

FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT  
Memorandum  
08/05/2024

TO: FRAQMD BOARD OF DIRECTORS

FROM: Christopher D. Brown AICP, APCO

SUBJECT: Approve Resolution #2024-10 of the Board of Directors of the Feather River Air Quality Management District Consenting to County Counsel advising and representing the County of Sutter and the Feather River Air Quality Management District and waiving any actual or potential Conflict of Interest Concerning the Representation and authorize the Chairman to execute related documents.

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SUMMARY:

Feather River Air Quality Management District ("FRAQMD") has contracted with the County of Sutter to have Sutter County Counsel's Office provide legal advice and provide general counsel on its behalf. In order for County Counsel to continue to do so, both the County and FRAQMD must be informed of the possibility that an actual or potential conflict of interest may arise during the course of such representation and that each party provides a written waiver of those actual or potential conflicts of interest. Adoption of the attached resolution would allow County Counsel to continue to provide legal advice and general counsel to FRAQMD while simultaneously providing legal services to the County.

RECOMMENDATION:

Authorize County Counsel to represent the Feather River Air Quality Management District and adopt "*A Resolution of the Feather River Air Quality Management District Board of Directors Consenting to County Counsel Advising and Representing the County of Sutter and Feather River Air Quality Management District and Waiving Any Actual or Potential Conflict of Interest Concerning the Representation.*"

BACKGROUND:

Feather River Air Quality Management District ("FRAQMD") has contracted with the County of Sutter to have the Sutter County Counsel's Office to provide legal advice and provide general counsel on its behalf. County Counsel's ability to represent County and FRAQMD is governed by what are commonly called the California Rules of Professional

Conduct, which include rules regarding conflicts of interest which require County Counsel to notify clients of any actual or potential conflicts of interest that exist or may arise during the course of such representation and obtain a written waiver from each client of those actual or potential conflicts of interest. In order to undertake representation, County Counsel must receive an acknowledgment from both parties that: (1) the County and FRAQMD have been advised of the potential conflicts associated with each party's respective interests; (2) nevertheless, both the County and FRAQMD want County Counsel to represent them; and (3) both parties are completely free to seek independent counsel at any time even if this resolution is adopted.

Although County Counsel is not presently aware of a conflict created by the representation of FRAQMD, the nature and scope of County Counsel's work may give rise to such conflicts of interest in the future. Accordingly, each party must be made aware that the interests and objectives of the County and FRAQMD individually on certain issues may, at some time in the future, become inconsistent with the interests and objectives of the other party and that both parties understand this waiver and are comfortable with County Counsel representing both parties. During such representation, County Counsel shall endeavor to avoid providing any services that would create a conflict of interest but in the event that a conflict does arise or if for any reason the County Counsel's office declines to or resigns from providing services to FRAQMD, then as a condition of County Counsel providing such representation, FRAQMD must agree that the County Counsel's Office may thereafter continue to act as legal counsel for the County and that the County Counsel's Office shall not be disqualified from representing or otherwise carrying out any of its powers and duties on behalf of the County.

**FISCAL IMPACT:**

None.

**BOARD OF DIRECTORS, FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT**

**RESOLUTION 2024-10**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT CONSENTING TO COUNTY COUNSEL ADVISING AND REPRESENTING THE COUNTY OF SUTTER AND THE FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT AND WAIVING ANY ACTUAL OR POTENTIAL CONFLICT OF INTEREST CONCERNING THE REPRESENTATION**

**WHEREAS**, the Feather River Air Quality Management District ("FRAQMD") has asked the Sutter County Counsel's Office ("County Counsel") to provide legal advice and provide general counsel on its behalf; and

**WHEREAS**, County Counsel is employed by, and currently serves as general counsel for, the County of Sutter ("County") and also serves as the legal advisor for a number of other separate legal entities that are governed by the same five (5) individuals that sit as the Board of Supervisors for the County, such as the Sutter County Water Agency, Water Works District No. 1, the Sutter County In-Home Support Services Public Authority, and others (all such public entities that are governed by the same five (5) individuals are hereinafter referred to as "Related Public Entities"); and

**WHEREAS**, County Counsel may, upon request, represent local governmental entities that are distinct from County government ("Other Clients"), such as the FRAQMD; and

**WHEREAS**, County Counsel's ability to represent County and FRAQMD is governed by what are commonly called the California Rules of Professional Conduct, which include, but are not limited to, rules regarding conflicts of interest which require County Counsel to notify clients of any actual or potential conflicts of interest that exist or may arise during the course of such representation and obtain a written waiver from each client of those actual or potential conflicts of interest; and

**WHEREAS**, before undertaking representation of County and FRAQMD, County Counsel must receive an acknowledgment from both parties that: (1) The County and FRAQMD have been advised of the potential conflicts associated with each party's respective interests; (2) Nevertheless, both the County and FRAQMD want County Counsel to represent them; and (3) Both parties are completely free to seek independent counsel at any time even if this resolution is adopted; and

**WHEREAS**, although County Counsel is not presently aware of a conflict created by the proposed representation of FRAQMD, the nature and scope of County Counsel's work for its primary clients, namely the County, Related Public Entities, and Other Clients, may give rise to such conflicts of interest in the future and prior to adopting this resolution, both the County and FRAQMD must be made aware that the interests and objectives of the County and FCD individually on certain issues may, at some time in the future, become inconsistent with the interests and objectives of the other party and that both parties understand this waiver and are comfortable with County Counsel representing both parties; and

**WHEREAS**, County Counsel shall endeavor to avoid providing any services that would create a conflict of interest but in the event that a conflict does arise between the County or other Related

Public Entities on the one hand and FRAQMD on the other hand, or if for any reason the County Counsel's office declines to or resigns from providing services to FRAQMD, then FRAQMD agrees that the County Counsel's Office may thereafter continue to act as legal counsel for the County and that the County Counsel's Office shall not be disqualified from representing or otherwise carrying out any of its powers and duties on behalf of the County; and

**WHEREAS**, the parties understand and acknowledge that County Counsel's representation of the parties may also result in the loss of the attorney-client privilege for communications between the parties and County Counsel, because anything disclosed by one client on a matter of common interest may be disclosed to a jointly represented client in a civil proceeding between the parties and that in the event of a dispute among the parties, County Counsel may be precluded from representing any individual party without first obtaining the consent of all concerned.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Directors of the FRAQMD acknowledges that it has been advised by County Counsel that authorizing County Counsel to represent both the County and the FRAQMD may give rise to a conflict of interest between the County and FRAQMD; acknowledges that it has been advised to seek the advice of independent counsel with respect to these issues; and, by adopting this resolution, elects to have County Counsel undertake the joint representation of the County and FRAQMD and waives any and all claims against County Counsel which may arise or accrue by reason of any such joint representation by County Counsel.

**BE IT FURTHER RESOLVED** that the Board of Directors of the FRAQMD agrees that should it discharge County Counsel as its legal counsel or should County Counsel withdraw as legal counsel for FRAQMD, County Counsel shall have the right to continue representing the County in all matters without objection or interference by or from FRAQMD which County Counsel no longer represents.

**THIS RESOLUTION** was passed by the Board of Directors for the Feather River Air Quality Management District at a regular meeting thereof held on August 5, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Chairman of FRAQMD Board of Directors

ATTEST:

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