

SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT

For the Agenda of: July 26, 2007

To: Board of Directors
Sacramento Metropolitan Air Quality Management District

From: Larry Greene
Air Pollution Control Officer

Subject: Grant of Authority to Execute Conflict Waiver for the Legal Advisor to
Sacramento Area Council of Governments (SACOG)

Recommendation

Authorize the District Counsel to sign a Conflict Waiver concerning the legal advisor to Sacramento Area Council of Governments (Attachment 1).

Purpose

Kirk Trost, Miller Owen & Trost, is assisting the District in ongoing litigation against Jerome Sprague. In addition, he and his firm provide assistance on other matters as the need arises. Mr. Trost was also recently hired by Sacramento Area Council of Governments (SACOG) to serve as their outside legal advisor. Because it is possible that the interests of the two agencies may conflict from time to time, Mr. Trost has requested that the District provide a written acknowledgment of the potential for conflict.

Background

The Rules of Professional Conduct of the State Bar of California require that, before an attorney may begin or continue to represent a new client when the attorney has or had a relationship with another client interested in the subject matter of the attorney's proposed representation of the new client, the attorney must inform both clients in writing of the relevant circumstances and of any actual or reasonable foreseeable adverse consequences to the clients. The Rules also require the attorney to obtain both clients' informed written consent to continued representation.

The Conflict Waiver Request complies with the Rules of Professional Conduct outlined above.

Discussion

Mr. Trost, as legal advisor to SACOG, has been asked to review and comment on documents relating to the SECAT Program, which is jointly run by SACOG and the District. These documents include the existing Memorandum of Understanding between

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SACOG and the District, as well as the standard form agreement used in the Program. Mr. Trost is also advising SACOG in transactions relating to State Implementation Plan, and its relationship to the transportation plans and environmental analysis prepared by SACOG. At the same time, he is assisting the District in ongoing enforcement actions, and occasionally provides additional advice on litigation procedure, public agency issues and air quality matters.

To date, there has been no significant overlap between Mr. Trost's duties for SACOG and the District. Nonetheless, there is a potential for conflict if Mr. Trost's duties for either SACOG or the District were to impact the exercise of his judgment in a particular matter. Consequently, to meet the Professional Code of Conduct requirements, Mr. Trost has requested the District's written acknowledgement and consent to his simultaneous representation of SACOG and the District.

Should an actual conflict occur in the future the District will reassess its options at that time.

Fiscal Impact

None

Respectfully submitted,

Larry Greene,
Air Pollution Control Officer

Reviewed By:

Kathrine Pittard,
District Counsel

Attachment