

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

620



**FROM:** County Counsel

**SUBMITTAL DATE:**  
February 28, 2013

**SUBJECT:** Waiver of Conflict of Interest for the law firm of Best Best & Krieger LLP to represent the Western Riverside County Regional Conservation Authority (RCA) regarding a Funding Agreement between RCA and the County of Riverside District 5/District 5

**RECOMMENDED MOTION:** That the Board of Supervisors consent to the waiver of conflict of interest and authorize County Counsel to sign the letter of consent for the law firm of Best Best & Krieger LLP to represent RCA in the preparation of a Funding Agreement between the County of Riverside and RCA concerning the acquisition of in-lieu mitigation credits over RCA owned real property.

**BACKGROUND:** Currently, the County retains the law firm of Best Best & Krieger LLP (BBK) to represent the County's interest in a number of environmental transactions and California Environmental Quality Act litigation.

Departmental Concurrence

**Pamela J. Walls, County Counsel**

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$	In Current Year Budget:
	Current F.Y. Net County Cost:	\$	Budget Adjustment:
	Annual Net County 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:   
Denise G. Hadden

**County Executive Office Signature**

- Policy
- Consent
- Policy
- Consent

Dep't Recomm.:  
Per Exec. Ofc.:

**Prev. Agn. Ref.:** | **District:** 5/5 | **Agenda Number:**

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

3-7

BACKGROUND (continued):

BBK also desires to now represent RCA in the preparation of a funding agreement between the County of Riverside (County) and RCA concerning the acquisition of in-lieu mitigation credits over real property referenced as "Geller No. 2" property located south of the City of Banning, County of Riverside, State of California, for impacts to the Los Angeles pocket mouse habitat associated with the County's project known as the Larry D. Smith Correctional Facility. In this matter, BBK plans to represent RCA in preparing and drafting the funding agreement as well as reviewing any documentation relevant to the finalizing the funding agreement by RCA. In the event that conflicts arise concerning the transaction between the County and RCA, BBK would need to withdraw from representing either one or both parties.

The request for a conflict of interest waiver by the law firm of BBK 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; 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."

County Counsel and Economic Development Agency staff have reviewed the attached waiver of conflict of interest letter and are of the opinion that a conflict of interest would not arise in connection with the firm's representation of RCA or that the County's interests would be adversely affected by the firm's representation of RCA in this matter concurrently with representing and advising the County on CEQA issues and litigation.

Attachment:  
Conflict of Interest Waiver Request Letter



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

Indian Wells  
(760) 568-2811

Irvine  
(949) 263-2600

Los Angeles  
(213) 617-8100

Ontario  
(909) 989-8584

3390 University Avenue, 5th Floor, P.O. Box 1028, Riverside, CA 92502  
Phone: (951) 686-1450 | Fax: (951) 686-3083 | www.bbklaw.com

Sacramento  
(916) 325-4000

San Diego  
(619) 525-1300

Walnut Creek  
(925) 977-3300

Washington, DC  
(202) 785-0600

**Michelle Ouellette**  
(951) 826-8373  
michelle.ouellette@bbklaw.com  
File No. 26493.00003

November 1, 2012

Pamela J. Walls  
County Counsel  
County of Riverside  
3960 Orange Street, Suite 500  
Riverside, CA 92501

Re: County of Riverside/RCA Funding Agreement

Dear Pam:

We understand that the County of Riverside (the "County") plans to enter into an agreement (the "Funding Agreement") with the Western Riverside County Regional Conservation Authority ("RCA") to donate funds for the purchase of the "Geller No. 2" property, which contains habitat for the Los Angeles pocket mouse. The purpose of the donation is to satisfy mitigation requirements for impacts related to a County project to stabilize the north bank of Smith Creek with grouted rip-rap.

Best Best & Krieger LLP ("BBK"), as general counsel to RCA, has been asked to represent RCA in preparing the Funding Agreement. However, BBK also represents the County in other unrelated matters. Because BBK represents both the County and RCA, we have to inform you about our representation of RCA, discuss with you the potential impact of our representation and obtain your informed written consent.

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



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

- (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

In this matter, we will represent RCA in the preparation of the Funding Agreement. We will continue to represent the County in other unrelated matters.

ADVERSE CONSEQUENCES

We are obliged to inform you of any actual or reasonably foreseeable adverse effects of this representation. It is possible that future, as yet not existing, conflicts between the RCA and the County could develop into contentious disputes and result in litigation. At this point, BBK would need to withdraw from representing either one or both parties. Furthermore:

- We may be tempted to favor the interests of one client over the other.
- 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 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.

YOUR CONSENT

It is understood that this consent will not waive any protection that you may have with regard to attorney-client communications with us. 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

**BBK**  
**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

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.

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.

Sincerely,



Michelle Ouellette  
of BEST BEST & KRIEGER LLP

AGREED AND ACCEPTED:

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

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