



Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street
Chicago, IL 60611

Legislation Text

File #: 10-0001, **Version:** 1

TRANSMITTAL LETTER FOR BOARD MEETING OF JANUARY 7, 2010

COMMITTEE ON JUDICIARY

Mr. Richard Lanyon, Executive Director

Request for Authorization to Issue a Check to Rausch Construction Company in the amount of \$625,751.35 for payment of the judgment amount in the matter of Rasuch Construction Company v. Metropolitan Water Reclamation District of Greater Chicago, No. 07 CH 4269. P.O. 5000162.

Dear Sir:

Rausch Construction Company filed suit against the District alleging breach of contract in Contract 97-362-1S Rehabilitation of Dropshaft 5 and Installation of an Odor Control Unit in DesPlaines, Illinois. Rausch sought \$980,000.00 in damages plus interest in the amount of \$285,413.00 pursuant to the Prompt Payment Act. Rausch also sought a determination that the assessment of some of the liquidated damages was a penalty.

The trial of this matter was conducted from October 26, 2009 through November 2, 2009. The Court entered judgment in the amount of \$625,751.35 against the District which represents the liquidated damages amount it found were not properly withheld. The Court declined to find that the District's liquidated damage provision was a penalty. Nor did it find that the assessment of interest was applicable under the Prompt Payment Act.

Although there were several technical errors in the Court's analysis, even considered in the aggregate, the Law Department believes that they were not of such significance as to warrant a reversal of the decision. However, even if these matters were reconsidered, it would not result in reversible error. Moreover, the Law Department does not believe that the trial court's decision turned on any of those matters. The District is currently holding approximately \$680,000.00 in retainage and liquidated damages. These funds are being held in P.O. 5000162. As such, it is the opinion of the Law Department that the judgment amount be tendered to Rausch and this Decision and Order not be appealed.

The Law Department requests authorization to issue a check in the judgment amount of \$625,741.35 from P.O. 5000162 to Rausch Construction Company.

Requested, Frederick M. Feldman, General Counsel, FMF:LJH:crb
Respectfully Submitted, Terrence J. O'Brien, Chairman Committee on Judiciary
Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for January 7, 2010