

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

609A



FROM: County Counsel

SUBMITTAL DATE:
November 26, 2013

SUBJECT: Waiver of Conflict of Interest; District 3

RECOMMENDED MOTION: That the Board of Supervisors:

That the Board of Supervisors consent to the waiver of conflict of interest and authorize County Counsel to sign the attached letter of consent of waiver for the law firm of Best, Best & Krieger to represent the County in JPR, Inc. v. the California Department of Fish and Game et al. (Case No. MCC 1300351).

BACKGROUND:

Summary

The above-referenced litigation has been initiated against the County of Riverside and the Western Riverside County Regional Conservation Authority (RCA) as well as the California Department of Fish and Wildlife involving the Western Riverside County Multiple Species Plan. Pursuant to the terms of the Joint Powers Agreement establishing the RCA, the RCA has an obligation and duty to indemnify and defend the County in such litigation.

(Continued on Attachment Page)

Karin Watts-Bazan

KARIN WATTS-BAZAN, Principal Deputy County Counsel
for PAMELA J. WALLS, County Counsel

Departmental Concurrence

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

SOURCE OF FUNDS:	Budget Adjustment: No
	For Fiscal Year: 13/14

C.E.O. RECOMMENDATION:

APPROVE

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

County Executive Office Signature

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: Jeffries, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: December 10, 2013
xc: Co.Co., BBK

Kecia Harper-Ihem
Clerk of the Board
By: *Kecia Harper-Ihem*
Deputy

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

BACKGROUND:

Summary (continued)

RCA has agreed to indemnify and defend the County and has requested that Best, Best & Krieger (BB&K) represent both the RCA and the County in this litigation. Because of BB&K's representation of the RCA as general counsel as well as in this matter and of the County in other matters, BB&K has requested that we execute the attached conflict waiver and consent letter.

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; 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."

County Counsel has reviewed the attached waiver of conflict of interest letter and is of the opinion that it is not likely a conflict of interest would 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 in this matter as well as others. County Counsel will supervise and monitor BB&K in its representation of the County.

Impact on Citizens and Businesses

Waiver of conflict of interest in this matter will allow for the BB&K to represent both public agencies rather than having two separate firms provide for the RCA and County defense in this litigation. Dual representation will save taxpayer dollars as a result.

SUPPLEMENTAL:

Additional Fiscal Information

Not applicable.

Contract History and Price Reasonableness

Not applicable.

ATTACHMENTS:

- A. Conflict Waiver and Consent Letter from BB&K

ATTACHMENT – “A”

BEST BEST & KRIEGER

ATTORNEYS AT LAW

INDIAN WELLS
(760) 568-2611

IRVINE
(949) 263-2600

LOS ANGELES
(213) 617-8100

ONTARIO
(909) 989-8584

3750 University Avenue, Suite 400
Post Office Box 1028
Riverside, California 92502-1028
(951) 686-1450
(951) 686-3083 Fax
BBKlaw.com

SACRAMENTO
(916) 325-4000

SAN DIEGO
(619) 525-1300

WALNUT CREEK
(925) 977-3300

Michelle Ouellette
(951) 826-8373
Michelle.Ouellette@bbklaw.com
File No. 26493.00

November 18, 2013

Pamela J. Walls, County Counsel
Karin Watts-Bazan, Principal Deputy
County Counsel
Office of County Counsel
County of Riverside
3960 Orange Street, 5th Floor
Riverside, CA 92501

Re: JPR, Inc. v. the California Department of Fish and Game et al.
(Case No. MCC 1300351)

Dear Ms. Walls:

Best Best & Krieger LLP ("BBK") has been asked to represent the Western Riverside County Regional Conservation Authority ("RCA") regarding RCA's acceptance to indemnify and defend the County of Riverside for the claims raised in the above mentioned case. In this matter, BBK, on behalf of RCA, will be defending the County of Riverside. On occasion, BBK has and continues to represent the County of Riverside. Because of that relationship, we have to inform you about our representation of the RCA, discuss with you the potential impact of our representation of the RCA in this case, 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

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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.

(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 will continue to represent the RCA as general counsel. In the *JPR, Inc.* lawsuit referenced above, BBK, on behalf of RCA, will defend the County of Riverside. We will continue from time to time 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 of Riverside could develop into contentious disputes and result in litigation. At this point, BBK would need to withdraw from representing either one or both parties with reference to the above litigation. Furthermore:

- We may be tempted to favor the interests of one client over the other.
- Our exercise of independent judgment to the County of Riverside may be impaired or clouded by our pre-existing relationship with the RCA.
- 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

In order for us, on behalf of RCA, to represent you 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

BEST BEST & KRIEGER
ATTORNEYS AT LAW

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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.

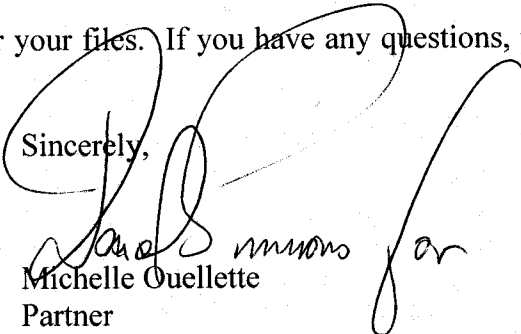
In the event that circumstances change or we become aware of new information that requires a new consent from the parties, you will be notified of that fact immediately, and continued representation will be subject to the informed written consent of involved parties.

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. Further, your execution of this consent form will also warrant that you are authorized to execute this consent form on behalf of the County.

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

Sincerely,



Michelle Ouellette
Partner
of BEST BEST & KRIEGER LLP

AGREED AND ACCEPTED:

By: _____

Dated: _____

Enclosure