

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

710B



**FROM:** General Manager-Chief Engineer

**SUBMITTAL DATE:**  
June 17, 2014

**SUBJECT:** Consent to the Waiver of Conflict of Interest for the law firm of Best Best & Krieger, LLP to represent the Coachella Valley Association of Governments (CVAG) with respect to environmental requirements in connection with the Coachella Valley Link Project. All Districts; [\$0]

**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 for the law firm of Best Best & Krieger, LLP to represent CVAG with respect to National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) requirements in connection with the Coachella Valley Link Project.

**BACKGROUND:**

Summary  
See Page 2.

SEM:bad  
P8/161382

*Steve Thomas*  
For **WARREN D. WILLIAMS**  
General Manager-Chief Engineer

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost:</b>	<b>POLICY/CONSENT (per Exec. Office)</b>
<b>COST</b>	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
<b>NET DISTRICT COST</b>	\$ 0	\$ 0	\$ 0	\$ 0	

<b>SOURCE OF FUNDS:</b> N/A	<b>Budget Adjustment:</b> No
	<b>For Fiscal Year:</b> N/A

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

APPROVE  
BY: *Steven C. Horn*  
Steven C. Horn

**County Executive Office Signature**

**MINUTES OF THE BOARD OF SUPERVISORS**

FORM APPROVED COUNTY COUNSEL  
BY: *Michelle Clack*  
DATE: 6/2/14  
MICHELLE CLACK

Departmental Concurrence

- A-30
- 4/5 Vote
- Positions Added
- Change Order

**Prev. Agn. Ref.:** | **District:** ALL | **Agenda Number:**

**11-2**

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

**FORM 11:** Consent to the Waiver of Conflict of Interest for the law firm of Best Best & Krieger, LLP to represent the Coachella Valley Association of Governments (CVAG) with respect to environmental requirements in connection with the Coachella Valley Link Project. All Districts; [\$0]

**DATE:** June 17, 2014

**PAGE:** Page 2 of 2

**BACKGROUND:**

**Summary (continued)**

Currently, the District retains the law firm of Best Best & Krieger, LLP (BBK) as Special Counsel with regard to litigation related to the Santa Ana sucker and other matters. BBK was recently asked to represent CVAG with respect to NEPA and CEQA requirements for the Coachella Valley Link Project (Project), which is a proposed 52-mile recreational trail through the Coachella Valley. The exact location of the Project has not been chosen, however, it may potentially encroach upon property or facilities owned or operated by the District.

In regards to the Project, BBK would represent CVAG with respect to environmental compliance and other matters related to the Project. BBK would continue representing the District on the other matters set forth above. The request for a Conflict of Interest Waiver by BBK is prompted by Rule 3-310 of the California Rules of Professional Conduct, which provides, in pertinent part, the following:

- “(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 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 has reviewed the attached Waiver of Conflict of Interest letter and is of the opinion that a conflict of interest would not arise in connection with BBK's representation of CVAG or that the District's interests would be adversely affected by BBK's representation of CVAG in regards to the Project concurrently with advising the District on the Santa Ana sucker litigation or other matters. In the event a conflict arises, BBK would need to withdraw from representing either one or both parties.

**Impact on Residents and Businesses**

The Board's consent to the Waiver of Conflict of Interest does not have a direct impact on residents or businesses because it simply allows Best Best & Krieger, LLP to represent another public agency for a transactional legal matter.

**ATTACHMENT:**

- A. Conflict of Interest Waiver Request Letter

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P8/161382



**BEST BEST & KRIEGER**  
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**Michelle Ouellette**  
(951) 826-8373  
michelle.ouellette@bbklaw.com

May 1, 2014

Pamela J. Walls, County Counsel  
Karin Watts-Bazan, Principal  
Deputy County Counsel  
Riverside County Flood Control &  
Water Conservation District  
3960 Orange Street, Suite 500  
Riverside, CA 92501

Re: Informed Written Consent Concerning CV Link Project

Dear Pam and Karin:

As you know, we currently represent the Riverside County Flood Control & Water Conservation District (the "District") as Special Counsel with regard to litigation related to the Santa Ana sucker and other matters. However, we were recently asked to represent the Coachella Valley Association of Governments ("CVAG") with respect to National Environmental Policy Act ("NEPA") and California Environmental Quality Act requirements in connection with the development of the Coachella Valley Link Project, a 52-mile recreational trail through the Coachella Valley (the "Project").

At this time, the exact alignment and location of the Project has not been chosen, nor will it be chosen until the completion of all required environmental review. However, it is anticipated that the Project would generally track the Whitewater River through the Coachella Valley, such that the Project would cross lands under the District's jurisdiction and could potentially encroach upon property or facilities owned or operated by the District. Accordingly, we have to inform you about our proposed representation of CVAG, 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



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

Pamela J. Walls  
Karin Watts-Bazan  
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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.
- (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 would represent CVAG with respect to environmental compliance and other matters related to the Project. However, we would continue to represent the District as to the other matters identified above.

**ADVERSE CONSEQUENCES**

We are obliged to inform you of any actual or reasonably foreseeable adverse effects of this representation. It is possible that:

- We may be tempted to favor the interests of one client over the other.
- Our exercise of independent judgment to the District may be impaired or clouded by our relationship with CVAG.
- 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.
- Disputes may arise between both clients regarding tactics, objectives or resolution of this matter because of our joint representation of both clients.
- 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.



**BEST BEST & KRIEGER**  
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Karin Watts-Bazan  
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**YOUR CONSENT**

If you wish to allow us to represent CVAG in this matter, 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. 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.

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.

If you have any questions, please do not hesitate to call me.

Sincerely,

Michelle Ouellette  
of BEST BEST & KRIEGER LLP

AGREED AND ACCEPTED:

RIVERSIDE COUNTY FLOOD CONTROL & WATER  
CONSERVATION DISTRICT

By: \_\_\_\_\_  
Pamela J. Walls, County Counsel

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