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June 26, 2019

Lara DeLaney
Senior Deputy County Administrator
Acting Director, Office of Reentry & Justice
County of Contra Costa
651 Pine Street, 10th floor
Martinez, CA 94553

Re: Request for Waiver of Potential Conflicts of Interest

Dear Ms. DeLaney:

Nossaman LLP (“Nossaman”) has submitted a proposal to provide State Legislative Advocacy Services to the County (the “Services”). Nossaman wishes to provide the Services, but Nossaman also has ongoing commitments to provide legal services to Kern County Water Agency and Coalition for a Sustainable Delta as well as certain other clients whose interests may, at times, conflict with those of the County. This letter requests and will document the County’s consent to Nossaman’s representation of Kern County Water Agency and Coalition for a Sustainable Delta subject to specified conditions that will enable Nossaman to advise and represent the County with respect to current and future engagements. Since the County has already decided to retain Nossaman for these matters, the consent which we request here will be effective as soon as it is granted, subject to reciprocal consents from the other clients I have just mentioned.

As attorneys, we are governed by specific rules relating to our representation of clients when present or potential conflicts of interest exist. Rule 1.7 of the California Rules of Professional Conduct addresses avoiding the representation of adverse interests. According to this Rule, a member of the California Bar shall not, without the informed written consent of each client “represent a client if the representation is directly adverse to another client in the same or a separate matter.” (Rule 1.7(a)). As the Rule notes, this prohibition against representing conflicting interests can be waived by the clients’ informed written consent.

Lawyers owe an undivided duty of loyalty to their clients. This means that, absent an informed waiver, a lawyer may not take legal action adverse to the client's interests even if such action is outside the scope of the lawyer's engagement with the client.

In connection with our request for waiver, the actual and reasonably foreseeable adverse consequences to the County if it waives the potential conflicts of interest are essentially as follows:

Contra Costa County is currently opposing the proposed Delta conveyance, including in a regulatory proceeding before the State Water Resources Control Board. It is not and does not expect to be represented there by the Nossaman firm. The Coalition for a Sustainable Delta is a party to the regulatory proceeding and Kern County Water Agency, represented by Nossaman, is a State Water Contractor supportive of the proposed Delta conveyance. In both circumstances, these parties are existing firm clients and are taking positions that are in conflict with the position being taken by the County. There is also the foreseeable likelihood that these parties, represented there by Nossaman, will take positions with respect to water operations and species management efforts in the Bay-Delta which are adverse to the County's position in those matters, and which may be addressed in federal and/or state litigation or in as yet unidentified other proceedings, such as Delta Stewardship Council and State Water Resources Control Board regulatory proceedings.

We expect Kern County Water Agency and Coalition for a Sustainable Delta to grant waivers of these conflicts and to agree that the County will be able to call upon Nossaman to advise and represent the County with respect to the matters mentioned in the first sentence of this letter insofar as they are unrelated to water operations and species management in the Bay-Delta and its tributary waters and are not adverse to Kern County Water Agency or to the Coalition for a Sustainable Delta. Under these waivers, Nossaman will also not be available to advise and represent the County with respect to water operations and species management in the Bay-Delta and its tributary waters or any matters that present any direct adversity to either or both of these existing clients of the Nossaman firm.

We believe that the prospects for actual conflicts between the County and these other clients are limited to water operations and species management in the Bay-Delta and its tributary waters. If any other conflict were to appear, we could not represent either the County or parties adverse to the County with respect to those matters without further written waivers of the conflicts from both sides.

However, more generally, lawyers have the duty to do their professional best to serve each client with total loyalty. This means that they must pursue the client's rights zealously. Where a lawyer or a law firm acting through different individual lawyers, represents a client and at the same time opposes that client in an unrelated matter, there can be a concern that the lawyer may not be as zealous in opposition to the other party as he or she would otherwise be if he or she is protecting a relationship with the opposing party. The Rules of

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Professional Conduct require that lawyers shall not represent a client in a matter “if there is a significant risk the lawyer’s representation of the client will be materially limited by the lawyer’s responsibilities to or relationships with another client . . .” We believe that there is no such risk.

Nossaman takes very seriously our obligation to avoid conflicts of interest in the absence of informed, written consent from our affected clients. Thus the waiver we are here requesting from the County will not become effective and our engagement cannot begin unless and until Nossaman obtains waivers from both Kern County Water Agency and Coalition for a Sustainable Delta that acknowledge the limits set forth herein on the County’s consent and on Nossaman’s provision of services to Kern County Water Agency and Coalition for a Sustainable Delta. We are requesting those waivers concurrently and expect them to be granted soon.

Nossaman also takes very seriously its obligation to maintain the confidentiality of information we receive from all of our clients, including the County, Kern County Water Agency, and Coalition for a Sustainable Delta. Accordingly, regardless of whether the requested waiver is granted, Nossaman will continue to maintain the confidences of the County, of Kern County Water Agency, and of the Coalition for a Sustainable Delta, including in any instance where one party might benefit from learning confidential information relating to the other party.

By agreeing to this waiver, you will also agree that you will not consider it a breach of any duty that we might owe to the County in the absence of this agreement, for us to maintain the confidences of Kern County Water Agency and Coalition for a Sustainable Delta parties and to limit any obligation of disclosure of such information to you in this manner. We will, of course, obtain reciprocal agreements from Kern County Water Agency, and Coalition for a Sustainable Delta to waive the conflicts described herein and to protect your confidences.

We believe that we have expressed above the “reasonably foreseeable adverse consequences to the client” from your waiver of the potential conflict described above. If you agree to waive the potential conflicts described above, thereby permitting us to pursue the engagements to provide legal services to Kern County Water Agency, and Coalition for a Sustainable Delta while representing the County in unrelated matters as discussed above, please sign this conflict waiver letter and return it to me for our files. You may wish to consult independent counsel before signing this letter in order to understand the consequences of this waiver for the County.

If you have any questions, please give me a call.

Sincerely,



Ashley Walker
Nossaman LLP

**** Consent Follows This Page ****

CONSENT

The undersigned has read the foregoing and hereby acknowledges and understands the potential for conflicts of interest as described above and waives those potential conflicts subject to the conditions stated above.

Date: June ____, 2019

Contra Costa County (“the County”)

By: _____

x

County Counsel