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September 8, 2003

COPY

Bruce Sutherland, Mayor
City of Rexburg
12 N. Center
P.O. Box 245
Rexburg, ID 83440

Dear Mayor Sutherland:

In some recent work we have been doing for Teton Pipeline Association, we have had occasion to focus on a water right held in the name of the City of Rexburg. The right came to our attention in connection with our review of a "Water Lease Agreement" between the City and Teton Pipeline Association, dated October 12, 1999, for the lease by the pipeline association of some 6.5 cfs of a portion of one of the city's water rights, number 22-204C, for a period of 25 years.

As we reviewed this water right, we became aware that the total amount of the right is 27.0 cfs, and that the right has an early priority (June 10, 1883). The Idaho Department of Water Resource records show the original purpose of the right was for "municipal and power purposes". When we wondered how it came to be that the city would lease 6.5 cfs of the right for irrigation purposes, we were informed that the city has not been using 6.5 cfs of the right for some period of time, and may not be using all of the remaining balance of the right (21.5 cfs) for "municipal or power purposes" either. After officials at the Eastern Region office of the Idaho Department of Water Resources and the Water District 01 also expressed some concern because of the upcoming Snake River Basin Adjudication processing which will commence in earnest for Basin 22 rights in the next few months, our clients asked us to write this letter.

As you are undoubtedly aware, if all or some portion of a water right has not been applied to the beneficial use for which it was appropriated for a period of 5 years, there is a risk of a

Source: Claimant
Date: 10/1/2004

decision by Idaho Department of Water Resources and/or the Snake River Basin Adjudication Court that such right, or a portion thereof, has been lost and forfeited. Such a determination with respect to any portion of right number 22-204C would seem to us to be very undesirable. There are not many rights with such an early priority, and we assume the city would not want to risk the loss of any portion of the right.

Perhaps the full balance of the right (21.5 cfs) is currently being applied to a beneficial use pursuant to applicable Idaho Department of Water Resources rules and Idaho law, and has been, without interruption. But, if any portion of the balance of 21.5 cfs is at risk of forfeiture for non-use, we want to emphasize that, in our opinion, the pipeline association is in an ideal position to provide assistance.

We understand the association has offered to lease more than the 6.5 cfs on occasion in the past, so the city is aware that the farms served by the association's diversion and delivery system could be greatly benefitted by the lease of more than the 6.5 cfs, indeed up to the entire 27 cfs. If there is more water than the 6.5 cfs already leased by the association potentially available, we think an appropriate lease arrangement which would protect the rest of the right and still have it available for any future needs of the city could easily be designed.

Municipal water rights can be protected to some extent through proper planning, including the development of a "planning horizon" as defined in Idaho Code §42-202B(7). But if it seems desirable to the city, a lease of some or all of the balance of 21.5 cfs under this right could be established on conditions that the water would be made again available to the city at a predetermined time consistent with the city's "planning horizon", or after some reasonable notice period. We think such a lease resulting in a continued beneficial use of the water would furnish added and perhaps needed protection for the right as well as significant benefits to both the city and the pipeline association of the lease payments and the use of the water.

We have taken the liberty of sending a copy of this letter to Mr. Stephen Zollinger, whom we understand to be the attorney for the City of Rexburg. If the city is and has been continuously applying the entire balance of 21.5 cfs under this right to beneficial use, then we apologize, because our intent is not to be presumptuous. If the city thinks there is any merit in our proposal, then we would appreciate an opportunity to pursue the matter further. Please feel free to call us or to have your attorney call us at your convenience. Thank you for your kind consideration in this matter.

Yours very truly,



Kent W. Foster

c: Mr. Stephen P. Zollinger
Roger Hoopes

Source: Clarkmont

Date: 10/1/2004