

WEST BASIN MUNICIPAL WATER DISTRICT

JULY 14, 2005 – Water Resources
Little, Kwan
JULY 25, 2005 – Board Meeting
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Submitted by: Steve O'Neill
Approved by: Art Aguilar/Rich Nagel

INFORMATION CALENDAR

CONTRACTING PRACTICES: WITNESS SERVICES

SUMMARY:

The Board requested review of the contracting practices of other public agency clients regarding agreements for consultants to act as witnesses for the agency in the event litigation ensues.

Lemieux & O'Neill serves as counsel for the following agencies: City of California City, City of Ridgecrest, Big Bear Municipal Water District, Desert Lake Community Services District, East Kern Airport District, East Kern Health Care District, Foothill Municipal Water District, Inyo Kern Airport District, Kern Valley Health Care District, North Edwards County Water District, Littlerock Creek Irrigation District, Las Virgenes Municipal Water District, Palm Ranch Irrigation District, San Gabriel County Water District, San Gabriel Valley Municipal Water District, Tehachapi Health Care District, and Valley County Water District.

As a general rule, when these agencies retain consultants, they do not require the consultant agree to provide witness services as part of the consulting agreement. However, related issues have arisen with intellectual property issues and engineering contracts. With regard to intellectual property, some software providers require that the agency who purchases the software agrees to assist in any subsequent litigation concerning the provider's intellectual property rights. This, of course, is the opposite of the practice we have been asked to review.

Engineering firms sometimes specify in their contracts that if litigation arises from circumstances related to the engineer's services, the engineer will only provide litigation service at extra cost and such services are not included in the scope of services defined in the contract.

In summary, in Lemieux & O'Neill's experience representing the above-listed agencies, it is not common practice to have consultants agree to provide testimony as part of their underlying scope of services.

FISCAL IMPACTS:

Not applicable.

ENVIRONMENTAL IMPACTS

Not applicable.

COMMITTEE STATUS:

This item was reviewed by the Water Resources Committee on July 14, 2005 and was agendaized to the July 25, 2005 Board meeting as information for discussion.

RECOMMENDED MOTION:

This item is for information only.