


Administrator's Memorandum

To: IDWR Staff

From: L. Glen Saxton 
Administrator
Water Management Division

Miscellaneous Memo #13

Date: April 25, 2005

Re: **Guidelines for Communication with Outside Attorneys**

IDWR staff are often contacted by outside attorneys. As IDWR is and will be involved in litigation, including judicial cases and contested administrative proceedings, there is a need for guidelines regarding when staff should contact the appropriate Deputy Attorney General assigned to IDWR prior to providing a response, access to files, or other information.

There are three basic questions to ask yourself prior to speaking with an outside attorney:

1. Is the matter to be discussed currently in litigation?
2. Is the matter to be discussed the subject of potential litigation?
3. Is the matter to be discussed a routine matter, not the subject of current or potential litigation?

I. What to do if contacted on a matter currently in litigation.

- If the discussion concerns a matter that is currently in litigation, you should not discuss it with opposing counsel. Respectfully and courteously inform the individual that you cannot do so. Direct the outside attorney to the appropriate Deputy Attorney General and inform the Deputy Attorney General of the contact.
- If you are involved in negotiations on a SRBA subcase, inform the assigned Deputy Attorney General of the negotiations and defer to the Deputy's discretion regarding his or her involvement in the negotiations.
- If the matter you are being contacted about is more than a procedural matter, in other words discussing the merits of the case, involve the Deputy Attorney General.

II. What to do if contacted on a matter that is likely to be the subject of litigation.

- Seek advice from a Deputy Attorney General prior to responding.
- If it is not possible to seek the advice of counsel, respectfully and politely say that you cannot speak on the issue at this time.
- For the SRBA, if you suspect at the pre-investigation phase that an issue is going to be litigated, involve your Deputy Attorney General in the discussions.
- Think before you respond! Remember what you say may be used against the agency in the future.

III. What to do if contacted by an attorney on a routine matter, not the subject of current or potential litigation.

- Use your best judgment. Refer the attorney to the appropriate Deputy Attorney General on issues that are not routine.
- If during the discussion a matter is raised that is currently in litigation or that is the subject of potential litigation, please follow the guidelines under sections I and II above.

These guidelines are general in nature. It may be more difficult for the staff working on the SRBA to identify matters in "litigation" or the potential subject of litigation because the SRBA is itself an ongoing lawsuit. In general, follow these guidelines and when in doubt contact an IDWR Deputy Attorney General and discuss the concerns.