

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

330



FROM: County Counsel

SUBMITTAL DATE:
April 10, 2012

SUBJECT: Waiver of Conflict of Interest for the law firm of Best Best & Krieger to represent the Riverside-Corona Resource Conservation District in the Lower Anza Creek Memorandum of Understanding and Conservation Easement transaction
District 2/District 2

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 of waiver for the law firm of Best Best & Krieger to represent the Riverside-Corona Resource Conservation District (RCRCD) in the Lower Anza Creek Memorandum of Understanding and Conservation Easement real estate transaction.

BACKGROUND: Currently, the County retains the law firm of Best Best & Krieger (BBK) to represent the County's interest in a number of environmental transactions and California Environmental Quality Act litigation.
(continued on page 2)

Departmental Concurrence

Pamela J. Walls

Pamela J. Walls, County Counsel

FINANCIAL DATA	Current F.Y. Total Cost:	\$	In Current Year Budget:
	Current F.Y. Net County Cost:	\$	Budget Adjustment:
	Annual Net County Cost:	\$	For Fiscal Year:

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

C.E.O. RECOMMENDATION:

APPROVE

BY: *Denise C. Harden*
Denise C. Harden

County Executive Office Signature

- Policy
- Consent
- Policy
- Consent

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: April 10, 2012
xc: Co.Co.

Kecia Harper-Ihem
Clerk of the Board
By: *Pamela J. Walls*
Deputy

Dep't Recomm. ATTACHMENTS FILED WITH THE CLERK OF THE BOARD Per Exec. Ofc.:

3.12

BACKGROUND (continued):

BBK also desires to now represent RCRCDC in the Lower Anza Creek Memorandum of Understanding and Conservation Easement real estate transaction. In this matter, BBK plans to represent RCRCDC in preparing and drafting the Memorandum of Understanding and conservation easement as well as reviewing any documentation relevant to the acceptance of the conservation easement by RCA. 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, the Economic Development Agency, Real Estate Division staff have reviewed the attached waiver of conflict of interest letter and do not believe a conflict of interest would arise in connection with the firm's representation of RCRCDC or that the County's interests would be adversely affected by the firm's representation of RCRCDC 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

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CLIENT'S COPY

March 22, 2012

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

Re: Lower Anza Creek Memorandum of Understanding and Conservation Easement

Dear Pam:

The Riverside-Corona Resource Conservation District ("RCRCD") 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 RCRCD and the County related to the conveyance of a Conservation Easement as part of the Lower Anza Creek Aquatic Habitat Restoration Project. RCRCD has asked Best Best & Krieger LLP ("BBK") to represent RCRCD 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 RCRCD 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 RCRCD, there is a potential that the County's interests and the RCRCD'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

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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 the RCRCDC 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 RCRCDC 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 RCRCDC 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 RCRCDC 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 RCRCDC over the County.
- Our exercise of independent judgment to the County may be impaired or clouded by our pre-existing relationship with the RCRCDC.
- 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 RCRCDC.
- We may be restricted from forcefully advocating the County's position for fear of alienating the RCRCDC.
- 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: 
Michelle Ouellette

AGREED AND ACCEPTED:

By: _____

Dated: _____

Enclosure



MEMORANDUM

RIVERSIDE COUNTY COUNSEL

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGE

DATE: March 27, 2012

TO: Denise Harden, Principal Management Analyst
Executive Office

FROM: Synthia M. Gunzel *SMG*
Deputy County Counsel

RE: Form 11 and Waiver of Conflict of Interest Request Letter
Lower Anza Creek Memorandum of Understanding and Conservation Easement

Attached please find the above referenced documents for your review. We would like this submittal to be placed on the April 10, 2012 Board Agenda. Please feel free to contact me if you have any questions or request revisions to the Form 11. I can be reached at micro 5-6328 or the main line at 955-6300. Thank you.

Attachments