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A Commitment to Service

Agenda Date: 11/12/2019

Agenda Placement: 6R

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors

FROM: Jason Dooley for Jeffrey Brax - County Counsel
County Counsel

REPORT BY: Jason Dooley, Deputy County Counsel III - (707)259-8246

SUBJECT: Consent to Meyers Nave's joint representation of the County and the Napa Sanitation District in pending litigation

RECOMMENDATION

County Counsel requests authorization to execute a consent to the law firm Meyers Nave's joint representation of the County and the Napa Sanitation District in pending litigation relating to the validity of Napa Sanitation District's fees.

EXECUTIVE SUMMARY

On September 12, 2019, the County was served with a complaint in which the plaintiff sought, among other things, an injunctive order requiring the County to withhold property tax allocations to the Napa Sanitation District, based on alleged improper fees charged by the District that are collected through the County tax roll. The County has tendered its defense in the action to the District. The District has accepted the obligation to provide a defense to the County. The District is represented in the action by the Meyers Nave law firm (which has also provided unrelated legal services to the County in the past). At no cost to the County, Meyers Nave will represent the County, but first requests a customary consent to the firm's joint representation of the District and the County and seeks the County's waiver of any potential conflicts of interest that may arise between the parties. Meyers Nave knows of no actual conflicts and does not foresee any potential conflicts, but requirements of professional responsibility dictate that the firm obtain the County's consent. Inasmuch as the County has no significant stake or interest in the underlying litigation and has been named only due to its role as the tax-collecting entity, staff is comfortable with having Meyers Nave represent the County. Such joint representation will save the County significant costs of defense.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No
County Strategic Plan pillar addressed: Effective and Open Government

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

On September 12, 2019, the County received a copy of the First Amended Complaint in the matter *Raja Development Co. et al. v. Napa Sanitary District, et al.* filed in the Napa County Superior Court, Case No. 19CV000682. The complaint asserted that the Napa Sanitation District had improperly set its fees for the last forty years and named Napa County as a "Real Party in Interest." Plaintiff seeks declaratory relief and a writ of mandate to compel the County to withhold property tax allocations from the District in an amount equal to any illegally collected taxes or fees.

The County is involved in this matter primarily because of a statutory duty, at the option of the Napa Sanitation District, to collect sewer service fees on the tax roll, along with property taxes, for all properties serviced by the District. The District provides information regarding the properties subject to their service fees, as well as the amount of the fee, and the County collects the fee at the same time and in the same manner as with property taxes and other assessments. The County does not have any authority to reject the request from the District to collect the fees; nor does the County make any independent determination of the validity of the fees being collected.

As a result, the County has no stake in the matter and has been named as a party because the Plaintiff views the County as a necessary party in order to obtain the relief the Plaintiff seeks. Because the County is named solely as the agency that collects the challenged fees, County Counsel tendered the defense of the case to counsel for the District. The District accepted the tender of defense and now proposes that its counsel, Meyers Nave, jointly represent both parties. To do so, however, Meyers Nave is requesting the County's consent to such joint representation and a waiver of potential conflicts.

In the context of public entity law practice - where there is a small universe of good firms who represent public entities in such litigation - such requests for consent are commonly made and granted. The Meyers Nave firm has expressly disclosed potential conflicts that may arise, though represents that these disclosures are made in an abundance of caution. From the firm's letter:

"We believe we can competently represent the District and the County because of your common interests in this matter. We do not foresee any conflicts at this time and the joint representation may result in economic or tactical advantages. You should, however, be aware that representation of multiple clients also involves risks. Although we are not currently aware of any actual or reasonably foreseeable adverse effects of such divided or shared loyalty, it is possible that issues might arise as to which our representation of you might be materially limited by our joint representation."

One item to note is that the nature of joint representation means that communications between the County and Meyers Nave in the context of the litigation cannot be withheld as confidential from the District, under California Evidence Code section 962, should a dispute arise between the two agencies. However, staff believes that the likelihood of communications connected with this matter being relevant in a future dispute is very small.

Based on the above, staff recommends that the Board authorize County Counsel to execute the consent as requested by Meyers Nave.

SUPPORTING DOCUMENTS

A . Consent Letter

CEO Recommendation: Approve

Reviewed By: Helene Franchi