



# San Bernardino County

## Legislation Text

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**File #: 3655, Agenda Item #: 29**

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

**February 9, 2021**

#### **FROM**

**MICHELLE D. BLAKEMORE, County Counsel**

#### **SUBJECT**

Agreements with Kaplan Kirsch & Rockwell LLP for Specialized Legal Services and Langan Engineering and Environmental Services, Inc. for Technical Expert Services

#### **RECOMMENDATION(S)**

1. Approve Agreement with Kaplan Kirsch & Rockwell LLP in the amount of \$3.4 million for the period of February 9, 2021 through February 8, 2024, with two one-year options to extend, in order to continue legal representation of the County through specialized legal services, including experts, related to the remediation of groundwater contamination located generally in the City of Chino at the County's Chino Airport (Four votes required).
2. Authorize the County Counsel or Chief Assistant County Counsel to amend Exhibit A to the Agreement with Kaplan Kirsch & Rockwell LLP to change or add attorneys, paralegals or other legal staff as needed.
3. Approve Agreement with Langan Engineering and Environmental Services, Inc. in the amount of \$500,000 for the period of February 9, 2021 through February 8, 2024, with two one-year options to extend, to provide technical expert services in connection with insurance recovery and litigation against responsible parties for cost recovery related to the Chino Groundwater Remediation.
4. Authorize the Auditor-Controller/Treasurer/Tax Collector to post the necessary budget adjustments to the 2020-21 Budget, as identified in the Financial Impact Section, to establish budget authority to fund the costs associated with the Agreements with Kaplan Kirsch & Rockwell LLP, and Langan Engineering and Environmental Services, Inc. (Four votes required).
5. Authorize the Auditor-Controller/Treasurer/Tax Collector to post the necessary budget adjustments to the 2020-21 Budget, as identified in the Financial Impact Section, to establish budget authority to fund the costs associated with the Agreement with Reed Smith LLP (approved by the Board of Supervisors on December 15, 2020 (Item 37)), for insurance recovery legal services relating to the Chino Groundwater Remediation. (Four votes required).

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

#### **COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

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

#### **FINANCIAL IMPACT**

Legal services provided pursuant to the Agreement with Kaplan Kirsch & Rockwell LLP (Kaplan) in the amount of \$3.4 million will be funded by the Litigation Expenses Reserve and paid from the Litigation 2020-21 Budget [13400010000]. The Agreement with Langan Engineering and Environmental Services, Inc. (Langan) is in the

amount of \$500,000 and will also be funded by the Litigation Expenses Reserve and paid from the Litigation 2020-21 Budget [13400010000].

Appropriation adjustments are necessary for the Agreements with Kaplan and Langan, in addition to the Agreement approved by the Board of Supervisors (Board) on December 15, 2020 (Item No.37) with Reed Smith LLP (Reed Smith), for specialized legal services in connection with insurance recovery relating to the remediation of groundwater contamination located generally in the City of Chino at the County's Chino Airport (Chino GW Remediation).

Appropriation adjustments for the three Agreements are as follows:

Kaplan Kirsch & Rockwell LLP (Kaplan):			
Fund/Cost Center	Commitment Item/GL Account	Description	Increase (Decrease)
1000	37008520	Litigation Expenses Re	(\$200,000)
1340001000	52002449	Outside Legal Counsel	\$200,000

Langan:			
Fund/Cost Center	Commitment Item/GL Account	Description	Increase (Decrease)
1000	37008520	Litigation Expenses Re	(\$200,000)
1340001000	52002449	Outside Legal Counsel	\$200,000

Reed Smith LLP:			
Fund/Cost Center	Commitment Item/GL Account	Description	Increase (Decrease)
1000	37008520	Litigation Expenses Re	(\$1,000,000)
1340001000	52002449	Outside Legal Counsel	\$1,000,000

The recommended budget adjustments are being presented to the Board for approval at this time due to an anticipated increase in specialized legal services through the end of the fiscal year resulting from implementation of the Reed Smith contract and the agreement by Reed Smith to utilize the services currently being provided by Langan. Requested budget adjustments to fund future costs of these Agreements will be included on any future countywide budget presented to the Board for approval.

### **BACKGROUND INFORMATION**

Since 1990, the County has conducted activities at the Chino Airport property, located at 7000 Merrill Avenue, Chino, to identify potential sources of contamination, characterize identified source areas and remediate discovered soil contamination. The groundwater is suspected to have been contaminated due to past usage of Volatile Organic Compounds (VOCs) by prior occupants of the Chino Airport property.

During 2016 and 2017, the County prepared a Feasibility Study in order to identify and evaluate options to properly mitigate environmental impacts from past operations and historic activities at the Chino Airport. On January 11, 2017, the Water Board issued Cleanup and Abatement Order No. R8-2017-0011, which superseded the previous order issued in 2008, and which continued the requirements for the County to complete the groundwater investigation and added a new reporting requirement. The Final Feasibility Study, dated May 2017, recommended a groundwater pump-and-treat system be put in place to provide hydraulic

containment of groundwater contamination utilizing groundwater extraction wells both onsite and offsite of the Chino Airport. In addition, it was recommended that an extensive groundwater monitoring program be put in place to monitor progress in the reduction of contaminant levels. Based upon the Final Feasibility Study, a Remedial Action Plan (RAP) was prepared proposing implementation of the pump-and-treat system, in coordination with the Chino Desalter Authority. The RAP was reviewed by the Water Board and redesignated as an Interim RAP (IRAP). On January 29, 2019 (Item No. 24) the Board approved the IRAP and related California Environmental Quality Act (CEQA) documents. The IRAP was approved by the Water Board on November 4, 2020.

The groundwater pump and treat system is being jointly implemented with the Chino Desalter Authority through a Granular Activated Carbon (GAC) Treatment Plant, extraction and treatment program.

Since May of 2010, outside counsel, including Kaplan, in coordination with the Office of County Counsel has provided the necessary specialized legal advice and assistance to the County regarding the Chino GW Remediation. This includes advising on the dispute between the County, the Chino Basin Watermaster, and the Chino Desalter Authority. The County, in coordination with Kaplan, is continuing to investigate the availability of cost recovery against prior occupants and tenants at the Chino Airport (potential responsible parties) to assist with the cost of the remedial activities. Recommendation No.1 will allow the County to continue to utilize the services of Kaplan, a law firm that has the specialized skills, knowledge, experience and expertise in the area of cost recovery actions needed to effectively assist, advise, litigate and otherwise represent the County in its recovery efforts for the period of February 9, 2021 through February 8, 2024, with two additional one-year options to extend the Agreement, in the amount of \$3.4 million. No set annual spend is included in the contract, due to the fluctuations in cost from year to year depending on activities relating to litigation. Recommendation No.2 will allow County Counsel to change or add additional legal staff to the Agreement as needed.

In addition, Kaplan has retained the services of an environmental expert, Langan, to review environmental investigation and cleanup documentation concerning the Chino GW Remediation, and information about the sources and events surrounding the release of hazardous substances to soil and groundwater, including occurrences for purposes of insurance recovery, and provide expert advice regarding analysis of this information. Approval of Recommendation No. 3 will allow the County to better facilitate the use of Langan's work by both Kaplan and the County's newly contracted outside insurance counsel, Reed Smith by directly contracting with Langan, for the period of February 9, 2021 through February 8, 2024, with two one-year options to extend, in the amount of \$500,000. No set annual spend is included in the contract with Langan, due to the fluctuations in cost from year to year depending on activities relating to litigation. The Agreement with Langan includes modifications to the County's standard indemnification provision and adds a Limitation of Liability provision that is not a standard County contract term. The modifications to the indemnification provisions limit indemnification to third party claims and to those claims that arise out of the negligent acts of Langan. In addition, the duty to defend with respect to professional responsibility claims does not arise until the time of judgment, award or settlement. The Limitation of Liability provision limits Langan's total liability for any claims, losses, costs or damages arising out of the services provided to the County, to the minimum insurance coverage amounts listed in the Agreement. The insurance requirements mirror the standard County insurance limits. It is recommended that the Agreement be approved with the modifications detailed above in that due to the type of services Langan is providing there is little risk to the County as a result of such services, and due to Langan's specialized qualifications the benefit of their services outweigh any potential risk. Utilization by both Kaplan and Reed Smith of Langan's work will result in cost savings to the County.

Recommendation No. 5 will allow the Auditor-Controller/Treasurer/Tax Collector to post the necessary budget adjustments to the 2020-21 Budget to fund costs associated with the Agreement with Reed Smith through the end of Fiscal Year 2020-2021. It was initially thought the necessary budget adjustments could be made with the next quarterly countywide budget adjustment, however due to timing of the next adjustment the request is being submitted at this time. The estimated cost of \$1,000,000 for this Fiscal Year as previously presented to

the Board remains unchanged.

### **PROCUREMENT**

On May 31, 2010, pursuant to County Code section 12.1908, County Counsel retained the firm of Gallagher & Gallagher for specialized legal services related to the Chino GW Remediation (Purchase Order No. N1126). The Gallagher & Gallagher firm was selected by County Counsel as a non-competitive provider of specialized legal services necessary in resolving environmental claims against the County in connection with the Chino GW Remediation.

On April 19, 2011 (Item No. 24), the Board approved Agreement No. 11-230 with Gallagher & Gallagher in an amount not to exceed \$125,000, to provide legal services related to the Chino GW Remediation. On September 24, 2013 (Item No. 25), the County approved Agreement No. 11-230 A-1 to reflect the firm's new name, The Gallagher Law Group PC.

In February 2018, a new Purchase Order (PO number 4100023686) was issued in the amount of \$100,000 with The Gallagher Law Group. To date, The Gallagher Law Group has invoiced the County \$67,973.20 for legal services associated with this purchase order.

Since 2010, Thomas A. Bloomfield has been the primary attorney assigned to the Chino GW Remediation matter. In early 2019, Mr. Bloomfield changed law firms, from The Gallagher Law Group to Kaplan. Based on Mr. Bloomfield's experience and expertise, in February 2019, County Counsel requested and received Purchase Order Number 4100077225 for \$50,000 with Kaplan. This purchase order was subsequently increased by \$25,000 in May 2019 in anticipation of additional expense related to Kaplan retaining a groundwater expert. This purchase order was fully utilized as of October 2019. In September 2019, County Counsel requested and received Purchase Order Number 4100110743 for \$200,000. On March 10, 2020 (Item No. 30) County Counsel recommended and the Board approved an increase to the existing purchase order in an amount not to exceed \$200,000 to continue receiving legal services from Kaplan. It is anticipated that the remaining funds from the existing purchase order will be expended shortly.

Langan was selected by Kaplan due to their environmental expertise in hydrogeology, engineering and geotechnical experience. Langan has spent the last eighteen months providing services related to the Chino GW Remediation. To date, the cost for Langan's services has been paid utilizing the existing PO's issued to Kaplan.

The Reed Smith LLP agreement was approved by the Board on December 15, 2020 (Item No. 37), after a competitive selection process seeking highly qualified insurance counsel.

Pursuant to Title 1, Division 2, Chapter 19, Section 12.1908 of the County Code, County Counsel is authorized to select and retain through a purchase order, specialized counsel for a particular matter not to exceed \$200,000 per fiscal year. Contracts for services in excess of that amount require the Board's approval.

### **REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Kristina Robb, Deputy County Counsel, 387-5455) on January 12, 2021; Auditor-Controller/Treasurer/Tax Collector (Erika Gomez, General Accounting Manager, 382-3196) on January 26, 2021; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on January 26, 2021; Finance (Carl Lofton, Administrative Analyst, 387-5404) on January 25, 2021; County Administrative Office (Diana Alexander, Assistant Executive Officer, 387-4261) on January 26, 2021; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on January 25, 2021.