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March 3, 2011 DEPARTMENT OF
WATER RESOURCES

Via US Mail

Jeff Peppersack
Chief, Water Allocation Bureau
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

Re: Lexington Hills, Inc. Water Right 63-123F and City of Eagle Permit 63-11413

Dear Jeff:

I write on behalf of Lexington Hills, Inc. (Lex Hills), the owner of partially decreed surface water right 63-123F, to seek clarification about this right's transferability. Clarification is needed because of a condition that states the right cannot be transferred if it would cause limitation on the use of water under permit 63-11413, a municipal ground water permit owned by the City of Eagle. Specifically, we request confirmation that a transfer of the place of use of right 63-123F will not cause the Department to impose a limitation on the use of water authorized under permit 63-11413.

Right 63-123F is a privately owned surface irrigation right historically used to irrigate land that is now the Lexington Hills Subdivision in Eagle, Idaho. Lex Hills established its ownership of water right 63-123F in an SRBA case where the Lexington Hills Homeowners Association asserted that it should own all the surface water rights historically appurtenant to the subdivision. The court ruled that Lex Hills retained 63-123F, which is appurtenant to impervious, non-irrigated areas in the subdivision. The court separately decreed right 63-123G to the HOA for the irrigated areas within the Subdivision. The HOA also owns entitlements to the delivery of surface water through Farmers Union Ditch Co. for irrigation within the subdivision.

Water right 63-123F is linked to permit 63-11413, a permit that Lex Hills conveyed to the City of Eagle along with the domestic water system for the subdivision, by the following condition:

The ability to transfer this water right pursuant to Idaho Code Section 42-222 is contingent upon a finding by the Department that such transfer will not be cause for the Department to further limit the use of water right 63-11413.

Lex Hills eventually intends to transfer right 63-123F. Absent a transfer, the right will forfeit because it can no longer be beneficially used within the subdivision. Lex Hills does not have any current plans or agreements for transfer, but plans to eventually. Because of the condition quoted above, Lex Hills needs to clarify that permit 63-11413, in fact, will not be "further limited" by a place of use transfer.

Permit 63-11413 has a condition of approval that states:

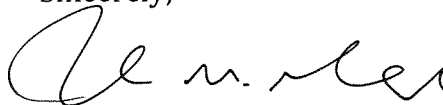
Farmers Union Canal Company water shall be utilized for the irrigation of the lots in Lexington Hills and Trail Creek Ranch parcels equal to or greater than one-half acre in size during periods when water is being delivered in the canal. This water right may be used for irrigation purposes only if the entire amount of water from the Farmers Union Canal Co. remains with the land in Lexington Hills and Trail Creek Ranch. Sale or transfer of surface water from any portion of these properties will be cause for the Department to further limit the use of this right.

The effect and meaning of this condition was the subject of extensive briefing and debate in the SRBA litigation. The HOA argued that this condition affirmatively required the SRBA to decree right 63-123F as non-transferable. The Special Master presiding over the case disagreed and ruled that the HOA's proposed interpretation would unnecessarily result in forfeiture of the right contrary to the policy of securing maximum use and least wasteful use of Idaho water.

Although we understand a complete pre-transfer review is not possible because particulars of a future transfer are not in play, we seek a general determination that IDWR will not further limit right 63-11413 in the event right 63-123F is transferred away from the subdivision. We believe the clear intent of 63-11413's condition is to preclude the use of ground water for irrigation within the subdivision in lieu of using the available surface water. The adjudication litigation resulted in a determination that the HOA holds sufficient surface water rights to irrigate all of the irrigated area in the subdivision. Consequently, the transfer of right 63-123F away from the subdivision will have no bearing on the use of ground water for irrigation within the subdivision. But, as noted by the SRBA court, if right 63-123F is not transferred, this valuable, senior Boise River water right will eventually forfeit because it cannot be beneficially used any longer in its current location.

Thank you for your consideration of this matter. I will attempt to contact you shortly to discuss after you have had a chance to review.

Sincerely,

A handwritten signature in black ink, appearing to read "J. M. Marshall", written in a cursive style.

John M. Marshall

cc: Bruce Smith (legal counsel for City of Eagle)
Lexington Hills, Inc.