



# San Bernardino County

## Legislation Text

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**File #: 4776, Agenda Item #: 57**

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**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF THE FOLLOWING:**

**SAN BERNARDINO COUNTY  
SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT  
AND RECORD OF ACTION**

**REPORT/RECOMMENDATION TO THE BOARD OF DIRECTORS  
OF THE SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT  
AND RECORD OF ACTION**

**September 14, 2021**

**FROM**

**MICHELLE D. BLAKEMORE, County Counsel**

**SUBJECT**

Consent to Representation and Waiver of Potential Conflict of Interest

**RECOMMENDATION(S)**

Acting as the governing body of San Bernardino County, San Bernardino County Flood Control District, and the San Bernardino County Fire Protection District:

1. Approve a consent to representation and waiver of potential conflict of interest arising out of the representation of the City of Fontana by Orrick, Herrington & Sutcliffe, LLP with respect to the formation of a Community Facilities District and the issuance of special tax bonds.
2. Authorize the County Counsel or a Principal 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 and Stakeholders.**

**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 City of Fontana (City) is utilizing the services of Orrick, Herrington & Sutcliffe, LLP ("Orrick") as bond counsel in connection with proceedings to establish a Community Facilities District No. 109 (Monarch Hills) (the CFD) and the issuance of special tax bonds (the CFD Financing). Upon its establishment, the CFD will be a related entity to the City and Orrick will represent the CFD in certain CFD Financing matters. In connection with the CFD Financing, a property owner within the proposed CFD has requested that the City and the San

Bernardino County Flood Control District (Flood Control District) enter into a joint community facilities agreement (Joint Community Facilities Agreement) to provide for financing certain public facilities to be owned and operated by the Flood Control District. Orrick would be primarily responsible for drafting the Joint Community Facilities District.

Orrick from time to time represents the County (County) and certain related entities, including the Flood Control District and the San Bernardino County Fire Protection District (Fire Protection District) in public finance matters. The firm currently represents the Fire Protection District with respect to the pending District Headquarters Ground Lease (Fire District Headquarters Financing). In the past, Orrick has represented the Flood Control District with respect to the issuance and refunding of its judgment obligation bonds and has represented the County on its own community facilities district financings.

Although the Fire District Headquarters Financing is totally unrelated to the CFD Financing, the interests of the Flood Control District, on the one hand, and the City and the CFD on the other, are adverse in the CFD Financing. Orrick has considered all potential conflicts, including those with respect to the Flood Control District, the Fire Protection District, the County, the City and the CFD. Neither the Flood Control District nor the County is currently an Orrick client and Orrick's former matters for the Flood Control District and the County (Former Matters) are unrelated to the Fire District Headquarters Financing and the CFD Financing. The same Orrick attorney represented the Flood Control District and the County in the Former Matters and is now representing the Fire Protection District in connection with the Fire District Headquarters Financing and will represent the City and CFD in connection with the CFD Financing Matters. It is not expected that Orrick's representation of the City and CFD will represent any actual or potential conflict of interest between: (a) any or any combination of the Flood Control District, the Fire Protection District and the County, and (b) one or both of the City and the CFD.

Out of an abundance of caution, under the Rules of Professional Conduct, in order for Orrick to undertake representation of the City and CFD in connection with the CFD Financing under the stated circumstances, it needs: (a) a written waiver of any actual and potential conflict of interest between (i) any one or any combination of the Flood Control District, the Fire Protection District and the County, and (ii) one or both of the City and the CFD, (b) the consent of each of the Flood Control District, the Fire Protection District and the County to Orrick's representation of the City and the CFD in the CFD Financing, and (c) the agreement of each of the Flood Control District, the Fire Protection District and the County not to seek disqualification of Orrick from the representation of the City and the CFD in the CFD Financing. If the County, the Flood Control District and the Fire Protection District each executes the waiver and consent, it would be allowing Orrick to represent the City and the CFD and would be waiving its respective right to seek to disqualify Orrick from its representation of those entities

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 City and the CFD with respect to the CFD proceedings and CFD Financing and it would be appropriate for the Board to approve the document.

## **PROCUREMENT**

Not applicable

## **REVIEW BY OTHERS**

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This item has been reviewed by County Counsel (Michelle D. Blakemore, County Counsel, 387-5455) on August 30, 2021; Finance (Carl Lofton, Administrative Analyst, 387-5404) on August 30, 2021; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on August 30, 2021.