

RECEIVED

SEP 30 2013

DEPARTMENT OF
WATER RESOURCES

GIVENS PURSLEY^{LLP}

LAW OFFICES

601 W. Bannock Street
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

JEFFREY C. FEREDAY

Direct: 208-338-1217
Email: jeffereday@givenspursley.com

Gary G. Allen
Peter G. Barton
Christopher J. Beeson
Clint R. Bolinder
Erik J. Bolinder
Preston N. Carter
Jeremy C. Chou
William C. Cole
Michael C. Creamer
Amber N. Dina
Elizabeth M. Donick
Thomas E. Dvorak
Jeffrey C. Fereday
Martin C. Hendrickson
Steven J. Hippler

Don E. Knickrehm
Neal A. Koskella
Debora K. Kristensen
Michael P. Lawrence
Franklin G. Lee
David R. Lombardi
Emily L. McClure
Kenneth R. McClure
Kelly Greene McConnell
Alex P. McLaughlin
Melodie A. McQuade*
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Deborah E. Nelson

W. Hugh O'Riordan, LL.M.
Angela M. Reed
Matt G. Smith
Jeffrey A. Warr
Robert B. White

Of Counsel
Kimberly D. Maloney

*Licensed in Virginia

Retired:
Kenneth L. Pursley
James A. McClure (1924-2011)
Raymond D. Givens (1917-2008)

September 27, 2013

Ms. Pam Skaggs
Senior Water Resource Agent
IDWR State Office
322 East Front Street
Boise, ID 83720-0098

Re: JRG Water Supply Bank Lease for decreed Water Right No. 31-2327B

Dear Pam:

This follows up our September 24, 2013 telephone conversation about the 2004 lease of decreed Water Right No. 31-2327B (the "Water Right") into the state water bank by JRG Partners II ("JRG"). My call was prompted by Monica Van Bussum's February 22, 2013 letter to our client, Greg Young of JRG, pertaining to the Water Right. The purpose of this letter is to confirm JRG's intention that the Water Right continue to be committed permanently to mitigation for JRG's water right permits 22-13917 and 22-13918 (the "Permits"), either by leaving the Water Right un-rented in the Idaho Water Resource Board's State Water Supply Bank ("Bank") or, as you suggested, by releasing it from the Bank and instead designating it as a mitigation water right that cannot be separately diverted or used. After discussing this with Mr. Young, we would prefer the latter course.

Perhaps some background would be helpful. On February 12, 2004, JRG leased the Water Right into the Bank to comply with a mitigation condition on the Permits. The September 7, 2004 letter to JRG from IDWR's Jeff Peppersack (copy enclosed) accepted the Water Right as a lease into the Bank with the condition that the Water Right "cannot

be rented from the bank and water cannot be diverted under the right for any purpose.” Mr. Peppersack’s letter states that the Water Right “will remain in the bank indefinitely unless the right is released earlier by the Board, or upon request by the lessor.”

Consistent with this, Monica’s 2013 letter states that “[a]ll or a portion of [water right 31-2327B] is considered leased into the Bank, and should remain unused, until you release it from the Bank.” While her letter states that JRG need do nothing to maintain the status quo, we want to make sure there is no confusion, based on the “all or a portion of” language or otherwise, about JRG’s position that, to ensure its efficacy as mitigation for the Permits, the entire Water Right remain in the Bank and not be rented from the bank or used. JRG considers the Water Right currently used for this mitigation purpose. Both Ms. Van Bussum’s and Mr. Peppersack’s letters are enclosed for your reference.

Another potential wrinkle is that the Water Right authorizes ground water diversions to irrigate 70 acres in Basin 31. In the Bank it provides mitigation for JRG’s new irrigation well that irrigates 54 acres in Basin 22 near Driggs, Idaho. Then Eastern Region Director Ron Carlson recommended placing the Water Right in the Bank rather than simply abandoning it, on the theory that the Water Board may be able to rent a portion of it to a third party for beneficial use if this could be done without injuring other water rights or impairing the Water Right’s mitigation purpose. JRG agreed to this, and recognized, for example, that since JRG is using this 70-acre irrigation right to mitigate for 54 acres of irrigation on JRG’s property, the Water Right may hold some excess mitigation value that could be made available to others. If that were to be done, JRG would expect to receive compensation from the transaction, according to the water rental rules. But the entire reason for JRG’s lease of the Water Right into the Bank is to ensure that the Water Right remain in position to fully mitigate JRG’s uses in Basin 22, as originally intended.

This, finally, brings me to your suggestion about removing the Water Right from the Bank and instead simply designating it as a mitigation water right. We favor this approach, provided it could be done economically and without going through a hearing. I would like to discuss what the next step should be to achieve this. We understand that this has been made possible by recent statutory changes protecting mitigation water rights from forfeiture, and that, because of this, the Bank may not be the optimal repository for water rights that are intended to be unavailable for rental. In this change process, we assume the Department would address the issue of the 16 acre portion in the Water Right that may be in excess of the mitigation need.

Ms. Pam Skaggs
September 27, 2013
Page 3

I will call you to get the ball rolling with this change.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey C. Fereday". The signature is fluid and cursive, with a horizontal line extending to the right.

Jeffrey C. Fereday

JCF

1881201_1

cc: Greg Young
James Cefalo

Encl: Monica Van Bussum's February 12, 2013 letter
Jeff Peppersack's September 7, 2004 letter