

RECEIVED
BOARD OF SUPERVISORS
EL DORADO COUNTY
Aug 23, 2010, 11:34 am

August 19, 2010

Patricia Beck, Esq.
Principal Assistant County Counsel
OFFICE OF COUNTY COUNSEL
COUNTY OF EL DORADO
330 Fair Lane
Placerville, CA 95667

Re: Waiver of Potential and Actual Conflicts of Interest Arising From Concurrent Representation of the County of El Dorado and Others

Dear Trish:

Thank you for retaining Downey Brand LLP to represent El Dorado County in the claim and litigation arising from the lawsuit filed by MV Transportation, Inc. against South Tahoe Area Transit Authority, et al., Case No. 10-CV-0240 (the "STATA Matter")

As we have discussed, El Dorado County retained Downey Brand, LLP in September 2007. At that time, Frank Perrott prepared an extensive letter disclosing and requesting a waiver of potential and actual conflicts. That letter is attached hereto and incorporated herein, and this letter is intended to update that letter and to disclose and request a waiver of any potential and actual conflicts of interest now arising from Downey Brand LLP's representation of El Dorado County in the STATA Matter. Finally, this letter discloses that the attorney representing MV Transportation in the STATA Matter, Leigh Goddard, is a partner of my husband's at McDonald Carano Wilson LLP. My husband (Robert Armstrong) is a business attorney and does not practice with the firm's litigation attorneys, but this is a disclosure we try to always make under the Nevada Rules of Professional Conduct (Rule 1.8).

1. Waiver of Potential or Actual Conflicts

a. Verizon Wireless

As in 2007, Downey Brand has represented, and continues to represent, Verizon Wireless in various matters.

b. K. Hovnanian Forecast Homes, Inc.
The People of the State of California v. K. Hovnanian Forecast Homes, Inc.
El Dorado County Superior Court Case No. PC 20060556

Downey Brand has represented, and continues to represent, K. Hovnanian Forecast Homes, Inc., in various matters, and many of those matters remain active.

c. The Hertz Corporation
United States of America v. El Dorado County
United States District Court Case No. S-01-520 MCE

Downey Brand has represented, and continues to represent, The Hertz Corporation in various matters. Since 2007, the tentative settlement which was reached has been reduced to a consent decree. While there are presently not any issues or problems under the consent decree, there could be in the future. Our representation of Hertz in this matter is ongoing, and El Dorado County hereby waives the conflict to allow Downey Brand LLP to continue representing The Hertz Corporation on any an all matters related to the consent decree and the Meyers Landfill site in El Dorado County.

d. Raley's
United States of America v. El Dorado County
United States District Court Case No. S-01-520 MCE

Downey Brand has represented, and continues to represent, Raley's in various matters, including the same environmental contamination case involving The Hertz Corporation described above. Raley's was one of the third-party defendants that reached a tentative settlement with the County during mediation. Our representation of Raley's in this matter is ongoing, and El Dorado hereby waives the conflict to allow Downey Brand LLP to continue representing Raley's on any an all matters related to the consent decree and the Meyers Landfill site in El Dorado County.

e. SMUD
El Dorado – SMUD Cooperation Agreement

Downey Brand has represented, and continues to represent, SMUD in various matters.

2. Prospective Waiver of Certain Potential or Actual Conflicts

As set forth in Mr. Perrott's letter, Downey Brand represents a number of individuals, private companies, and public agencies that conduct business within the County of El Dorado. Due to our possible representation of other clients in future matters involving the County, we believe it would be prudent to obtain a prospective waiver by the County of the limited category of potential or actual conflicts of interest described below.

The prospective waiver of potential conflicts of interest would be limited to real estate transactions between the County and any other client of Downey Brand (including the leasing by Verizon Wireless of tower space, land or other real property owned by the County), the County's regulation or enforcement of water quality standards and environmental protections, whether directly by the County or through the County's provision of assistance to other public agencies, such as the Regional Water Quality Control Board, the Army Corps of Engineers, the California Department of Fish and Game, and the El Dorado County District Attorney (when acting on behalf of the people of the State of California), and the County's regulation of land use (including the obtaining of land use-related approvals, building permits, and other entitlements by any client of Downey Brand).

Under the rules of professional conduct and the other laws that govern attorneys in Nevada and California, we would have to zealously represent the interest of our clients in these matters, even if such interests were adverse to the interests of the County, and would intend to do so, despite our representation of the County in the STATA Matter. We believe that the zealousness and commitment with which we would represent the County in the STATA Matter would not be impaired by our potential representation of other clients in these types of matters because of the specialized issues (and potentially Nevada specific) issues involved in the STATA Matter. If and when it becomes necessary, we will also establish procedures ensuring that any confidential information of the County obtained by the attorneys representing the County in the STATA matter will not be disclosed to any other attorneys at Downey Brand.

3. Proposed Conditions of Any Waiver of Potential or Actual Conflicts of Interest by the County

I practice in Downey Brand's offices in Reno. I will be the partner primarily responsible for the representation of the County in the STATA Matter. With respect to the STATA Matter, I would anticipate obtaining the assistance of our "of counsel" attorney, Craig Denney, my associates, Michelle Kazmar and Carrie Parker, my partner in the Sacramento office, Andrew Collier, and my paralegal, Donna Ellis. To the best of my knowledge, none of these attorneys have in any way participated in the representation of SMUD, Raley's, Hertz, Verizon Wireless, or K. Hovnanian Forecast Homes in any matters involving the County.

4. Disclosure of Potential and Actual Conflicts.

Under the rules of professional conduct and other laws that govern attorneys in Nevada, which are somewhat different than the laws in California, we can represent two clients at the same time if their interests are not directly adverse to one another. In this case, the subject matters of Downey Brand's representation of the County in the STATA Matter and its representation of SMUD, Hertz, Raley's, Verizon Wireless, and K. Hovnanian Forecast Homes in other matters are entirely unrelated. However, there are also other risks of this proposed waiver of conflicts of interest that should be considered by the County. Theoretically, there could be adverse consequences to you from our simultaneous representation of the County in the STATA Matter

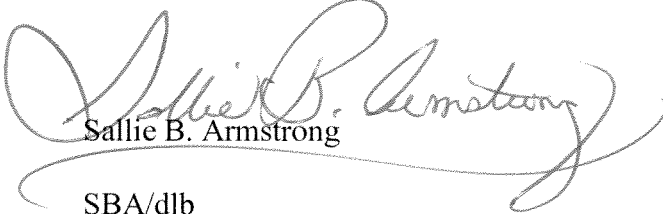
and other clients in unrelated matters involving the County. It is possible that we could favor one or another client and, as a result, fail to press the other client's interests as vigorously as possible. While we do not believe that this result would occur, such a result is at least theoretically possible. Additionally, there could be other adverse consequences to the County arising from our representation of the County in the STATA Matter this representation that we cannot now foresee.

In connection with Mr. Perrott's letter, we encouraged the County to seek the advice of independent legal counsel concerning its determination of whether or not to waive these potential and actual conflicts of interest. I do not know whether the County did so, but, as discussed herein, the matters in which Downey Brand LLP was involved in 2007 have not materially changed. If the County agrees to continue waiving any potential or actual conflicts of interest that could occur as the result of Downey Brand's separate, but concurrent, representation of the County and SMUD, Hertz, Raley's, Verizon Wireless, and K. Hovnanian Forecast Homes in other matters involving the County and, further, agrees to prospectively waive any potential or actual conflicts of interest arising from our representation of other clients in future matters involving real estate transactions with the County, the County's participation in the regulation or enforcement of water quality standards or other environmental protections, and the County's regulation of land use, please so indicate by dating and signing the enclosed counterpart of this letter and returning the original to me in the enclosed, self-addressed, stamped envelope.

Thank you for your attention to this matter.

Very truly yours,

DOWNEY BRAND LLP



Sallie B. Armstrong

SBA/dlb
Encl.

WAIVER OF CONFLICT OF INTEREST

I have read the foregoing letter, which incorporates Downey Brand LLP's letter of September 6, 2007, concerning any potential and actual conflicts of interest arising from Downey Brand's separate, but concurrent, representation of the County and SMUD, The Hertz Corporation, Raley's, Verizon Wireless, and K. Hovnanian Forecast Homes in other matters involving the County and any potential or actual conflicts of interest arising from Downey Brand's representation of clients in future matters involving real estate transactions with the County, the County's participation in the regulation or enforcement of water quality standards and other environmental protections, and the County's regulation of land use. I am authorized to, and hereby do, waive such conflicts of interest on behalf of the County, but only to the extent, and upon the conditions, described in this letter and the September 6, 2007 letter.

Dated: _____

THE COUNTY OF EL DORADO

By: _____

Its: _____

DOWNEY BRAND
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downeybrand.comFrank R. Perrott
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September 6, 2007

David A. Livingston, Esq.
Deputy County Counsel
COUNTY COUNSEL'S OFFICE
COUNTY OF EL DORADO
330 Fair Lane
Placerville, CA 95667**Re: Waiver of Potential and Actual Conflicts of Interest Arising From Concurrent Representation of the County of El Dorado and Others**

Dear Dave:

This letter discloses and requests a waiver of any potential and actual conflicts of interest arising from Downey Brand LLP's proposed representation of the County of El Dorado in the arbitration proceeding entitled Yubacon, Inc. v. El Dorado County Department of Transportation, et al., before the Office of Administrative Hearings of the State of California and Downey Brand's separate, but concurrent, representation of other clients in the various unrelated matters described below. This letter also requests a prospective waiver of any potential or actual conflicts of interest arising from Downey Brand's possible representation of clients in future matters concerning real estate-related transactions with the County, the County's regulation of land use, and the County's regulation or enforcement of water quality standards and any other environmental laws (which proposed prospective waiver is more specifically described in Section 2).

1. Waiver of Potential or Actual Conflicts**a. Verizon Wireless
Amendment to Existing Lease for Cellular Tower Site**

Downey Brand has represented, and continues to represent, Verizon Wireless in various matters. Verizon Wireless is currently leasing portions of a cellular tower and associated site, located at 1352 and 1360 Johnson Boulevard, South Lake Tahoe, from the County. Verizon Wireless intends to replace the existing tower, modify the equipment that will be re-installed on the new tower, and construct an equipment shelter at the site. We are representing Verizon Wireless in connection with the negotiation and drafting of an amendment to the existing lease needed to accomplish these activities.

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**b. K. Hovnanian Forecast Homes, Inc.
The People of the State of California v. K. Hovnanian Forecast Homes, Inc.
El Dorado County Superior Court Case No. PC 20060556**

Downey Brand has represented, and continues to represent, K. Hovnanian Forecast Homes, Inc., in various matters. In October of 2006, the El Dorado County District Attorney, on behalf of the people of the State of California, filed a complaint for civil penalties and other relief against K. Hovnanian Forecast Homes, alleging violations of Fish and Game Code section 5650 and Business and Professions Code section 17200. The complaint alleged, among other things, that K. Hovnanian Forecast Homes allowed sediment, soil, sand, and dirt to pass into the waters of the State of California and failed to install adequate erosion control measures to ensure full compliance with the NPDES General Permit for Storm Water Discharges Associated With Construction Activity issued by the State Water Resources Control Board. The people of the State of California and K. Hovnanian Forecast Homes have entered into a stipulated judgment. The stipulated judgment requires K. Hovnanian Forecast Homes to pay civil penalties in the event of future violations of Fish and Game Code section 5650, immediately pay other civil penalties, and waive any objections to employees from the El Dorado County Department of Code Compliance entering the subject property for the purposes of enforcement and confirming compliance with the stipulated judgment. K. Hovnanian Forecast Homes has tentatively entered into a settlement of its disputes with the Regional Water Quality Control Board arising out of the same alleged facts.

We do not believe that our representation of K. Hovnanian Forecast Homes in a civil action brought on behalf of the people of the State of California by the El Dorado County District Attorney or our representation of K. Hovnanian Forecast Homes in connection with its disputes with the Regional Water Quality Control Board constitutes a potential or actual conflict of interest requiring a written waiver by the County of El Dorado. However, in an effort to provide full disclosure to the County and avoid any possible misunderstandings, we are disclosing our representation of K. Hovnanian Forecast Homes in these matters.

**c. The Hertz Corporation
United States of America v. El Dorado County
United States District Court Case No. S-01-520 MCE**

Downey Brand has represented, and continues to represent, The Hertz Corporation in various matters. We represent Hertz, a third-party defendant and cross-claimant, in an environmental contamination case involving the Meyers Landfill site in El Dorado County. The County, the third party plaintiff, has brought an action for contribution against numerous third-party defendants, including Hertz, alleging that waste from the third-party defendants was deposited at the landfill during all or part of the period of the 1950's through the landfill closure in 1972, and that this waste has contributed to alleged soil and groundwater contamination. Recently, the County and several third-party defendants, including Hertz, reached a tentative settlement during

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mediation that is subject to approval by several public entities. Pending these approvals, final documentation of the settlement, and ancillary approvals from the United States District Court, our representation of Hertz in this matter is ongoing.

d. **Raley's**
United States of America v. El Dorado County
United States District Court Case No. S-01-520 MCE

Downey Brand has represented, and continues to represent, Raley's in various matters, including the same environmental contamination case involving the Meyers Landfill site described above. Raley's was one of the third-party defendants that reached a tentative settlement with the County during mediation. Our representation of Raley's in this matter is ongoing pending the finalization of the settlement.

e. **SMUD**
El Dorado – SMUD Cooperation Agreement

Downey Brand has represented, and continues to represent, SMUD in various matters. SMUD and the County are both parties to the El Dorado – SMUD Cooperation Agreement (the "Agreement"), which governs the terms under which the County and other El Dorado interests may coordinate use of SMUD's Upper American River Project ("UARP") for storage and/or diversion of water from the American River system. The Agreement controls how much interference the County and other parties may make with the UARP, the amount of compensation to be paid to SMUD for interfering with power generation, and numerous related issues that could potentially form the basis of future conflict among the parties. The Agreement also specifies several possible reopeners, including changing the contemplated source of El Dorado's water right, changing the place where El Dorado will take the water, and FERC's imposition of certain flow-related measures in SMUD's new federal power license. We represented SMUD in connection with the negotiation and drafting of the Agreement, continue to represent SMUD in connection with the implementation of the Agreement, and anticipate representing SMUD in connection with future disputes, if any, between SMUD and the County and/or other parties to the Agreement relating to the rights and responsibilities of the parties under the Agreement.

We have disclosed our proposed representation of the County in the Yubacon matter to SMUD, Raley's, Hertz, Verizon Wireless, and K. Hovnanian Forecast Homes and each of these clients has agreed to waive the potential and/or actual conflicts of interest arising from Downey Brand's representation of the County in the Yubacon matter.

SMUD has conditioned its waiver upon the County's agreement that, should an actual dispute arise between the County and SMUD, Downey Brand will cease to represent the County (by immediately making preparations to withdraw and withdrawing as soon as reasonably

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practicable under the circumstances considering Downey Brand's obligation to protect the interests of the County while the County obtains new attorneys to replace Downey Brand) and the County will allow Downey Brand to continue to represent SMUD without claiming any conflicts of interest or otherwise seeking to have Downey removed, replaced, or disqualified as continuing counsel for SMUD (including during the period of time that Downey Brand is making preparations to withdraw).

Similarly, Raley's and Hertz have each conditioned their waivers upon the County's agreement that, should an actual conflict arise between the County and Hertz or Raley's, Downey Brand will cease to represent the County (by immediately making preparations to withdraw and withdrawing as soon as reasonably practicable under the circumstances considering Downey Brand's obligation to protect the interests of the County while the County obtains new attorneys to replace Downey Brand) and the County will allow Downey Brand to continue to represent Hertz or Raley's without claiming any conflicts of interest or otherwise seeking to have Downey Brand removed, replaced, or disqualified as continuing counsel for Hertz or Raley's (including during the period of time that Downey Brand is making preparations to withdraw). This includes, if the settlement among and between Raley's, Hertz, and the County in the action concerning the Meyers Landfill site not be finally consummated for any reason, Downey Brand will cease to represent the County and the County will allow Downey Brand to continue to represent Hertz and Raley's without claiming any conflicts of interest or otherwise seeking to have Downey removed, replaced, or disqualified as continuing counsel for Hertz and Raley's (including during the period of time that Downey Brand is making preparations to withdraw).

Verizon Wireless has conditioned its waiver upon the County's agreement that if at some point in the future Verizon Wireless must negotiate again with the County over the South Lake Tahoe cell site or some other cell site, that Verizon Wireless may, if it chooses, be represented by Downey Brand LLP, that the County will not retain Downey Brand LLP in connection with such matter, and that whether or not the County is at the time a client of Downey Brand LLP, the County will not assert a conflict of interest against Verizon Wireless or Downey Brand LLP as a result of that later representation by Downey Brand LLP of Verizon Wireless.

2. Prospective Waiver of Certain Potential or Actual Conflicts

Downey Brand represents a number of individuals, private companies, and public agencies that conduct business within the County of El Dorado. Due to the potential conflicts of interest arising from our proposed representation of the County in the Yubacon matter and our possible representation of other clients in future matters involving the County, we believe it would be prudent to obtain a prospective waiver by the County of the limited category of potential or actual conflicts of interest described below.

The prospective waiver of potential conflicts of interest would be limited to real estate transactions between the County and any other client of Downey Brand (including the leasing by

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Verizon Wireless of land, tower space, or other real property owned by the County), the County's regulation or enforcement of water quality standards and any other environmental laws, whether directly by the County, through the County's participation as a party in any adjudicatory proceedings, or through the County's provision of assistance to other public agencies, such as the Regional Water Quality Control Board, the Army Corps of Engineers, the California Department of Fish and Game, and the El Dorado County District Attorney (when acting on behalf of the people of the State of California), and the County's regulation of land use (including the obtaining of land use-related approvals, building permits, and other entitlements by any client of Downey Brand).

Under the rules of professional conduct and the other laws that govern attorneys in California, we would have to zealously represent the interest of our clients in these matters, even if such interests were adverse to the interests of the County, and would intend to do so, despite our representation of the County in the Yubacon matter. We believe that the zealousness and commitment with which we would represent the County in the Yubacon matter would not be impaired by our potential representation of other clients in these types of matters because of the specialized nature of the construction practice of the attorneys representing the County in the Yubacon matter (which attorneys have not, and will not, represent other clients in these other potential matters involving the County). We will also establish procedures ensuring that any confidential information of the County obtained by the attorneys representing the County in the Yubacon matter will not be disclosed to any other attorneys at Downey Brand.

3. Proposed Conditions of Any Waiver of Potential or Actual Conflicts of Interest by the County

I practice in Downey Brand's offices in Stockton. I would be the partner primarily responsible for the representation of the County in the Yubacon matter. With respect to the Yubacon matter, I would anticipate obtaining the assistance of my associate, Matthew Weber, my document clerk, Louise Fornos, and my secretary, Sarah Welsh, all of whom are also based in Downey Brand's Stockton offices. Neither I, Mr. Weber, Ms. Fornos, nor Ms. Welsh have in any way participated in the representation of SMUD, Raley's, Hertz, Verizon Wireless, or K. Hovnanian Forecast Homes in any matters involving the County. Mr. Weber, Ms. Fornos, Ms. Welsh, and I have not personally participated in the representation of any clients in any matters involving the County's regulation or enforcement of water quality standards or other environmental laws, real estate transactions with the County, or the County's regulation of land use. Except for the purpose of gathering information needed to prepare this letter, Mr. Weber, Ms. Fornos, Ms. Welsh, and I have never communicated with any person in the Sacramento offices of Downey Brand regarding the subject matter of Downey Brand's representation of other clients in matters involving the County.

Therefore, in the event that the County agrees to waive the potential and actual conflicts of interest caused by Downey Brand's separate, but concurrent, representation of the County and

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other clients in matters involving the County, it is unlikely that anyone at Downey Brand would ever acquire confidential information of the County that could be used to the advantage of Downey Brand's other clients in matters involving the County. In addition, the following procedures would be established to eliminate any risk of the inadvertent disclosure of such confidential information:

1. Mr. Perrott, Mr. Weber, Ms. Fornos, and Ms. Welsh will not participate in the representation of any other parties or entities in any matters involving the County during the duration of the Yubacon matter.
2. All attorneys at Downey Brand formerly or presently representing other clients in matters involving the County will not do any work relating to the Yubacon matter.
3. There shall be no communication of any sort (verbal, written, or electronic) regarding the subject matter of the Yubacon matter between the persons working on the Yubacon matter (Mr. Perrott, Mr. Weber, Ms. Fornos, and Ms. Welsh) and any persons formerly or presently representing other clients in matters involving the County.
4. There shall be no communication of any sort (verbal, written, electronic) regarding the County's risk management practices or litigation-related policies, procedures, or strategies between the persons working on the Yubacon matter (Mr. Perrott, Mr. Weber, Ms. Fornos, and Ms. Welsh) and any persons formerly or presently representing other clients in matters involving the County.
5. The files for the Yubacon matter will be maintained in red file folders that will bear the following legend on the outside: **DO NOT DISCLOSE TO OR INVOLVE ANY PERSONS OTHER THAN FRANK PERROTT, MATTHEW WEBER, LOUISE FORNOS, AND SARAH WELSH.** In addition, those files will be kept in a distinct location behind Sarah Welsh's desk in Downey Brand's Stockton offices in a fashion that will render them inaccessible to other persons.
6. Invoices, billing memos, and the like relating to the firm's representation of the County in the Yubacon matter will contain a legend that they are not to be shown to any attorneys other than Mr. Perrott and Mr. Weber.
7. A memorandum describing this procedure will be distributed to all persons in the firm and given to all persons who join the firm in any capacity after its initial distribution.
8. The memorandum will be re-distributed and re-broadcast by e-mail every six months after the date of its initial distribution until the conclusion of our

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representation of the County in the Yubacon matter as a reminder to all persons working in the firm of the obligation imposed by the ethical wall.

4. Disclosure of Potential and Actual Conflicts.

Under the rules of professional conduct and other laws that govern attorneys in California, we cannot represent two clients at the same time, whether their interests are adverse or potentially adverse, unless both clients agree to waive any potential or actual conflicts arising from such concurrent representation in writing after having the opportunity to seek the advice of independent legal counsel. This ethical requirement applies even though the representations are not related to one another.

In this case, the subject matters of Downey Brand's representation of the County in the Yubacon matter and its representation of SMUD, Hertz, Raley's, Verizon Wireless, and K. Hovnanian Forecast Homes in other matters are entirely unrelated. In addition, as set forth above, Downey Brand will establish procedures preventing the disclosure of confidential information by persons working on the Yubacon matter to persons representing other clients in matters involving the County. Therefore, there would appear to be little possibility that Downey Brand could acquire confidential information in the course of its representation of the County in the Yubacon matter that could be used advantageously by our other clients in matters involving the County.

However, there are also other risks of this proposed waiver of conflicts of interest that should be considered by the County. Theoretically, there could be adverse consequences to you from our simultaneous representation of the County in the Yubacon matter and other clients in unrelated matters involving the County. It is possible that we could favor one or another client and, as a result, fail to press the other client's interests as vigorously as possible. While we do not believe that this result would occur, such a result is at least theoretically possible. Additionally, there could be other adverse consequences to the County arising from our representation of the County in the Yubacon matter and other clients in unrelated matters involving the County that we cannot now foresee.

We encourage the County to seek the advice of independent legal counsel concerning its determination of whether or not to waive these potential and actual conflicts of interest. If, after doing so (should you so choose), and after considering the forgoing disclosure of the potential and actual conflicts of interest, the County agrees to waive any potential or actual conflicts of interest that could occur as the result of Downey Brand's separate, but concurrent, representation of the County and SMUD, Hertz, Raley's, Verizon Wireless, and K. Hovnanian Forecast Homes in other matters involving the County and, further, agrees to prospectively waive any potential or actual conflicts of interest arising from our representation of other clients in future matters involving real estate transactions with the County, the County's regulation or enforcement of water quality standards or other environmental laws, and the County's regulation of land use,

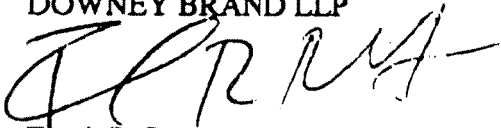
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please so indicate by dating and signing the enclosed counterpart of this letter and returning the original to me in the enclosed, self-addressed, stamped envelope.

Thank you for your attention to this matter.

Very truly yours,

DOWNEY BRAND LLP

A handwritten signature in black ink, appearing to read 'FRP', with a long horizontal stroke extending to the right.

Frank R. Perrott

FRP:sew

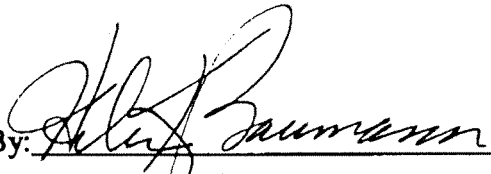
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WAIVER OF CONFLICT OF INTEREST

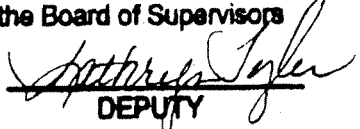
I have read the foregoing letter concerning any potential and actual conflicts of interest arising from Downey Brand's separate, but concurrent, representation of the County and SMUD, The Hertz Corporation, Raley's, Verizon Wireless, and K. Hovnanian Forecast Homes in other matters involving the County and any potential or actual conflicts of interest arising from Downey Brand's representation of clients in future matters involving real estate transactions with the County, the County's regulation or enforcement of water quality standards and other environmental laws, and the County's regulation of land use. I am authorized to, and hereby do, waive such conflicts of interest on behalf of the County, but only to the extent, and upon the conditions, specifically described in this letter.

Dated:

THE COUNTY OF EL DORADO

By: 
Its: Chairman

ATTEST: CINDY KECK, Clerk
of the Board of Supervisors

By: 
DEPUTY