

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: MARCH 11, 2014

FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

**SUBJECT: AGENDA ITEM #5 – CONSIDERATION OF SPECIAL COUNSEL FOR
LAFCO 3157 – SPHERE OF INFLUENCE ESTABLISHMENT FOR CSA 120
AND LAFCO 3177 – REORGANIZATION TO INCLUDE CITY OF FONTANA
ANNEXATION NO. 173 AND DETACHMENT FROM COUNTY SERVICE
AREAS 70 AND SL-1**

RECOMMENDATION:

Staff recommends that the Commission take the following actions:

1. Note the disqualification of Legal Counsel Alsop from representation on LAFCO 3157 and LAFCO 3177;
2. Retain the law firm of Colantuono & Levin, PC, Ms. Holly Whatley, as Special Counsel for LAFCO 3157 and waive potential conflict;
3. Retain the law firm of Rutan & Tucker LLP, Mr. John Ramirez, as Special Counsel for LAFCO 3177; and,
4. Authorize the Executive Officer to sign the Agreements as presented.

BACKGROUND:

LAFCO Legal Counsel Clark Alsop is a partner in the firm Best Best and Krieger (BB&K). BB&K is Counsel for the City of Fontana and the Inland Empire Resource Conservation District, entities affected in both LAFCO 3157 and LAFCO 3177. Pursuant to Commission policy the issue of waiver of conflict was required to be addressed.

For LAFCO 3157, staff received notification of the potential conflict immediately prior to the February hearing on the environmental determination for the proposal. Pursuant to the Commission's policy related to Legal Counsel Conflict, the Executive Officer and Legal Counsel reviewed the question of the potential for controversy on this proposal and were of the opinion that a controversy could exist. Therefore, a waiver of conflict would not apply. LAFCO staff then contacted the firm of Colantuono & Levin, PC (C&L) to represent the Commission on this proposal as they did for the MSR and sphere of influence update for the Town of Apple Valley. Ms. Holly Whatley of C&L has identified that the firm does represent the City of Rialto and City of San Bernardino (affected agencies in this consideration) in other matters, but does not believe that it represents a conflict in their representation of the Commission for LAFCO 3157. LAFCO staff has reviewed this question and believes that a conflict waiver would be appropriate. C&L has provided a representation agreement for this service (copy attached) indicating the hourly rate for Counsel will be \$270, a discounted rate, and the acknowledgement of the conflict waiver.

For LAFCO 3177, at the Departmental Review Committee meeting held on January 22, 2014, it was identified that BB&K was the City Attorney for the City of Fontana, and that controversy did exist on the proposal; therefore, no waiver would apply. LAFCO staff contacted the firm of Rutan and Tucker LLP, specifically Jeffery Goldfarb, to represent the Commission as he has in the past on questions of changes of organization. Staff was notified that Mr. Goldfarb will be taking an extended leave of absence from the firm, but that Mr. John Ramirez, a partner at Rutan & Tucker, would be available to represent the Commission. Mr. Ramirez has presented the commission with an Agreement for Provision of Legal Services which identifies an hourly rate of \$275, a discounted rate (copy attached).

Staff is requesting that the Commission take the actions to: (1) note Mr. Alsop's disqualification on each of the applications; (2) direct staff to retain the firm of C&L to represent the Commission in the matter of LAFCO 3157 and waive potential conflict; (3) direct staff to retain the firm of Rutan & Tucker to represent the Commission in the matter of LAFCO 3177; and (4) Authorize the Executive Officer to sign the respective Special Counsel Agreements.

KRM

Attachments:

1. [Commission Policy on Waiver of Legal Counsel Conflicts](#)
2. [Representation Letter, Dated March 5, 2014, from Colantuono & Levin, PC for LAFCO 3157](#)
3. [Representation Agreement with Rutan & Tucker LLP for LAFCO 3177](#)