



Legislation Text

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**Report to Carson Reclamation Authority**

Tuesday, June 18, 2024

Consent

**SUBJECT:**

**CONSIDER A CONFLICT WAIVER FOR GREENBERG TRAUIG TO REPRESENT ANGELO GORDON & CO. IN TRANSACTION INVOLVING DUE DILIGENCE OF THE CARSON CAL COMPACT LANDFILL PROJECT FOR THE REDEVELOPMENT OF CELLS 3, 4 AND 5.**

**I. SUMMARY**

The CRA has used the law firm of Greenberg Traurig (“GT”) since 2016 for environmental and risk management expertise because they are a national leader in the field and the project is highly complex.

GT also has a long list of regular clients who engage them in similar types of brownfield or contaminated land projects. One of their clients has asked that they assist with due diligence for an investment in the Carson Goose Owner, LLC project. When a firm represents more than one client in a transaction, they need to receive conflict waivers from all parties and undertake practices to keep the interests separate.

While this involves a transaction the CRA is involved in as we are the seller of the parcel, the diligence is against Faring and Faring’s development manager Hines (another GT client) as the developers on the site and not the CRA itself. Hines and the new investor have executed conflict waivers. The CRA previously approved a waiver when Hines joined the project. As such, this waiver is not a classic conflict of interest between the CRA (GT’s current client on the site) and the new investor, but as a public agency it was the recommendation of the Authority Counsel to submit it for approval in an open meeting.

**II. RECOMMENDATION**

- 1. APPROVE** the Conflict Waiver letter with Greenberg Traurig; and
- 2. AUTHORIZE** the Executive Director to sign the letter.

### III. ALTERNATIVES

**TAKE** another action the Board deems appropriate.

### IV. BACKGROUND

GT has in the past represented and currently represents Angelo, Gordon & Co. (“AG”) in connection with environmental projects unrelated to the Cal-Compact Landfill (the “Project”). GT also represents Hines Interests Limited Partnership and certain of its affiliates (“Hines”) in current matters unrelated to the Project.

GT currently represents the CRA as special environmental counsel for the Cal-Compact landfill redevelopment. Hines and CRA have both executed a conflict waiver with respect to the Project because GT currently represents Hines on other unrelated matters. As presently situated, CRA is technically adverse to Faring Development (“Faring”) and to Hines in the Project since there are ongoing discussions about the Option Agreement and its terms, including the various insurance programs required for the Project.

AG has asked GT to represent AG as environmental counsel during its due diligence of the Project as it seeks to negotiate a transaction with Faring and Hines for the redevelopment of Cells 3, 4 and 5 of the landfill. GT’s representation of AG in this matter would terminate upon the assignment of the Option Agreement to a joint venture between Faring, Hines and AG (the “JV Entity”) or upon the transfer of the subject lands to the JV Entity. During the representation of AG, GT would be permitted to share its extensive institutional knowledge of the environmental conditions of the Cal-Compact site and its history, but it would not disclose any confidential client information to AG (i.e., CRA financial information, CAM litigation information that is otherwise not already in the public domain and any Hines proprietary client information). AG believes that having GT in this role will help them expedite their diligence and reach agreement on project documents with Faring and Hines more quickly. GT would, of course, continue to represent CRA as special environmental counsel in the ordinary course, as both representations would technically be adverse to Hines and Faring in this regard and AG would have no privity with CRA during this period.

GT’s representation of both AG and Hines, together with GT’s ongoing work for Hines in unrelated matters, raises potential conflicts of interest. Such conflicts of interest are waivable only if (i) the conflict is fully disclosed to both parties, (ii) our exercise of independent professional judgment in the proposed representation of one client will not be materially limited by our responsibilities to the other client, (iii) we reasonably believe that our representation will not be adversely affected by the conflict, and (iv) our representation does not violate any other ethical requirements, such as the attorney’s duty of confidentiality to each client.

In the course of a transaction such as the one referenced above, there will inevitably arise a number of issues on which the interests of parties to the transaction may diverge. GT has examined the proposed representations and they have concluded that their representation of CRA will not be adversely affected by their dual role in the Project under the terms

described herein, their ongoing work for Hines in unrelated matters and/or their work for AG in the Project and unrelated matters, nor will their duty of confidentiality to either AG, CRA or Hines be breached by the representation of either party. Thus, in their opinion the potential conflict of interest described above is waivable.

In the event that any litigation or other form of formal dispute resolution between AG and CRA relating to the Project, GT agrees that they (GT) shall be precluded from representing either party in such litigation or other form of formal dispute resolution against the other. In such event, however, they may continue to represent CRA, Hines and AG, respectively, in matters unrelated to the Project, and to represent CRA in the Project. The waivers and agreements in this letter will continue in effect upon the termination of our representation of either client.

## **V. FISCAL IMPACT**

None.

## **VI. EXHIBITS**

1. Conflict Waiver letter from Curt Toll (pgs. 4-5)

Prepared by: John S. Raymond, Executive Director