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Title: Interim County Counsel requests authority to waive potential conflicts within the law firm of Downey Brand LLP, which represents the County on matters before the California Public Utilities Commission, and represents Goodfellow-Teichert-Odin, a Joint Venture in breach of contract litigation against CalRecycle related to structure debris and hazard tree removal from the 2020 wildfires.

Sponsors: Board of Supervisors

Indexes:

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Attachments: 1. Conflict Waiver Letter

Date	Ver.	Action By	Action	Result
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TO: Board of Supervisors

FROM: Thomas Zeleny, Interim County Counsel

REPORT BY: Thomas Zeleny, Interim County Counsel

SUBJECT: Waiver of potential conflict of Downey Brand LLP, outside counsel for Napa County on matters before the Public Utilities Commission

RECOMMENDATION

Interim County Counsel requests authority to waive potential conflicts within the law firm of Downey Brand LLP, which represents the County on matters before the California Public Utilities Commission, and represents Goodfellow-Teichert-Odin, a Joint Venture in breach of contract litigation against CalRecycle related to structure debris and hazard tree removal from the 2020 wildfires.

EXECUTIVE SUMMARY

Megan Somogyi, a partner with the law firm Downey Brand LLP, represents Napa County and other public agencies on several matters pending before the California Public Utilities Commission (CPUC). Other attorneys in the same firm represent Goodfellow-Teichert-Odin, a Joint Venture (GTO) hired by CalRecycle to remove fire debris and hazardous trees resulting from the 2020 wildfires. GTO has sued CalRecycle for breach of contract, claiming \$29 million in damages mostly resulting from delays and extra work. Some of the work at

issue occurred in Napa County, and GTO will very likely need to issue a business records subpoena to Napa County for documents related to its lawsuit. The California Rules of Professional Conduct require lawyers in situations where another lawyer in the same firm represents a party or a witness in the same matter, to obtain a waiver of the conflict from the client or withdraw from representation. This action would authorize County Counsel to waive the potential conflict of interest of Ms. Somogyi and her law firm.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Ms. Somogyi may not be able to continue representing Napa County at the CPUC without a waiver of the potential conflict.
Is the general fund affected?	No
County Strategic Plan pillar addressed:	Effective and Open Government

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by CEQA Guidelines section 15378 (14 CCR 15378) because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

BACKGROUND AND DISCUSSION

Megan Somogyi, a partner with the law firm Downey Brand LLP, represents Napa County and other public agencies on several matters pending before the California Public Utilities Commission (CPUC). Other attorneys in the same firm represent Goodfellow-Teichert-Odin (GTO), a Joint Venture hired by CalRecycle to remove fire debris and hazardous trees resulting from the 2020 wildfires. GTO has sued CalRecycle for breach of contract, claiming \$29 million in damages mostly resulting from delays and extra work. Napa County does not have a contract with GTO, nor is Napa County named in the lawsuit against CalRecycle. However, some of the work at issue occurred in Napa County, and it is very likely GTO will need to issue a business records subpoena to Napa County for documents related to its lawsuit against CalRecycle.

The State Bar of California publishes Rules of Professional Conduct governing lawyers licensed in California. Rule 1.7 prohibits a lawyer from representing a client when “the lawyer has, or knows that another lawyer in the lawyer’s firm has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter” unless the lawyer provides the client with a written disclosure of the relationship and obtains the client's written consent. Ms. Somogyi has provided a written disclosure of the relationship between the other lawyers in her firm and GTO in her letter included with this agenda item. The law firm has established an ethical wall between Ms. Somogyi and the other attorneys representing GTO to prevent any communication of confidential information. The County Counsel's Office is satisfied Ms. Somogyi's representation of Napa County at the CPUC will not be compromised by her firm's representation of GTO in its case against CalRecycle.

This action would authorize County Counsel to waive the potential conflict of Ms. Somogyi and her law firm by signing the letter included with this agenda item. GTO has already signed a similar letter waiving any potential conflict arising from Ms. Somogyi's representation of Napa County and other public agencies at the CPUC.