

FORM APPROVED COUNTY COUNSEL
 BY: GREGORY P. PRIAMOS DATE 5/19/15

Departmental Concurrence

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

106B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
 June 2, 2015

SUBJECT: Consent to the Waiver of Conflict of Interest for the Law Firm of Best Best & Krieger, LLP to Represent the Riverside-Corona Resource Conservation District (RCRCD) with Respect to In-Lieu Fee Agreements and Mitigation Requirements in Connection with Various District Projects; [\$0 - All Districts]

RECOMMENDED MOTION: That the Board of Supervisors:

1. 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 RCRCD with respect to in-lieu fee program agreements or mitigation requirements in connection with various District projects.

BACKGROUND:

Summary

See Page 2.

[Signature]
 WARREN D. WILLIAMS
 General Manager-Chief Engineer

SEM:mcv:bjp
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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 type="checkbox"/>
NET DISTRICT COST	\$ 0	\$ 0	\$ 0	\$ 0	

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

C.E.O. RECOMMENDATION:

APPROVE

BY: *[Signature]*
 Steven C. Horn

County Executive Office Signature

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

On motion of Supervisor Benoit, seconded by Supervisor Washington and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Washington, Benoit and Ashley
 Nays: None
 Absent: Tavaglione
 Date: June 2, 2015
 xc: Flood

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

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

Prev. Agn. Ref.:

District: All

Agenda Number:

11-6

**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 Riverside-Corona Resource Conservation District (RCRCD) with Respect to In-Lieu Fee Agreements and Mitigation Requirements in Connection with Various District Projects; [\$0 – All Districts]

DATE: June 2, 2015

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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 public financing matters. BBK is also general counsel for RCRCD.

The District has asked RCRCD to enter into an agreement for in-lieu fee credits to offset environmental impacts from the University Wash Channel project in the city of Riverside. More recently, the District has asked RCRCD to help implement mitigation requirements associated with Temescal Creek - Foster Road Storm Drain project. The District may purchase additional mitigation credits or work with RCRCD on other projects as well.

In regards to the University Wash Channel project, BBK would represent RCRCD and assist in drafting and negotiating the in-lieu fee agreement and with 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 does not believe that the District's interests would be adversely affected or that a conflict of interest would arise with BBK's representation of RCRCD in connection with in-lieu fee program agreements or mitigation requirements regarding various District projects while concurrently advising the District on the Santa Ana sucker litigation or other public financing 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 BBK to represent another public agency for a transactional legal matter.

ATTACHMENTS:

1. Conflict of Interest Waiver Request Letter

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ATTORNEYS AT LAW

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January 30, 2015

Warren D. "Dusty" Williams,
General Manager-Chief Engineer
Riverside County Flood Control and
Water Conservation District
1995 Market Street
Riverside, Ca 92501

Re: Informed Consent – Riverside-Corona Resource Conservation District

Dear Mr. Williams:

Best Best & Krieger LLP ("BBK") is general counsel to the Riverside-Corona Resource Conservation District ("RCRCD"). Recently RCRCD informed us that the Riverside County Flood Control and Water Conservation District ("Flood Control District") asked RCRCD to enter into an agreement to purchase in-lieu fee credits to offset impacts associated with a Flood Control District project to replace a section of the University Wash Flood Control Channel located in the City of Riverside, commonly referred to as the University Wash Channel Stage 3 Project. The Flood Control District may purchase additional mitigation credits for or work with RCRCD on other future projects as well. More recently, the Flood Control District approached RCRCD to help implement mitigation associated with, among other projects, the Temescal Creek – Foster Road Storm Drain Project located within the unincorporated El Cerrito area of Riverside County.

BBK also serves as special counsel to the Flood Control District on public financing matters. Therefore, it is necessary to obtain consent from both RCRCD and the Flood Control District regarding BBK's involvement in this matter. We must inform you about our concurrent representation of RCRCD and the Flood Control District, 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

- (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

We will continue to represent RCRCO as general counsel. As such, we plan to assist RCRCO in drafting and negotiating the relevant agreements and other documents associated with these matters. We will not represent the Flood Control District in this matter, but plan to continue working with the Flood Control District 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 conflicts between the Flood Control District and RCRCO could develop into contentious disputes and result in litigation. This scenario could have potentially problematic results in regard to our representation of you. In particular,

- 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.

YOUR CONSENT

By signing this letter now, you will be agreeing that we may represent RCRCO in the matters discussed above as well as any future matter in which the Flood Control District desires to work with RCRCO on matters such as mitigation or the purchase of credits or otherwise, despite the potential conflict that could occur with the Flood Control District. We have also

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BBK
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asked RCRCDD sign a similar waiver and consent. We do not believe that any of these matters will be controversial.

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.

Sincerely,



Kimberly A. Byrens
of BEST BEST & KRIEGER LLP

AGREED AND ACCEPTED:

By: _____
Riverside County Flood Control and
Water Conservation District

Dated: _____