



San Bernardino County

Legislation Text

File #: 3001, Agenda Item #: 47

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

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

October 6, 2020

FROM

MICHELLE D. BLAKEMORE, County Counsel

LUTHER SNOKE, Interim Director

Department of Public Works - Transportation and Flood Control District

SUBJECT

Stormwater Permit Participation and Joint Defense Agreement with Pillsbury Winthrop Shaw Pittman LLP

RECOMMENDATION(S)

1. Acting as the governing body of the County of San Bernardino, approve the Municipal Separate Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) Stormwater Permit Participation and Joint Defense Agreement with the law firm of Pillsbury Winthrop Shaw Pittman LLP for the term October 6, 2020 through December 31, 2022 (Four votes required).
2. Acting as the governing body of the San Bernardino County Flood Control District, approve the MS4 NPDES Stormwater Permit Participation and Joint Defense Agreement with the law firm of Pillsbury Winthrop Shaw Pittman LLP for the term October 6, 2020 through December 31, 2022 (Four votes required).

(Presenter: David Doublet, Deputy Director, 387-7906)

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 this item will not result in the use of additional Discretionary General Funding (Net County Cost) as the MS4 NPDES Stormwater Permit Participation and Joint Defense Agreement (Participation Agreement) does not commit the County of San Bernardino (County) or San Bernardino County Flood Control District (District) to provide additional funding to Pillsbury Winthrop Shaw Pittman LLP (Pillsbury). Pursuant to San Bernardino County Code Section 12.1908, County Counsel retained Chris Amantea on behalf of the District through a Purchase Order (currently, Purchase Order No. 4100117301). Services provided by Mr. Amantea to the District for the MS4 NPDES Stormwater Permit are funded by the Areawide Urban Stormwater Program (Program) under Implementation Agreement No. 11-545 (Implementation Agreement) approved by the Board

of Supervisors on June 28, 2011 (Item No. 94). The Program is funded by its participants with the following shares: County (19.06%), District (5.00%), and 16 cities (75.94%). Sufficient appropriation and revenue have been included in the District's 2020-21 budget (1990002550-76F02509) and will be included in future budgets.

BACKGROUND INFORMATION

The County, the District, and the Cities of Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland, and Yucaipa (Co-Permittees) within the Santa Ana River Watershed wish to enter into a Participation Agreement and to retain the Pillsbury law firm as common counsel to assist in the MS4 NPDES Phase 1 Permit (Permit) in the Santa Ana region.

Preparation and subsequent negotiation of Permit compliance terms will be a joint effort among the County, the District, and the 16 cities within the Santa Ana River Watershed, and the Santa Ana Regional Water Quality Control Board (SARWQCB), with the goal of protecting water quality and the beneficial uses of streams, lakes and rivers within the Santa Ana River Watershed. The Program participants, through the Implementation Agreement, fund and perform Program-wide tasks cooperatively. Therefore, there is an economy of scale achieved in that the cost to each participant for a task is lower than if the participant performed the task individually.

On January 29, 2010, the SARWQCB adopted the Permit for urban stormwater discharges from the County, the District, and the Co-Permittees. The Co-Permittees collectively developed the Program, to cooperatively implement the requirements set forth in the Permit. This cooperative effort is formalized in the Implementation Agreement.

In compliance with Section XXII of the Permit, the Program prepared and submitted a permit application, known as a Report of Waste Discharge, in August 2014. On January 29, 2015, the SARWQCB issued an administrative extension of the Permit, which allows the SARWQCB to continue in force the conditions of an expired permit until the effective date of a new Permit. The Program is currently waiting for the SARWQCB to issue a draft Permit for review and comment. The SARWQCB estimates that an administrative draft may be available to the Co-Permittees by the end of 2020.

The Participation Agreement will allow Pillsbury to serve as common counsel to the County, the District, and Co-Permittees and form an attorney-client relationship with said parties during the course of the Permit process. Participation in the Agreement is voluntary and only those Co-Permittees that enter into the Participation Agreement will be privy to attorney-client communications.

The attorney-client relationship established by the Participation Agreement allows the County and the District to participate in privileged conversations wherein Pillsbury will discuss and/or provide expert legal advice and assistance concerning legal implications of proposed Permit requirements and language, current and expected future Permit compliance conditions, legal defense strategies, overall NPDES regulatory knowledge and advice, and positions for the Program to adopt during Permit negotiations. In addition, the Participation Agreement sets forth requirements and rules regarding the future use of such information by the Co-Permittees jurisdictions.

The Participation Agreement shall remain in effect until the later of: (a) the date the renewed Permit becomes final pursuant to applicable law; (b) the conclusion of proceedings challenging any final order regarding the renewed Permit, or (c) termination by written agreement of all parties, but in no event later than December 31, 2022.

This action is aligned with the County and Chief Executive Officer Goals and Objectives by providing the County and the District with specialized legal counsel to provide expert legal opinion, advice, and representation before the SARWQCB associated with the Permit process.

PROCUREMENT

The County Counsel's Office issued a Request for Proposals in December 2013, for outside counsel services associated with the Permit process. After evaluating the proposals received by the District and completing the interviews, County Counsel retained Squire Sanders, LLP, with Chris Amantea as lead counsel. Since then Mr. Amantea joined Pillsbury, which has been retained by County Counsel pursuant to a Purchase Order. It is important to the Permit process to maintain continuity of legal advice. In addition, utilizing Mr. Amantea's new firm promotes efficiency and will help control the costs of the agencies if the same attorney is used.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Sophie A. Akins and Suzanne Bryant, Deputies County Counsel, 387-5455) on August 28, 2020; Purchasing (Jason Cloninger, Lead Buyer, 387-8258) on September 1, 2020; Finance (Jessica Trillo, Administrative Analyst, 387-4222) on September 16, 2020; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on September 19, 2020.