



San Bernardino County

Legislation Text

File #: 4270, Agenda Item #: 40

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

June 8, 2021

FROM

MICHELLE D. BLAKEMORE, County Counsel

SUBJECT

Consent to Representation and Waiver of Potential Conflict of Interest

RECOMMENDATION(S)

1. Approve a consent to representation and waiver of potential conflict of interest arising out of the representation of the San Bernardino International Airport Authority by Orrick, Herrington & Sutcliffe, LLP with respect to issuance of lease revenue bonds.
 2. Authorize the County Counsel or Chief Assistant County Counsel to execute the consent to representation and waiver of potential conflict of interest agenda.
- (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 representation and waiver of potential conflict of interest ("Consent and Waiver") item will not impact County discretionary funding.

BACKGROUND INFORMATION

The San Bernardino County Fire Protection District ("District") is utilizing the services of Orrick, Herrington & Sutcliffe, LLP ("Orrick") as special counsel for the structuring, negotiation and drafting of documents in connection with the District's lease of a facility from the Inland Valley Development Authority ("IVDA") that will be used as the District's new headquarters. The San Bernardino International Airport Authority ("SBIAA"), which is a related entity to IVDA with four of SBIAA's five member agencies being the four member agencies of IVDA and sharing the same staff as IVDA, desires to use Orrick's services as bond counsel on its anticipated issuance of lease revenue bonds because Orrick is familiar and experienced with the IVDA/SBIAA relationship surrounding the San Bernardino International Airport. There is the possibility that a conflict could arise from the District's lease transaction and SBIAA's lease revenue bonds. Because the San Bernardino County Board of Supervisors sits, ex officio, as the Board of Directors of the District, and since Orrick would be representing both the District and SBIAA (affiliated with IVDA), a potential conflict of interest issue arises. Under the Rules of Professional Conduct of the State Bar of California (Rule 1.7 and Rule 1.10, which govern conflicts of interest for non-governmental attorneys), Orrick is required to obtain the informed written consent of SBIAA, IVDA and the District before it can represent SBIAA in connection with the SBIAA's issuance of lease revenue

bonds. Orrick has obtained informed written consent from SBIAA, IVDA and from the District on March 23, 2021 (Item No. 77). However, for purposes of full transparency, Orrick is now also seeking the consent of the County because the Board of Supervisors sits *ex officio* as the District Board of Directors. If the County executes the waiver and consent, it would be allowing Orrick to represent SBIAA and would be waiving its right to seek to disqualify Orrick from its representation of SBIAA.

County Counsel has reviewed the consent to representation and waiver of conflict of interest and believes there would be minimal risk of a conflict of interest regarding Orrick's representation of the SBIAA with respect to its lease revenue bond issuance and it would be appropriate for the Board to approve the document.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Robert F. Messinger, Chief Assistant County Counsel, 387-5455) on May 14, 2021; Finance (Carl Lofton, Administrative Analyst, 387-5404) on May 19, 2021; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on May 19, 2021.