

**WEST DES MOINES WATER WORKS  
BOARD OF TRUSTEES MEETING COMMUNICATION**

**DATE:** November 6, 2017

**ITEM:**

- 3. Recommendation from Committee
  - c. Regionalization
    - 1. Motion – Approving Concurrent Representation by Brick Gentry P.C. for Regional Water Works Authority Matters

**FINANCIAL IMPACT:**

N/A

**SUMMARY:**

Brick Gentry, P.C. performs legal services for multiple cities and municipal entities within the Des Moines Metro area. Due to existing client relationships, Paul Drey of Brick Gentry P.C. has requested a waiver from potential conflict of interests for representation on the 28E agreement for a regional water production utility.

The details surrounding this issue were reviewed and approved by the Regionalization Committee.

**BACKGROUND:**

West Des Moines Water Works, Urbandale Water Utility and Des Moines Water Works are leading an effort to facilitate discussion on a potential regional water production utility. It is necessary to obtain legal services to work with the facilitator, Jason Mumm of FCS Group, to develop and draft a final 28E/28F document, identify local, state and federal legal issues and prepare necessary legal documents. The Board of Trustees of the Urbandale Water Utility and Des Moines Water Works will be considering this issue at their upcoming meetings.

**RECOMMENDED ACTION BY THE BOARD OF TRUSTEES:**

To concur with the recommendation of the Regionalization Committee and approve concurrent representation by Brick Gentry P.C. for Regional Water Works authority matters.

Prepared by: \_\_\_\_\_

Approved for Content by: \_\_\_\_\_



October 30, 2017

Susan J. Huppert  
Chair, Board of Directors  
Des Moines Water Works  
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Des Moines, IA 50321  
VIA E-MAIL: [Susan.huppert@dmu.edu](mailto:Susan.huppert@dmu.edu)

Karen Novak Swalwell  
Chair, Board of Trustees  
West Des Moines Water Works  
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West Des Moines, Iowa 50265  
VIA E-MAIL: [knovak@fa-search.com](mailto:knovak@fa-search.com)

John McCune  
Chairman, Board of Trustees  
Urbandale Water Utility  
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Urbandale, IA 50322  
VIA E-MAIL: [John.mccune73@gmail.com](mailto:John.mccune73@gmail.com)

Re: Regional Water Works Authority Matters – Conflict Waiver

Dear Susan, John and Karen:

Our firm would be privileged to represent the proposed regional water works authority (“Water Authority”) on multiple legal matters including, but not limited to, formation, and other organizational issues. We appreciate this relationship and look forward to working with your three entities, as well as the other regional municipalities, and appreciate the opportunity to serve the Water Authority.

Our firm, on occasion and currently, represents multiple cities and municipal entities within the area, on several legal matters including, but not limited to, economic development, municipal matters, and finance. While we do not believe our representation of these cities and the other municipal entities, as well as the Water Authority in unrelated matters will present a direct conflict of interest, it is our duty to inform you of the nature of the concurrent representation of the Water Authority and these other municipalities.

Because our representation of the municipalities and the Water Authority are contemporaneous, such representation could be perceived as a concurrent conflict of interest under the ethical standards governing the practice of law in Iowa. From a strict legal perspective, a concurrent conflict of interest exists under Iowa rules if (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer. We do not believe that the first prong of the test will apply to this situation because we do not represent the cities with respect to the Water Authority. We also think the second prong does not apply since the nature of the representations is so unrelated. Nonetheless, we think the proper approach is to advise clients of such situations. We understand a multi-party governmental agreement (amongst the water works/utilities, the cities and possibly other entities) will be drafted to memorialize the parties’ obligations and agreements. Given our current engagements, Brick Gentry P.C. cannot negotiate on behalf of any city or the Water Authority itself against the other, and understand the water works/utilities, cities and/or Water Authority will negotiate for itself respectively. Brick Gentry P.C. will act in the limited capacity as legal resource and scrivener of such multi-party governmental agreement. If this should change, please advise.

The state's ethical rules allow a law firm to concurrently represent two adverse parties if (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing. In this instance and at this time, we do not view the parties as adverse. We believe confidently that our attorneys will be able to provide competent and diligent representation to each client, the representation is not prohibited by law, and there will not be an assertion of a claim or adverse event as described. The purpose of this letter is to inform the Water Authority of these issues in order to proceed.

Please feel free to contact me with any questions or concerns. If you consent to the concurrent representation, please so indicate below and return a copy of the fully executed acknowledgement to my attention.

Very truly yours,



Paul A. Drey

PAD:pm

ACKNOWLEDGMENT AND CONSENT

The Water Authority hereby waives and consents to any actual, potential, or perceived conflict of interest associated with Brick Gentry P.C.'s representation of the Water Authority with respect to the above-referenced representations.

**"Water Authority"**

DES MOINES WATER WORKS

URBANDALE WATER UTILITY

\_\_\_\_\_  
By: Susan J. Huppert  
Its: Chair, Board of Directors  
Dated: \_\_\_\_\_

\_\_\_\_\_  
By: John McCune  
Its: Chairman, Board of Directors  
Dated: \_\_\_\_\_

WEST DES MOINES WATER WORKS

\_\_\_\_\_  
By: Karen Novak Swalwell  
Its: Chair, Board of Directors  
Dated: \_\_\_\_\_