


LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: JULY 8, 2019 
FROM: SAMUEL MARTINEZ, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #10 – CONSIDERATION OF WAIVERS OF CONFLICT OF INTEREST AND RETAINING SPECIAL COUNSEL FOR LAFCO 3233 – REORGANIZATION TO INCLUDE DISSOLUTION OF COUNTY SERVICE AREA 64 AND FORMATION OF THE SPRING VALLEY LAKE COMMUNITY SERVICES DISTRICT

RECOMMENDATION:

Staff recommends that the Commission take the following actions:

1. Note the disqualification of Legal Counsel Paula de Sousa Mills of Best Best & Krieger (BB&K) from representation on LAFCO 3233;
2. Not waive conflict of interest to the Town of Apple Valley (affected agency) and the Victor Valley Wastewater Reclamation Authority (interested agency) on using BB&K for legal representation on LAFCO 3233;
3. Retain Ms. Holly Whatley from the law firm of Colantuono, Highsmith & Whatley, PC (CH&W) as Special Counsel for LAFCO 3233 and waive potential conflict; and,
4. Authorize the Executive Officer to sign the Agreement/Conflict Waiver as presented.

BACKGROUND:

LAFCO Legal Counsel Paula de Sousa Mills is a partner in the firm Best Best and Krieger (BB&K). BB&K is Counsel for the Town of Apple Valley and the Victor Valley Wastewater Reclamation Authority, an affected and an interested agency respectively on LAFCO 3233, which is a proposed reorganization to dissolve a county service area and forming a community services district. Pursuant to Commission policy, the issue of waiving conflict of interest is required to be addressed.

As indicated in the Commission's policy on Waiver of Legal Counsel Conflict (see Attachment #1), the Executive Officer and Legal Counsel reviewed the question of the potential for controversy on this proposal and are of the opinion that controversy exists for both agencies. Therefore, a waiver of conflict would not apply.

LAFCO staff has not received a request from BB&K regarding a waiver for either the Town of Apple Valley or the Victor Valley Wastewater Reclamation Authority. It is not clear if they would make such a request. However, in the event they would, staff is seeking direction to not grant a waiver of conflict.

LAFCO staff contacted the firm of Colantuono, Highsmith & Whatley, PC (CH&W) to represent the Commission on this proposal. Ms. Holly Whatley of CH&W has identified that her firm does represent the County of San Bernardino and the San Bernardino County Fire Protection District (County Fire) in other matters, but does not believe that it represents a conflict in their representation of the Commission for LAFCO 3233. LAFCO staff has reviewed this question and believes that a conflict waiver would be appropriate since CH&W's representation for both the County and County Fire are on unrelated matters. CH&W has provided a representation agreement for special counsel services and a written request for conflict waiver (see Attachment #2).

Staff is requesting that the Commission take the actions to:

- 1) Note Ms. de Sousa Mills' disqualification on LAFCO 3233;
- 2) Not grant a waiver of conflict to the affected and interested agencies on LAFCO 3233 that uses BB&K;
- 3) Direct staff to retain the firm of CH&W to represent the Commission in the matter of LAFCO 3233 and waive potential conflict; and,
- 4) Authorize the Executive Officer to sign the informed consent to simultaneous representation and the special counsel services agreement.

Attachments:

1. [Commission Policy on Waiver of Legal Counsel Conflict of Interest](#)
2. [Representation Letter from Holly Whatley Dated July 8, 2019](#)