

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

August 6, 2024

FROM

TOM BUNTON, County Counsel

SUBJECT

Consent to Representation and Waiver of Conflict of Interest

RECOMMENDATION(S)

1. Approve a consent to representation and waiver of conflict of interest arising out of Downey Brand LLP's representation of Cadiz, Inc.
2. Authorize the County Counsel or Chief Assistant County Counsel to execute any required documentation to consent to Downey Brand LLP's representation of Cadiz, Inc., and waiver of conflict of interest.

(Presenter: Tom Bunton, County Counsel, 387-5455)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost) as the consent to representation and waiver of conflict are non-financial in nature.

BACKGROUND INFORMATION

On May 1, 2012 (Item No. 4), the Board of Supervisors (Board) adopted Resolution No. 2012-55 approving a Memorandum of Understanding (MOU) to establish a framework for development of a groundwater management plan and County oversight for the Cadiz, Inc. (Cadiz) Valley Groundwater Conservation, Recovery, and Storage Project (Project). On October 1, 2012 (Item No. 1), the Board adopted Resolution No. 2012-176 approving the Project's Groundwater Management, Monitoring and Mitigation Plan (Plan).

Commencing in approximately 2010, Downey Brand LLP (Downey) represented the County in connection with various aspects of the MOU, the Project, and the Plan, including, but not limited to, water rights, land use permitting, environmental review, and litigation that was commenced against the County following approval of the Project. Downey no longer represents the County in connection with the Project.

As Cadiz is operating under land use permits issued by the County there is a potential for future conflict between Cadiz and the County. Accordingly, as required by the California Rules of Professional Conduct that regulate attorney conduct, Downey has asked that the County provide consent for its representation of Cadiz and to waive the conflict of interest.

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Downey has agreed to establish an “ethical wall” to guard against the disclosure of any material or confidential information obtained during its representation of the County so that the attorneys working on behalf of Cadiz in the Project implementation will have no access to any files or materials relating to Downey’s previous representation of the County. If the County grants its consent to Downey’s representation of Cadiz and waiver of the conflict of interest, Downey will be permitted to represent Cadiz in Project implementation. The consent and waiver would not authorize Downey to represent Cadiz in litigation against the County.

The Office of County Counsel has reviewed the consent to representation and waiver of conflict of interest and believes there would be minimal risk to the County’s interest, and it would be appropriate for the Board to approve the consent to representation and waiver of the conflict of interest and authorize the County Counsel or a Chief Assistant County Counsel to execute the waiver of conflict of interest.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Jason Searles, Supervising Deputy County Counsel, 387-5455) on July 23, 2024; Finance (Carl Lofton, Administrative Analyst, 387-5404) on July 29, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on July 29, 2024.

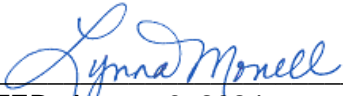
**Consent to Representation and Waiver of Conflict of Interest
August 6, 2024**

Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Curt Hagman
Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: August 6, 2024



cc: File - County Counsel/General
MBA 08/8/2024