

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

654
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FROM: County Counsel

SUBMITTAL DATE:
December 17, 2014

SUBJECT: Waiver of Conflict of Interest for the law firm of Best Best & Krieger LLP to represent the San Jacinto Basin Resource Conservation District (SJBRC D) regarding a potential memorandum of understanding and conservation easement over real property located in the Juniper Flats area; 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 SJBRC D regarding a potential memorandum of understanding between the County and SJBRC D and conservation easement over real property located in the Juniper Flats area proposed to be granted in favor of SJBRC D by the County of Riverside.

BACKGROUND:

Summary

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. (continued on page 2)

Gregory P. Priamos
County Counsel

Departmental Concurrence

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

SOURCE OF FUNDS: _____ **Budget Adjustment:** _____
For Fiscal Year: _____

C.E.O. RECOMMENDATION:

APPROVE

BY: Denise C. Harden

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

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

Prev. Agn. Ref.: _____ District: 5 Agenda Number: _____

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

FORM 11: Waiver of Conflict of Interest for the law firm of Best Best & Krieger LLP to represent the San Jacinto Basin Resource Conservation District (SJBRCD) regarding a potential memorandum of understanding and conservation easement over real property located in the Juniper Flats area; District 5

DATE: December 17, 2014

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BACKGROUND:

Summary (continued)

BBK also desires to now represent SJBRCD regarding a potential conservation easement over real property located in the Juniper Flats area. In this matter, BBK plans to represent SJBRCD in reviewing a memorandum of understanding and conservation easement as well as advising SJBRCD on any issues relevant to negotiating and finalizing the conservation easement real estate transaction. It may be possible that BBK may advise SJBRCD in the future on matters related to the enforcement of the conservation easement if warranted. In the event that conflicts arise concerning the transaction between the County and SJBRCD, 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 Transportation 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 SJBRCD or that the County’s interests would be adversely affected by the firm’s representation of SJBRCD in this matter concurrently with representing and advising the County on CEQA issues and litigation.

Impact on Citizens and Businesses

N/A

SUPPLEMENTAL:

Additional Fiscal Information

N/A

Contract History and Price Reasonableness

N/A

ATTACHMENTS (if needed, in this order): Conflict of Interest Waiver Request Letter

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December 2, 2014

Greg Priamos, County Counsel
Office of County Counsel
3960 Orange Street, Suite 500
Riverside, CA 92501

Re: Juniper Flats Memorandum of Understanding and Conservation Easement

Dear Greg:

The San Jancinto Basin Resource Conservation District ("SJBRC") plans to negotiate and enter into Memorandum of Understanding ("MOU") with the County of Riverside. The MOU will govern the rights and responsibilities of the SJBRC and the County related to the conveyance of the Juniper Flats Conservation Easement. SJBRC has asked Best Best & Krieger LLP ("BBK") to represent SJBRC in the review and documentation of the MOU and the Conservation Easement, as well as reviewing other documents related to conducting due diligence in preparation for accepting the Conservation Easement. It may be possible that SJBRC would ask us for advice in the future related to the enforcement of the Conservation Easement as well.

As you know, BBK currently represents and advises the County on other legal matters. As a result of our relationship with the SJBRC, there is a potential that the County's interests and the SJBRC's interests could conflict, creating a conflict of interests 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
- (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or

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- (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.
- (E) A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

OUR REPRESENTATION

We plan to represent the SJBRCD in the review and documentation of the MOU and the Conservation Easement, as well as reviewing other documents related to conducting due diligence in preparation for accepting the Conservation Easement. It may be possible that the SJBRCD would ask us for advice in the future related to the enforcement of the Conservation Easement as well.

ADVERSE CONSEQUENCES

We are obliged to inform you of any actual or reasonably foreseeable adverse effects of our representation of the SJBRCD and the County under these circumstances. By signing this letter you are agreeing that you understand that a future, as yet not existing, conflict between the SJBRCD 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. 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 the SJBRCD over the County.
- Our exercise of independent judgment to the County may be impaired or clouded by our pre-existing relationship with the SJBRCD.
- We may not be able to present the appropriate position, claims or defenses for the County in order to avoid taking adverse positions to the SJBRCD.
- 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.

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- 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 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.

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: 
Steve Anderson

AGREED AND ACCEPTED:

By: _____

Dated: _____

Enclosure