



September 14, 2023

BCC Agenda Date/Item: \_\_\_\_\_

**Stephen L. Madkour**  
County Counsel

**Scott C. Ciecko**  
**Amanda Keller**  
**Shawn Lillegren**  
**Jeffrey D. Munns**  
**Andrew R. Naylor**  
**Andrew Narus**  
**Sarah Foreman**  
**Hong Huynh**  
**Caleb Huegel**  
Assistants

Board of County Commissioners  
Acting as Board of Directors  
Water Environment Services

**Authorization for Chair to Provide Written Consent to  
Representation by the Office of County Counsel in Lawsuit Filed by Trevor Whisman**

<b>Previous Board Action/Review</b>	This Board has been briefed on this matter during a previous executive session.		
<b>Performance Clackamas</b>	Build public trust through good government.		
<b>Counsel Review</b>	Yes	<b>Procurement Review</b>	N/A
<b>Contact Person</b>	Shawn Lillegren	<b>Contact Phone</b>	503-742-5393

**EXECUTIVE SUMMARY:** The Office of County Counsel requests the consent of this Board for the Office of County Counsel to provide legal representation to Clackamas County in a lawsuit filed by plaintiff Trevor Whisman, a person who seeks money damages for personal injuries sustained when riding his bicycle on SE Johnson Creek Boulevard. In this lawsuit, plaintiff has sued both Clackamas County and Water Environment Services. The Office of County Counsel presently provides legal representation to Water Environment Services on unrelated matters. Informed written consent is required in this matter because Clackamas County and Water Environment Services are potentially adverse.

**RECOMMENDATION:** The Office of County Counsel requests this Board to approve and authorize Chair Tootie Smith to sign the attached conflict waiver letter, providing consent to the Office of County Counsel to represent Clackamas County in this matter.

Respectfully submitted,

Shawn A. Lillegren  
Assistant County Counsel

For Filing Use Only



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING  
2051 KAEN ROAD | OREGON CITY, OR 97045

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September 14, 2023

Board of Directors  
Water Environment Services  
150 Beaver Creek Road No. 430  
Oregon City, OR 97045

Re: *Whisman v. Water Environment Services et al*  
Clackamas County Circuit Court Case No. 23CV22707

Dear Board of Directors:

As you know, Clackamas County has asked the Office of County Counsel to represent it adverse to Water Environment Services ("WES") with respect to a lawsuit filed by Trevor Whisman, a person who alleges that he sustained personal injuries when his bicycle fell between the slats of a storm grate located on SE Johnson Creek Boulevard near SE 67<sup>th</sup> Avenue. Through an IGA with the County, WES contracts for representation from the Office of County Counsel with respect to advisory, transactional, litigation, and labor and employment related matters. Insofar as I can presently tell, the factual and legal issues likely to arise in the work that you have asked us to do appear to be unrelated to the work we have been asked to or appear likely to do for Clackamas County in this matter.

Under the Oregon Rules of Professional Conduct, which apply to all Oregon attorneys, the Office of County Counsel may not oppose a current client, even on an unrelated matter, without the informed consent of all affected clients after an explanation about the material risks of and reasonable alternatives to consenting. This means that I must explain to both Clackamas County and you the pros and cons of consenting and that I cannot proceed to represent Clackamas County unless both Clackamas County and you consent.

In deciding whether to consent, you should consider how our representation of Clackamas County as described above could or might affect you. For example, clients that are asked to waive or consent to conflicts typically should consider whether there is any material risk that "their" attorney will be less zealous or eager on their behalf due to the conflict. Similarly, clients should consider whether there is any material risk that their confidences or secrets will be used adversely to them due to the conflict.

In the present case, I personally do not believe that there is a material risk of either type because of the unrelated nature of the work for the two clients. That is because we are unaware of any confidences related to our work with WES on advisory and transactional matters would have any relevance to our defense of Clackamas County in this lawsuit concerning the storm grate at issue. Nevertheless, these are issues that you should consider for yourself. In addition, you should bear in mind that if you consent, the Office of County Counsel will be representing Clackamas County adversely to WES in connection with the matter referenced above. In other words, we would be adverse to you on this matter.

The Oregon Rules of Professional Conduct require that I recommend that you seek independent counsel to assist you in deciding whether to consent. You do not have to do so if you do not wish to, however. Whether or not you consult such counsel is up to you.

I understand that the insurance carrier for WES has retained attorney Kurt C. Peterson to represent WES in this lawsuit filed by Mr. Whisman. Accordingly, we have copied him on this letter, and he is available to consult with you if you think that would be helpful.

Please review this matter carefully. If you have any questions that you would like me to answer prior to reaching a decision on this issue, please let me know. If you are willing to consent after such review as you believe appropriate, please direct your Chair sign the enclosed extra copy of this letter in the space provided and return it to me for my files.

Very truly yours,



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Shawn A. Lillegren  
Assistant County Counsel

I hereby consent to the terms of representation set forth above:

Dated: \_\_\_\_\_

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Chair Tootie Smith  
Board of Directors  
Water Environment Services