



Legislation Text

File #: 2019-1932, **Version:** 1

To: Sonoma County Board of Supervisors, Board of Directors of the Sonoma County Agricultural Preservation and Open Space District, Board of Directors of the Sonoma County Water Agency

Department or Agency Name(s): County Counsel

Staff Name and Phone Number: Bruce Goldstein -707-565-2421

Vote Requirement: 4/5th

Supervisory District(s): All

Title:

Legal Services Agreement and In-House Support for Kincade Fire PG&E Litigation

Recommended Action:

Authorize the County Counsel to execute a legal services agreement with Baron & Budd, P.C. and Dixon, Diab and Chambers, LLP (Attorneys) to represent the County of Sonoma, the Sonoma County Agricultural Preservation and Open Space District (Ag + Open Space) and the Sonoma County Water Agency (Sonoma Water) in pursuing litigation arising from the Kincade Fire that occurred in Sonoma County in October/November 2019. (4/5th Vote Required)

Executive Summary:

The Kincade Fire started on October 23, 2019 at 9:27 p.m. on John Kincade Road and Burned Mountain Road in Sonoma County, northeast of Geyserville. It burned 77,758 acres, destroyed 374 structures, injured 4 people, and prompted the largest evacuation in Sonoma County history. The Kincade Fire was extinguished on November 6, 2019.

At the time the Fire started, PG&E had conducted a widespread de-energization event in Sonoma County and turned off the power to approximately 27,837 customers in Sonoma County, including Geyserville and the surrounding area. As part of the power shut-off, PG&E had de-energized its distribution lines, but kept the larger transmission lines energized.

While the cause of the Kincade Fire is still under investigation by the California Department of Forestry and Fire Protection (CalFire), preliminary evidence points to PG&E's power equipment as the potential cause of the Fire. In an Electric Incident report filed on October 24, 2019, PG&E acknowledged that it experienced a transmission level outage on the Geysers line when the line relayed and did not reclose just prior to the start of the Fire. PG&E also acknowledged in public court filings the failure of a broken jumper cable on that tower.

The County, Ag + Open Space, and Sonoma Water sustained losses as a result of the Kincade Fire, including but not limited to damages to lands, parks, roads, and costs for emergency services, evacuations, debris removal, labor, and watershed restoration.

On December 10, 2019, your Board, on behalf of the County of Sonoma, Ag + Open Space and Sonoma Water, concurrently authorized the initiation of litigation against PG&E with respect to the Kincade Fire. The litigation is intended to insure that taxpayers and Sonoma County ratepayers do not bear the burden of the millions of dollars of damages caused by the Kincade Fire.

The Board also authorized the retention of Attorneys to represent the County's interests in this litigation. Attorney John Fiske, a shareholder at Baron & Budd, and his legal team have been representing the County related to the 2017 Sonoma Complex Fires after being selected by the Board among several qualified law firms following a thorough interview process in 2017. Based on their expertise, qualifications and successful representation of the County in the 2017 Fires litigation, your Board approved the retention of Attorneys again for the Kincade Fire litigation. The legal services agreement (Attachment A) provides for compensation to Baron & Budd and Dixon, Diab and Chambers, LLP on a contingency fee basis at the negotiated rate of eighteen percent (18%) recovery of net proceeds with a requirement that Attorneys front all costs, including expert witness fees. In addition, Attorneys have partnered with the law firm of Stutzman, Bromberg, Esserman & Plifka to protect the County's interest in PG&E's pending Chapter 11 bankruptcy proceeding. The fees and costs of bankruptcy counsel are included in Attorneys contingency fee at no additional cost for the County.

As the County retains complete control over the litigation, County Counsel will be responsible for overseeing and coordinating the litigation, facilitating discovery, and supervising outside counsel. The necessary support and oversight will require a significant commitment of County Counsel resources to manage and interface with County departments and agencies. County Counsel is estimating to spend up to 500 hours for related services. The fees for these in-house legal services will be shared equally by the County, Ag + Open Space, and Sonoma Water. As part of the professional service agreement with outside counsel, a reasonable amount of County Counsel fees will be a reimbursable cost at the end of successful litigation or settlement.

Staff recommend that the Boards authorize County Counsel to execute the legal services agreement with Baron & Budd, P.C. and Dixon, Diab and Chambers, LLP, included as Attachment A.

Discussion:

NA

Prior Board Actions:

December 10, 2019: The Board, on behalf of the County of Sonoma, the Sonoma County Agricultural Preservation and Open Space District and the Sonoma County Water Agency, authorized the initiation of litigation on behalf of the County and Agencies against PG&E to pursue recovery of all economic losses related to the Kincade Fire.

FISCAL SUMMARY

Expenditures	FY 19-20 Adopted	FY20-21 Projected	FY 21-22 Projected
Budgeted Expenses	150,000		
Additional Appropriation Requested			
Total Expenditures	150,000		
Funding Sources			
General Fund	50,000		
Water Agency	50,000		
Ag + Open Space District	50,000		
Use of Fund Balance			
Contingencies			
Total Sources	150,000		

Narrative Explanation of Fiscal Impacts:

County Counsel is estimating to spend up to 500 hours for services related to the oversight and coordination of the litigation. The fees for these in-house legal services will be shared equally by the County, Ag + Open Space, and Sonoma Water.

There are sufficient appropriations in the Litigation Contingency Fund to cover the County's share.

Staffing Impacts:			
Position Title (Payroll Classification)	Monthly Salary Range (A-I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):

NA

Attachments:

Attachment A: Legal Services Agreement with Baron & Budd and Dixon, Diab and Chambers, LLP

Related Items "On File" with the Clerk of the Board:

NA