

**SUBMITTAL TO THE FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT BOARD  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

611B



**FROM:** General Manager-Chief Engineer

**SUBMITTAL DATE:**  
August 16, 2011

**SUBJECT:** Waiver of Conflict of Interest

**RECOMMENDED MOTION:**

That the District's Board of Supervisors consent to the waiver of conflict of interest and authorize County Counsel to sign the letter of consent of waiver for the law firm of Best Best & Krieger to represent the Inland Empire Resource Conservation District concerning a mitigation services agreement.

**BACKGROUND:**

Currently, the District retains the law firm of Best Best & Krieger (BB&K) to represent the District in a variety of legal matters including the District's challenge to the U.S. Fish and Wildlife's designation of critical habitat for the Santa Ana sucker fish. BB&K desires to now represent the Inland Empire Resource Conservation District (IERCD) in connection with a mitigation services agreement with the District related to its Day Creek Channel, Stage 6 project. In this matter, BB&K plans to represent IERCD in the drafting of the agreement as well as other related documents. It is also possible that IERCD would ask BB&K for advice related to future issues that may arise related to the mitigation services agreement.

DW:bjp

**WARREN D. WILLIAMS**  
General Manager-Chief Engineer

<b>FINANCIAL DATA</b>	Current F.Y. District Cost:	\$	In Current Year Budget:
	Current F.Y. County Cost:	\$	Budget Adjustment:
	Annual Net District Cost:	\$	For Fiscal Year:

<b>SOURCE OF FUNDS:</b>	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

APPROVE

BY: Alex Gann  
Alex Gann

County Executive Office Signature

- Policy
- Policy
- Consent
- Consent
- Dept's Recomm.:
- Per Exec. Ofc.:

Prev. Agn. Ref.:

District: ALL

Agenda Number:

11.3

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

**SUBJECT:** Waiver of Conflict of Interest

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**BACKGROUND contd:**

The request for a conflict of interest waiver by the law firm of BB&K is prompted by Rule 3-310 of the California Rules of Professional Conduct, which provides, in pertinent part:

- "(C) A member [of the Bar] shall not, without the informed written consent of each client:
- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
  - (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; and
  - (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter."

County Counsel and District staff have reviewed the waiver of conflict of interest letter and do not believe a conflict of interest would arise in connection with the firm's representation of IERCD or that the District's interests would be adversely affected by the firm's representation of IERCD in this matter concurrently with representing and advising the District on its challenge to the designation of critical habitat for the Santa Ana sucker fish as well as other issues and litigation.

Attachment – copy of cited letter.



**BEST BEST & KRIEGER**  
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**Michelle Ouellette**  
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File No. 27761.00000

July 22, 2011

Pamela J. Walls, County Counsel  
Office of County Counsel  
County of Riverside  
3960 Orange Street, 5th Floor  
Riverside, CA 92501

Re: Mitigation Services Agreement Between The Riverside County Flood Control and Water Conservation District and the Inland Empire Resource Conservation District

Dear Pam:

The Inland Empire Resource Conservation District ("IERCD") plans to enter into a mitigation services agreement with the Riverside County Flood Control and Water Conservation District ("Flood Control"). IERCD has asked Best Best & Krieger LLP ("BBK") to represent IERCD in the drafting of the mitigation services agreement, as well as the review of other related documents. It may be possible that IERCD would ask us for advice related to future issues that may arise related to the mitigation services agreement as well.

BBK currently represents and advises Flood Control on other unrelated legal matters. As a result of our relationships with both IERCD and Flood Control, there is a potential that IERCD's interests and Flood Control's interests could conflict, creating a conflict of interest for BBK. When a potential or actual conflict of interest exists, a law firm must disclose the conflict to the clients and obtain their waiver and written consent to continue with the representation.

### **RULES OF PROFESSIONAL CONDUCT**

Rule 3-310 of the California Rules of Professional Conduct provides in pertinent part:

(C) A member [of the Bar] shall not, without the informed written consent of each client:

- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

Pamela J. Walls, County Counsel  
July 22, 2011  
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- (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
  - (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter; or
- (D) A member who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients without the informed written consent of each client.

### **OUR REPRESENTATION**

We plan to represent IERCD in the drafting of the mitigation services agreement, as well as the review of other related documents. It may be possible that IERCD would ask us for advice related to future issues that may arise related to the mitigation services agreement as well.

### **ADVERSE CONSEQUENCES**

We are obliged to inform you of any actual or reasonably foreseeable adverse effects of our representation of the RCRC and the Flood Control under these circumstances. By signing this letter you are agreeing that you understand that a future, as yet not existing, conflict between the RCRC and the Flood Control could develop into contentious disputes and result in litigation. At this point, BBK would need to withdraw from representing either one or both parties. It is impossible to foresee every possible circumstance that might occur, however, some of the following could occur:

- We may be tempted to favor the interests of one client over the other.
- Our exercise of independent judgment for Flood Control may be impaired or clouded by our pre-existing relationship with IERCD.
- We may not be able to present the appropriate position, claims or defenses for a client in order to avoid taking adverse positions to the other client.
- We may be restricted from forcefully advocating a client's position for fear of alienating the other client.
- We may impair the position, claims or defenses of one client because of an adverse position we take for another client.



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- Disputes may arise between both clients regarding tactics, objectives or resolution of this matter because of our representation of both clients.
- We may disclose confidential information to a client that the other client would not like revealed since we cannot keep confidences between clients on the same matter.
- We may be forced to withdraw from representing either or both clients because of disputes or further conflicts of interest which could increase either or both clients' attorney's fees and costs.
- There may be an appearance of impropriety in our representation of both clients simultaneously.
- After the matter is concluded, the clients may make conflicting demands for the client file.

**YOUR CONSENT**

If you wish to allow us to represent the IERCD on the terms described here, we need you to sign this consent letter. It is understood that this consent will not waive any protection that you may have with regard to attorney-client communications with us in this or other matters. Those communications will remain confidential and will not be disclosed to any third party without your consent.

I believe that you are familiar with the factual background in this matter, and I have given you a sufficiently-detailed description for obtaining informed written consent. However, if you believe that there is any other information that you or I need to have before such consent can be granted, please let me know immediately.

In the event that circumstances change or we become aware of new information that requires a new consent from the parties, you will be notified of that fact immediately, and continued representation will be subject to the informed written consent of involved parties.

I should emphasize that you are entitled to and should consider obtaining an independent legal opinion regarding the advisability of signing this consent form.



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

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July 22, 2011  
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Your execution of this consent form will constitute an acknowledgment of full disclosure in compliance with the requirements of Section 3-310 of the California Rules of Professional Conduct previously quoted in this letter.

A copy of this letter is enclosed for your files. If you have any questions, please do not hesitate to call.

Very truly yours,

BEST BEST & KRIEGER LLP

By:   
Michelle Ouellette

AGREED AND ACCERTED

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Enclosure

**COPY!**

MO:WHS/lcp