



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

Indian Wells  
(760) 568-2611

Irvine  
(949) 263-2600

Los Angeles  
(213) 617-8100

Ontario  
(909) 989-8584

655 West Broadway, 15<sup>th</sup> Floor, San Diego, CA 92101  
Phone: (619) 525-1300 | Fax: (619) 233-6118 | www.bbklaw.com

Riverside  
(951) 686-1450

Sacramento  
(916) 325-4000

Walnut Creek  
(925) 977-3300

Washington, DC  
(202) 785-0600

**Mary Beth Coburn**  
(619) 525-1369  
marybeth.coburn@bbklaw.com  
File No. 60076.00001

June 28, 2013

**VIA U.S. MAIL**

Ryan Rethmeier  
Western Pump Inc.  
3235 F Street  
San Diego, CA 92102

Re: Helix Water District - 10,000 Gallon Diesel Fuel Tank Relocation Project  
(WO 3882)

Dear Mr. Rethmeier:

This firm represents the Helix Water District (“District”) and as such we were asked to review the bids received for the 10,000 Gallon Diesel Fuel Tank Relocation Project (WO 3882) (“Project”), including the bid submitted by Western Pump Inc. (“Western Pump”). Unfortunately, upon our review, we learned that Western Pump was also involved in the design of the Project.

We are sorry to inform you that California law prohibits an entity that is involved in the design of a project from also participating in the bidding process. We’ve discussed this issue with District staff and in light of your ongoing relationship, which the District truly appreciates, they’ve asked that we provide you with a summary of the law and why we feel that moving ahead with the contract would place a great deal of risk on Western Pump.

Government Code section 1090 provides that a variety of individuals that govern, work for, or provide services to public agencies cannot be financially interested in any contract that they participated in drafting. The individuals included in this prohibition extend to independent contractors, such as consultants, even those that work temporarily or intermittently for the public agency. (46 Op. Cal. Atty. Gen. 74 (1965).) The law extends beyond those in management and decision making roles and has been interpreted to include those who are involved in preliminary decisions about the contract including the planning of the contract. (*Stigall v. City of Taft* (1962) 58 Cal. 2d 565, 569.) The prohibition covers consultants and advisers who are involved in the preliminary planning for the contract, including discussions, negotiations, reasoning, or the *drawing of plans and specifications for the contract.*” (82 Ops. Cal. Atty. Gen. 126, 129 (1999), emphasis added.)

Therefore, should the District award this Project to Western Pump, we believe that the contract could be determined void and unenforceable. If that occurred, Western Pump would



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

Ryan Rethmeir  
June 28, 2013  
Page 2

likely be ordered to pay back all monies paid to it by the District. (*Thomson v. Call* (1985) 38 Cal.3d 633, 647-648.) Recognizing that contractors should not bear all of the risk for improperly awarded contracts, California has created a statute<sup>1</sup> intended to protect innocent contractors that are wrongly awarded contracts by public agencies. Even in this scenario, if the contract were deemed invalid, Western Pump would be required return all profits on the Project to the District.

We realize that this is a very harsh outcome and this information may be surprising to Western Pump. District staff initially intended to discuss this issue with you, but given the legal complexities, it was determined that we should present the prevailing law to you for your consideration. We encourage Western Pump to reach out its own counsel to confirm our interpretation of the statutes and case law. We are confident that Western Pump, like the District, seeks to avoid challenges to the validity of this or any contract.

As such, we respectfully request that Western Pump withdraw its bid from this Project. The District will not enforce Western Pump's bid bond or seek other recourse related to Western Pump's withdrawal.

To reiterate, the District enjoys its working relationship with Western Pump and it hopes that Western Pump will participate in future District projects. Should you have any questions, please contact the undersigned.

Sincerely,

Mary Beth Coburn  
of BEST BEST & KRIEGER LLP

60076.00001\8042144.2

---

<sup>1</sup> Public Contract Code section 5110.