



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: County Counsel
Department No.: 013
For Agenda Of: June 19, 2018
Placement: Administrative
Estimated Time:
Continued Item: No
If Yes, date from:
Vote Required: 4/5

TO: Board of Supervisors

FROM: County Counsel Michael C. Ghizzoni, County Counsel, 568-2950
Contact Info: Same

SUBJECT: Contingent Fee Contract With The Law Firm Of Baron & Budd, P.C., For
Litigation Services In *County of Santa Barbara v. Plains Pipeline, L.P. et al.*

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Other Concurrence: Risk Management

As to form: Yes

Recommended Actions:

a) Approve and authorize the Chair to execute a contingent fee Professional Services Contract with the law firm of Baron & Budd, P.C., for the handling of the litigation entitled *County of Santa Barbara v. Plains Pipeline, L.P. et al.*, Case No. 2:17-cv-09304-PSG-JEM, to recover damages from the May 2015 Refugio Oil Spill; and

b) Determine that the above action is not a project under the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Sections 15378(b)(4) and 15378(b)(5) because it consists of government administrative or fiscal activities that will not result in direct or indirect physical changes in the environment.

Summary Text:

In Closed Session on December 12, 2017, the Board of Supervisors authorized the initiation of litigation against Plains Pipeline, L.P. and related entities ("Plains") to recover Santa Barbara County's remaining damages from the May 2015 Refugio Oil Spill. The litigation is intended to prevent County taxpayers from otherwise bearing the burden of those damages. Prior to filing the litigation, the County had received about \$1.98 million that it had claimed against Plains through interim claims for "removal costs" and "increased costs of public services."

Background:

The Refugio Oil Spill caused damages to the County of Santa Barbara, including by impacting the tourism industry and County tax revenues and soiling County beaches. We believe that the County's total remaining damages likely are greater than \$1 million, including the following categories: 1) loss of use of County facilities; and 2) lost income and tax revenues.

Our office has been handling this litigation since its filing in December 2017. Three Deputy County Counsels retired or resigned since the end of March 2018, however, and our office is still in the process of recruiting their replacements. Using contingent fee Outside Counsel for the Refugio Oil Spill litigation would allow us to use County Counsel attorneys for other matters that cannot be done by Outside Counsel and mitigate against even heavier overtime for our attorneys over the next several months, while our office recruits more replacement Deputy County Counsels, and without otherwise delaying other items and/or recommending contracts for short-term attorney support.

Baron & Budd represented the City of Santa Barbara related to the Refugio Oil Spill and has represented other counties and cities in oil spill litigation throughout the United States. Therefore, they are familiar with the circumstances of the Refugio Oil Spill and oil spill litigation in general.

Fiscal and Facilities Impacts:

We estimate that County staff support of this litigation will require up to .50 FTE of existing staff resources this year. Of that .50 FTE, we expect to use 0.25 FTE of an existing Deputy County Counsel and up to .25 FTE of other existing staff resources.

Other than that, there is no present financial impact from this contract, since the County would pay the Baron & Budd law firm a 20% contingent fee, only on any net recovery:

- The scope of representation for that contingent fee includes both trial and any appeal, if needed; and
- "Costs and expenses" -- including expert fees -- are advanced by the law firm, and repaid by the County only if the County recovers that amount or more from the defendants.

Budgeted: N/A

Key Contract Risks:

Even though this is a contingent fee contract -- versus a standard service contract -- we reviewed the Contract Risk Assessment Worksheet as part of our process. Contract Paragraph 5 provides the essential control terms of this contract, including that the Board of Supervisors, acting through its County Counsel, expressly retains "complete control" over the case, including decisions regarding settlement.

Contract Paragraph 7.D provides that in no event will the County be required to pay attorney's fees or any costs and expenses out of any public funds other than the monies recovered through the litigation.

A Request for Proposals was not required for this selection.

Staffing Impacts: Discussed in more detail at Page 2, we do not expect to need any new: legal positions, contractors on payroll, or extra help positions.

Special Instructions: None.

Attachments:

1. Attorney-Client Fee Contract with Baron & Budd, P.C.
2. Contract Summary Form

Authored by:

Michael C. Ghizzoni, County Counsel