



**CITY OF LODI
COUNCIL COMMUNICATION**

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AGENDA TITLE: Approve Waiver of Conflict of Interest for Meyers Nave's Representation of Northern California Power Agency (NCPA)

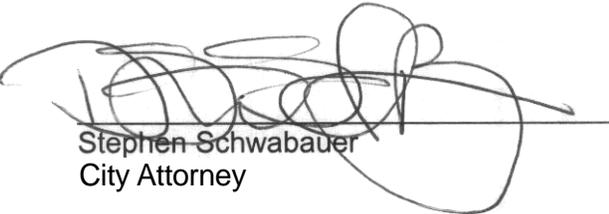
MEETING DATE: June 18, 2008

PREPARED BY: City Attorney's Office

RECOMMENDED ACTION: Approve Waiver of Conflict of Interest for Meyers Nave in their representation of the Northern California Power Agency (NCPA).

BACKGROUND INFORMATION: The law firm of Meyers Nave represents the City from time to time with regard to development agreements and other land use matters. They also assisted the City in drafting sections of the development agreements relating to electric utility costs. Meyers Nave also serves as General Counsel to NCPA, and has been tasked with drafting a form purchase agreement between NCPA and its member entities which includes the City of Lodi. Although technically a conflict of interest, I believe it is reasonable to waive in light of the risks involved and our desire to use Meyers Nave for land use work in the future.

FISCAL IMPACT: N/A



Stephen Schwabauer
City Attorney

APPROVED:



Blair King, City Manager

JUN 02 2008

CITY ATTORNEYS OFFICE

May 30, 2008

D. Stephen Schwabauer, City Attorney of Lodi
Office of the City Attorney
P.O. Box 3006
Lodi, CA 95241-1910

RE: Conflict Waiver Request
Lodi/PSREC Long-Term Procurement Agreement (NCPA LSR 8.42)
(MN 1083-11020)

Dear Steve:

As you may know, we act as the General Counsel to the Northern California Power Agency ("NCPA or "Agency"). In that capacity, we have been requested by NCPA to assist in the drafting of a long-term procurement agreement between NCPA and its member agencies including the City of Lodi. As a consequence, the City of Lodi is technically "adverse" to the Agency in this matter.

We also have represented or do represent the City of Lodi in connection with several employment and land use matters. Except insofar as the land use matters may relate to the City of Lodi's efforts to expand its service territory into areas currently served by PG&E, our representation of the City does not include matters relating to its electric utility. While this representation of the City therefore is not currently in conflict with any of the services that we provide to NCPA, the Rules of Professional Responsibility require us to disclose this relationship, as it may be potentially or actually adverse to the Agency, and we seek your informed written consent to our continued representation of the City its labor and employment and land use matters.

Rules 3-310(B), 3-310(C), and 3-310(E) of the California Rules of Professional Conduct provide as follows:

Rule 3-310(B): A member [of the State Bar] shall not accept or continue representation of a client without providing written disclosure to the client where:

- (1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or
- (2) The member knows or reasonably should know that:

- (a) the member previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; and
 - (b) the previous relationship would substantially affect the member's representation; or
- (3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or
- (4) The member has or had a legal]business, financial, or professional interest in the subject matter of the representation.

Rule 3-310(C): A member shall not, without the informed written consent of each client:

- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
- (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
- (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

Rule 3-310(E): A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

With regard to Rule 3-310(B), neither we nor, to the best of our actual knowledge, any member of our firm has or has had (i) any legal, business, financial, professional, or personal relationship with any party, witness, person, or entity or (ii) any interest in the subject matter of our representation of the Agency where disclosure of which is required by Rule 3-310(B), except for our past and current representation as described above.

With regard to Rule 3-310(C), our present representation of the Agency in connection with the matter described above will not result in our representing the City and the Agency in the same matter. However, it will result in our representing the City at the same time as we are representing the Agency in separate matters. Therefore, and since we have a professional duty of undivided loyalty to each current client, given our current and past representation of the Agency, we need the informed written consent of the City and the Agency before we can continue to represent these clients.

With reference to Rule 3-310(E), we do not believe that we have obtained any confidential information from the City that would be material to the current matter in which we have been asked to represent the Agency. However, the Agency may believe we have or may receive such material confidential information due to the nature of our past and current representation of City. Consequently, we are also requesting the informed written consent of the Agency.

In connection with our representation of the City, in the matter described above and for purposes of assisting you in determining whether or not to consent to such representation, we hereby inform you that:

- (a) We do not anticipate any actual or reasonably foreseeable adverse effects upon the Agency by reason of our past and current representation of the City;
- (b) We do not anticipate any actual or reasonably foreseeable adverse effects upon the City by reason of our past and current representation of the Agency;

We request that the City consider this written request carefully. You may wish to confer with independent legal counsel regarding this consent, and should feel free to do so. If, after review and consideration of the foregoing, the City consents to our representation of the Agency in the captioned matter, please sign the enclosed copy of this letter and return it to me as soon as possible.

Please do not hesitate to call me or if you have any questions or concerns about the foregoing.

Very truly yours,



Steven T. Mattas

The City of Lodi consents to the representation described above.

Dated: 6/19/08

By: 
D. Stephen Schwabauer, City Attorney
City of Lodi

c: Michael F. Dean, General Counsel, NCPA
Benjamin T. Reyes, Assistant General Counsel, NCPA
Conflicts Department