
>
> . . .
>
> An expenditure of public funds is regulated solely by constitutional and statutory provisions and must be confined to public purposes. An expenditure of municipal funds is permitted only "... where it appears that the welfare of the community and its inhabitants is involved and ... benefit results to the public." (citation) *Id.* at 869.

2. <u>*Stark v. Superior Court* requires proof of criminal intent or criminal negligence</u>

Stark v. Superior Court (2011) 52 C.4th 368 addressed the intent required for a violation of Penal Code Section 424(a)[61]. This case also offers a glimpse of a nuanced and technical violation of Section 424(a).

Stark was the auditor-controller of Sutter County who had significant disagreements the CAO of the county over accounting principles applicable to the Waterworks District, one of the special districts governed by the Board of Directors. *Id.* At 383-383. Stark believed the District's fund must be included in the county budget, a position the CAO disagreed with. In sum, the CAO discovered that Stark had transferred $336,485 from the general reserve to the District in order to balance both the District's fund and the County's budget. When the Board of Directors learned of this, they ordered him to transfer the funds back, which he did. When Stark testified before the grand jury, he stated his authority to make the transfer was implied when the when the Board directed him to balance the budget. *Id.* at 383. He was prosecuted under Section 424(a) for the alleged unauthorized transfer of funds, among other similar things.

As this case illustrates, the circumstances under which a person can be charged with a violation of this code section are varied and complicated. *Stark* addressed the issue of the *mens rea* required to violate Section 424(a).

> . . . [I]t is not simply the appropriation of public money, or the failure to transfer or disburse public funds, that is criminalized. Criminal liability

[61] The decision addressed only subsections (a)1, (a)3, (a)6 and (a)7, though based on the court's analysis it would undoubtedly apply to subsection (a)2 as well.

> attaches when those particular actions or omissions are contrary to laws governing the handling of public money. Unlike many statutory provision, these provisions make the presence or absence of legal authority part of the definition of the offense. The People must prove that legal authority was present or absent.
>
> Without a mental state as to legal authorization, a defendant could be convicted of violating the section 424 provisions by simply acting or failing to act, even if he was unaware of the facts, as defined by statute, that made his intent wrongful.

Id. at 395-396. The court went on to note that this type of result would be inconsistent with common law, that section 424 has never been construed as a strict liability offense. *Id.* at 396. The court noted that one of the "facts" that must be proven is the existence of the "authorizing laws." *Id.* The court held that the prosecution must prove the defendant either knew of the authorizing law, or was criminally negligent in failing to know his actions were without lawful authority. *Id.* at 404.

> A criminal negligence standard protects both the public and the accused. If public officials and others entrusted with control of public funds subjectively believe their actions or omissions are authorized by law, they are protected from criminal liability unless that belief is objectively unreasonable, i.e., is the product of criminal negligence in ascertaining legal obligations. Public officials and others should not be criminally liable for a reasonable, good faith mistake regarding their legal responsibilities. Nor is section 424 intended to criminalize ordinary negligence or good faith errors in judgment.

Starke at 399.

3. <u>The Joint Powers Agreement which established the IWMA sets forth the spending authority for the General Manager</u>

Section 7.5 of the Joint Powers Agreement details the duties of the Manager, including that he "shall approve payments of amounts duly authorized by the Board." Section 8.6 discusses the line item and program budget:

> (a) A <u>line item and program budget</u> for the Authority's operations shall be adopted by the Board for the ensuing Fiscal Year prior to June 30 of each year.
>
> . . . .
>
> The line item and program budget shall include sufficient detail to constitute an operating guideline, the anticipated sources of funds, and the anticipated expenditures to be made for the operations of the Authority and the administration, maintenance and operating costs of the facilities identified in Paragraph 5.1 herein. Any budget for Sole Use Facilities shall be maintained separately. <u>Approval of the line item and project budget by the Board shall</u>

> constitute authority for the Manager to expend funds for the purposes outlined in the approved budget, but subject to the availability of funds. (Emphasis added)

The District Attorney's Office reviewed many of the archived IWMA agendas, minutes and board packets, including those relating to the annual budget. Typically, the packet prepared for the annual budget included a proposed line-item budget, a summary of projected revenue, information about various programs to be undertaken by the IWMA in the coming year and a resolution adopting the budget.

The packet for the proposed budget for fiscal year 2015-2016, for example, was approximately 40 pages in length. It reflected an anticipated operating budget of $2,066,000, a beginning fund balance of $1,400,000 and a projected ending balance of $1,400,000. The line-item budget consisted of one page, and the remaining documents described proposed program objectives for the coming year. The minutes of that meeting reflect that Worrell reviewed these budget materials for the board, that there was no comment by the public, and that the budget and resolution were approved unanimously by the ten board members who were present. At that meeting Worrell's annual performance review was conducted and the following is reflected in the minutes: "The IWMA concluded Mr. Worrell's performance is outstanding and thanked him for another year of excellence."

As mentioned above, accompanying these proposed budget documents was a resolution adopting the budget and program objectives. Of significance, the resolution states that the IWMA, via the Board, "authorizes the Manager to take all actions necessary to implement the Budget and Program Objectives." [62] A similar resolution containing this language appears to have been adopted along with every budget.

When interviewed by the District Attorney's Office and asked about his spending authority, Worrell referred to the language found in these annual resolutions that they authorized him to "take all actions necessary to implement the Budget and Program Objectives."

The IWMA also has a spending policy which requires different levels of approval based on the amount to be spent. [63] The chart provided by the IWMA reflecting this policy follows:

[62] Resolution no. 15-01; Resolution of the San Luis Obispo County Integrated Waste Management Authority Adopting the 2015/16 Fiscal Year IWMA Budget.
[63] The current policy was effective as of November 14, 2018, but was created to combine two prior policies from 1995. The current policy is generally consistent with the two prior policies.

Amount	Description
Less than $5,000	Manager's discretion/Must be approved budget Item
$5,000 to $25,000	Executive Committee approval upon receipt of RFQ on an approved budget item.
Up to $10,000	Board President can sign any contract with a value of up to $10,000.
$25,000 to $75,000	IWMA Board Approves upon receipt of RFP
$75,000 – Up	IWMA Board approves upon receipt of formal advertised RFP

As to spending of less than $5,000, the significance of the language "Manager's discretion" is unclear in light of the language "[m]ust be approved budget Item." Arguable, these two statements conflict.

4. Criminal charges are not merited for allegations that Worrell spent beyond his authority

Knudson and others have taken the position that Worrell spent IWMA funds without authorization. Many of the specific items have already been addressed above, such as purchase of the four trucks and the box van and payment over the years to Tenborg companies for its services. However, Knudson has also made more general statements, such as asserting "No BOD approval or review of warrants issued by IWMA" and "No item spending limit where a notice to the BOD is required."

On retrospect it is difficult to assess how much detail Worrell provided Board of Directors during its four (or so) meetings per year beyond the materials provided in the board packet. It should be noted that in addition to these meetings Worrell met with the Board of Directors Executive Committee every two months. According to former Board President and Member Jeff Lee, Mayor of Grover Beach, there was a "high level of trust in the IWMA staff" and that the staff was "producing results." They had little reason to question finances, as audits were "clean" and if there had been issues he would have expected the auditor to have flagged them. In general, he stated the Board and the Executive Committee were focused on high-level decisions and "did not get into minutia," such as purchases made on a credit card.

Prosecution for a violation of Penal Code section 424 for unauthorized spending of government funds cannot be proven in this case unless there is evidence that Worrell knowingly violated a spending policy, or was criminally negligent in failing to know his spending was not legally authorized. (see *Stark*, above)

As a starting point, the spending authority is derived from the JPA, which provides that the authority of the Manager to spend comes from approval by the Board of the "line item and program budget." The JPA also states "[t]he line item and program budget" must include "sufficient detail to constitute an operating guideline, the anticipated source of funds, and the anticipated expenditures to be made. . . ." Based on the District Attorney's review of a sampling of the archived materials, reasonable persons could differ on whether the budgets Worrell presented to the Board of Directors were

adequately detailed or not—they are not as detailed as they are now, but this is a matter of degree. Members of the Board were presented with enough information to both inform them generally about the budget and to provide a basis to seek more information from Worrell.

Further, it is important to note that the resolution adopting the budget provides another layer of authority for Worrell, allowing him to "take all actions necessary to implement the Budget and Program Objectives." While the budgets provided by Worrell arguably lacked detail, they were not so lacking as to provide a basis for criminal liability.

As outlined below, it is important to note that the IWMA has improved transparency. As of the time of this report, the materials provided to the Board contain substantially more information than before this investigation began.

b. Insufficient evidence exists for criminal charges arising out of purchases made by William Worrell using his professional development fund

During his time as Manager of the IWMA William Worrell used IWMA funds from his professional development account to pay for items that appeared to be of a personal nature, including ipads, iphones, iwatches and fees to maintain his engineering licenses in Florida and Georgia. Other expenses from this account included annual travel to the World Resources Forum and travel to the Zero Waste Conference.

In his initial contract with the IMWA from 1995 there is no reference to a professional development allowance, but it was added to his contract on March 12, 2003. At that time the amount of his personal development fund was set to mirror that of the Deputy County Counsel, which at that time was $692.57 per year. In 2013 his contract was amended to increase that amount to $3,251.78.[64]

When interviewed and asked about this large increase, Worrell explained that his professional development fund was increased that time in lieu of a raise. As to how his professional development fund could be used, Worrell said there was no formal policy, but he understood that it should be related to professional development and education, though but ultimately it was up to him.

The issue raised is the appropriateness of some of the expenses and, if inappropriate, whether they rise to the level of criminal conduct. As referenced elsewhere, for conduct to be criminal, some level of criminal intent or criminal negligence must be proven. In this circumstance, these criminal elements are missing. At the heart of this issue is the purpose of the professional development fund. According to Worrell, there was no formal policy about how the funds were to be used other than the open-end purpose contained within the name itself: "professional development and education." In a digital age, electronic products such as ipads and iphones are helpful and, arguably, necessary. There is little to suggest Worrell purchased these items when he knew, or should have

[64] The amendment reads that his professional development reimbursement was be increased "by" $2,400, not "to" $2,400. Consequently, because his amount of reimbursement in 2013 was $851.78—evidently a number that tracked County Counsel—his total professional development fund became $3,251.78 ($2400 plus $851.78).

known, that he was not entitled to make them. Documents obtained from the IWMA do not reflect an attempt by Worrell to hide these purchases; rather, these purchases are listed in his expense reports.

Of note, CALCRIM 1806, the form instruction given to juries in cases involving embezzlement is clear that a "good faith belief" that a person is authorized to use property (or spend money) is a defense to that crime. Likewise, a reasonable mistake of fact is a defense to the crime of misappropriation of public funds in violation of Penal Code section 424(a)2.

As to use of the fund to pay engineering licenses fees in Florida and Georgia, these are arguably appropriate expenditures. When interviewed by the District Attorney's Office, former President and Board Member Jeff Lee stated that Worrell was respected throughout the state, that he would speak at conferences, and that maintaining his out-of-states licenses helped to enhance his reputation, which benefitted the IWMA.

In sum, insufficient evidence exists to pursue criminal charges for these expenses given the absence of a clear policy outlining the types of expenses which are (or are not) allowable.

VIII.

FINAL OBSERVATIONS

It has been observed that in his role as Manager of the IWMA, William Worrell ran the IWMA as if it was a private business. While some may view this as laudable—he was successful in obtaining grant funding and developed programs that by some accounts made the IWMA a standout in California—the IWMA is not a private business and must be operated with transparency expected of governmental entities.

While a lack of transparency may have created an environment where theft could occur undetected, misconduct was not found on the part of William Worrell. For the reasons expressed above, the allegations against Carolyn Goodrich will not be addressed here.

It bears noting that a forensic audit of the IWMA was conducted by CliftonLarsonAllen LLP ("CLA") and its report was shared with the District Attorney's Office. While the scope and purpose of its investigation were similar to the District Attorney's Investigation, it was not identical. While the District Attorney's Office was allowed access to this report, this office has not been authorized to share it. Nonetheless, it is clear CLA encountered some of the same hurdles as experienced by the District Attorney's Office, including the lack of supporting records for many expenses, making it difficult to evaluate whether many expenses were appropriate or not.

Finally, it is important to emphasize that since the District Attorney's Office began its investigation, the IWMA has made changes leading to greater transparency and oversight. This includes a 41-page policies and procedures handbook, effective June 18, 2020, covering a wide range of matters including vacation leave, use of the IWMA credit card, travel authorizations, and a variety of other matters. The Auditor-Controller's

Office made concrete recommendations for improving the IWMA's internal controls, all which have been implemented or are in the process of being implemented.

It is also evident that the Board is now provided with substantially more information about IWMA operations than it had in the past. This includes updating the Board at each meeting with the current state of the budget—how much revenue has come in and how much is being spent.

With respect to spending, the Board is provided with a list detailing every expense placed on the IWMA credit card. The Board is also given a list of all payables during the quarter which names the payee, the amounts paid and a description of what service or items was provided. In sum, the information now being provided allows Board members to track how IWMA funds are being spent.

As stated in the introduction to this report, the primary mission of the District Attorney's Office is to prosecute criminal matters. The focus of this investigation was to do more than simply identify questionable conduct, but to identify conduct that was criminal and can be proven to a jury beyond a reasonable doubt. The District Attorney's Office has not identified criminal conduct on the part of Charles Tenborg or William Worrell, but will prosecute Carolyn Goodrich for the charges that have been filed against her and listed above.

END OF REPORT