



San Bernardino County

Legislation Text

File #: 7299, Agenda Item #: 19

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

January 10, 2023

FROM

TOM BUNTON, County Counsel, Office of County Counsel

SUBJECT

Consent to Waiver of Potential Conflict of Interest

RECOMMENDATION(S)

1. Approve a waiver of potential conflict of interest arising out of representation of the City of Ontario by Kaplan Kirsch & Rockwell LLP.
2. Authorize the County Counsel or a Principal Assistant County Counsel to execute the waiver of conflict of interest.

(Presenter: Tom Bunton, 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 this item will not result in the use of additional Discretionary General Funding (Net County Cost).

BACKGROUND INFORMATION

San Bernardino County (County) is under a Regional Water Quality Control Board Order to investigate, clean up and remediate a groundwater plume near the Chino Airport. Since May of 2010, outside counsel, including Kaplan Kirsch & Rockwell LLP (KKR), in coordination with the Office of County Counsel has provided the necessary specialized legal advice and assistance to the County regarding the Chino Airport groundwater remediation. On February 9, 2021 (Item No. 29), the County expanded its agreement with KKR by entering into Contract No. 21-125 in the amount of \$3.4 million to continue to provide legal services, including experts, related to the remediation and investigation of the County's ability to recover clean-up costs from prior occupants and tenants at the Chino Airport who may have caused the contamination.

KKR has been asked to provide legal advice to the City of Ontario for a limited time regarding Federal Aviation Administration (FAA) regulatory requirements for the sale or lease of airport property. At this time there is no lawsuit pending between the County and the City of Ontario. However, the City of Ontario is potentially adverse to the County at the Chino Airport because a separate plume (the Archibald Plume) is migrating from and near the Ontario International Airport property towards the far eastern edge of the Chino Airport property. The Archibald Plume is a separate plume that may be threatening County property and damage to County property could result in the County filing a lawsuit against the City to seek remediation costs. The potential

FAA matter is unrelated to KKR's work for the County related to the Chino Airport remediation project and KKR does not advise the County on FAA matters. KKR will not be advising the City of Ontario regarding the development itself nor on environmental matters. The two matters do not involve common facts or relevant confidential information, and different attorneys will work on each matter. This representation is not prohibited by California Rules of Professional Conduct, Rule 1.7. Given the short duration and limited scope of the City of Ontario matter and that any potential litigation between the County and the City of Ontario regarding the plume is many years away at the earliest, the representation is not anticipated to be an issue, but should litigation ensue, KKR would not represent either party at the same time.

County Counsel has reviewed the Consent to Waiver of Conflict of Interest and believes that there is minimal risk of a conflict of interest regarding KKR's representation of the City of Ontario in the FAA matter and it would be appropriate for the Board of Supervisors to approve the waiver of the conflict of interest and authorize County Counsel or a Principal Assistant County Counsel to execute the waiver of conflict of interest.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Julie Surber, Principal Assistant County Counsel, 387-5455) on December 12, 2022; Finance (Carl Lofton, Administrative Analyst, 387-5404) December 19, 2022; and County Finance and Administration (Paloma Hernandez-Baker, Deputy Executive Officer, 387-5423) on December 20, 2022.