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June 17, 2010

The Honorable Mike Feuer  
Chair, Assembly Judiciary Committee  
P.O. Box 942849  
Sacramento, CA 94249

**RE: Senate Bill 972 - OPPOSE**

Dear Chair Feuer:

I am writing on behalf of the Kings River Conservation District (KRC D), to express our opposition to SB 972 (Wolk), relating to indemnity provision between local agencies and design professionals.

As a public agency, our ability to require consultants to include indemnity provisions for liability arising from construction and use of facilities is critically important. Without this ability, our agency could be liable for any claims brought against it that we caused by consultants, exposing our ratepayers to potentially large costs. Further, our financial ability to undertake construction of needed projects and facilities could be greatly impaired.

KRC D has constructed, owns, and operates power plants and facilitates the construction of groundwater recharge and other critical water facilities. This bill would impact our ability to develop energy generation and groundwater recharge projects like these in the future.

The following concerns specifically highlight what we believe would be the negative effects on local agencies like ours:

- SB 972 would make the protections of the proposed statute non-waivable. Indemnity protections are part of many business transactions and, in that setting, the parties to a business contract should be allowed to negotiate the allocation of risk resulting from the transaction, including the cost of defending a lawsuit and paying damages that are awarded.
- The definition of "design professional services" (section 2782.85(b)(2)) is too broad. It would include services that are not design services. The definition includes everything under the contract, including such services commonly included in contracts such as accounting and mediation services.

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- Under section 2782.85(c) the design professional has two options once a written tender is made. The design professional has 90 days to decide between those two options. However, frequently action on tenders often requires much more immediate action; for example, a response to a lawsuit typically is due within 30 days. We therefore believe 90 days to decide the appropriate action is too long.
- Under section 2782.85(c)(1), the defense is to be provided as a "complete defense," but only of claims attributable to the design professional. We understand how this would seem logical, but in reality it doesn't work. Insurance companies have to provide a complete defense (and that means all claims, not just the insured ones). SB 972 would limit this defense.
- Section 2782.85(c)(2) allows the design professional to pay a "reasonable allocated share" of the defense costs. We believe there would be additional conflicts and ultimately more lawsuits that will arise as the parties disagree with the proportion of their costs.

For these reasons, we believe SB 972 is not good policy. We respectfully request your "NO" vote when the bill is heard in the Assembly Judiciary committee on June 22, 2010.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Orth', with a stylized flourish at the end.

David Orth  
General Manager

DO/ct

File: 204.01