

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

June 22, 2021

FROM

MICHELLE D. BLAKEMORE, County Counsel

SUBJECT

Consent to Concurrent Representation

RECOMMENDATION(S)

1. Approve a consent to concurrent representation arising out of the representation of BNSF Railway Company by Meyers Nave with respect to compliance with local, state and federal environmental laws and regulations potentially affecting BNSF operations and property and rail infrastructure throughout San Bernardino County.
2. Authorize the County Counsel or Chief Assistant County Counsel to execute the consent to concurrent representation.

(Presenter: Michelle D. Blakemore, County Counsel, 387-5455)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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

Pursue County Goals and Objectives by Working with Other Agencies.

FINANCIAL IMPACT

Approval of the consent to concurrent representation item will not impact County discretionary funding.

BACKGROUND INFORMATION

The County of San Bernardino and San Bernardino County Flood Control District (collectively, the "County") intend to utilize the services of Meyers Nave as special counsel with respect to the Renewal of a Municipal Separate Storm Sewer System National Pollutant Discharge Elimination System Permit (NPDES Matter) and environmental and natural resources law services, including, but not limited to, the systemwide maintenance permit project, the First Line of Defense basin maintenance permit, the implementation agreement for the Upper Santa Ana River Wash Plan Habitat Conservation Plan administrative actions and civil actions (and the threat of same), and such other matters as may be assigned (Environmental Matters).

Meyers Nave currently represents BNSF Railway Company (BNSF) in connection with several land use and related environmental matters in California. Meyers Nave currently advises BNSF Railway with regard to public agency administrative review under the California Environmental Quality Act, the National Environmental Policy Act, and other local, state and federal environmental laws and regulations, and the California High Speed Rail Authority's proposed Los Angeles to Anaheim Project Section, which includes, as project components, a BNSF intermodal rail yard at Colton, California, and BNSF staging tracks at Lenwood, California. Additionally, Meyers Nave currently advises BNSF concerning compliance with local, state and

Consent to Concurrent Representation
June 22, 2021

federal environmental laws and regulations potentially affecting BNSF operations and property and rail infrastructure throughout San Bernardino County in and around and adjacent to railroad mainlines at and near the City of Barstow, the City of Victorville, the City of San Bernardino, and the City of Fontana, California. Collectively, Meyers Nave's work for BNSF is referred to as "BNSF Matters."

To the best of Meyers Nave's knowledge, however, it does not believe the interests of the County and BNSF are adverse to each other in the NPDES Matter and Environmental Matters. However, it is possible that at some point in the future, the BNSF Matters could include the need to obtain permits or authorizations from the County or otherwise affect the County. Therefore, in an abundance of caution, Meyers Nave has made a disclosure in order to fulfill Meyers Nave's duties under the California Rules of Professional Conduct, specifically Rule 1.7, paragraphs (a) and (b), and asks that the County provide written consent for Meyers Nave's concurrent representation of BNSF in the BNSF Matters before Meyers Nave accepts the proposed NPDES Matter representation and continues in its representation for Environmental Matters.

If the County grants its consent to Meyers Nave's concurrent representation of BNSF, Meyers Nave will not disclose to BNSF any confidential information it has acquired or acquire at any time in the present or future as a result of its lawyer-client relationship with the County. Meyers Nave will likewise not disclose to the County any confidential information it acquires as a result of its lawyer-client relationship with BNSF. Meyers Nave will not undertake the proposed representation of the County in the NPDES Matter or continue working on the Environmental Matters unless and until the County agrees in writing that it will not to seek to disqualify Meyers Nave, or any expert witness, based on the concurrent representation of both BNSF and the County.

Counsel has reviewed the consent to concurrent representation and believes there would be minimal risk to the County's interests in the NPDES Matter or Environmental Matters regarding Meyers Nave's representation of BNSF in the BNSF Matters and it would be appropriate for the Board of Supervisors (Board) to approve the concurrent representation documents.

PROCUREMENT

On January 14, 2021, County Counsel issued a Request for Proposals to five law firms to represent the County in the NPDES Matter. Four firms submitted proposals and one firm declined to submit a proposal due to a conflict of interest. A panel of County and County Counsel staff evaluated the proposals and selected Meyers Nave to represent the County in the NPDES Matter. If the Board approves the concurrent representation, County Counsel will request a purchase order to retain Meyers Nave for the NPDES Matter.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Julie Surber, Principal Assistant County Counsel and Sophie A. Akins, Deputy County Counsel, 387- 5455) on May 24, 2021; Finance (Carl Lofton, Administrative Analyst, 387-5404) on June 7, 2021; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on June 7, 2021.

Consent to Concurrent Representation
June 22, 2021

Record of Action of the Board of Supervisors
County of San Bernardino

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: June 22, 2021



cc: File- County Counsel
LA 06/24/2021