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2 - 7562 35-8796
P.01

MAR-08-05 11:15 AM IDAHU IRRIGATION DISTRICT 2085222356

MAR. 8' 02 (MON) 15:26

GIVENS PURSLEY LLP

TEL: 2083881300

P 002/004

GIVENS PURSLEY LLP

COPY

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Kimberly D. Maloney
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Carily E. Ward
Robert B. White

Raymond D. Givens
James A. McClure
Stephanie C. Winkelman
or
James A. McClure

March 18, 2002

VIA FAX AND U.S. MAIL

Blair J. Grover, Esq.
Grover & Archibald, Chartered
102 North Clark
P.O. Box 36
Rigby, ID 83442-0036

Re: Busch Agricultural Resources, Inc. and Idaho Irrigation District
Our File: 6191-1

Dear Blair:

As promised during our recent telephone conversation, this letter proposes an arrangement whereby the Idaho Irrigation District (the "District") would enter an agreement with my client, Busch Agricultural Resources, Inc. ("BARI"), pursuant to which BARI would be entitled to use District irrigation water (natural flow, storage, or some of each) in a mitigation plan for the ground water pumping that supports BARI's Idaho Falls malt plant operations, should such mitigation ever become necessary.

For several reasons, we do not anticipate the imposition of a mitigation requirement. For example, our hydrological review so far has indicated that, at least for the next 30 to 40 years, BARI's pumping actually is expected to provide more water to the river than it could be seen as taking out. This is because about 89 percent of its pumping production is non-consumptive and is almost immediately put into the Snake River through Idaho Falls' wastewater treatment plant; any theoretical depletion to the river is essentially not yet being felt. Consequently, we do not anticipate being obligated to produce mitigation water.

Received Time Mar 8 9:39AM

MAR. 18' 02 (MON) 15:27

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Blair J. Grover, Esq.
March 18, 2002
Page 2

Nevertheless, because BARI's ground water rights obviously are so vital to the plant, the company must ensure their continued reliability in the event of a delivery call or other administrative or judicial action that might affect BARI's ground water rights. Holding a long-term lease or other contract entitlement to use District water as mitigation would provide BARI with the assurance it is seeking.

BARI's plant is located on lands served by the District. Indeed, BARI receives and pays District assessments on some 260 minor's inches (5.2 cfs) of water for the 260-acre irrigated field the company owns immediately adjacent to the plant.

As you know, the District operates pursuant to the powers granted it under Title 43 of the Code. In addition, I.C. § 42-5275 authorizes the District to exercise the authorities of a ground water district. Ground water districts, of course, may implement "mitigation plans designed to mitigate any material injury caused by ground water use within the district upon senior water uses within and/or without the district." I.C. § 42-5224(10).

We believe the District has power to enter a contract authorizing BARI to use District water in a mitigation plan, at least so long as the water is not needed by irrigators within the District. To this end, BARI would consider pledging an equivalent portion of BARI's own water entitlement from the District (coupled with a proposal to dry up the appropriate portion of its irrigated agricultural land when mitigation was in effect) so that other District water users would not be affected by the use of BARI's District water for mitigation.

Another way to approach such an arrangement would be to enter a lease between BARI and the District pursuant to I.C. § 43-335 whereby the District would lease BARI a specified amount of water, either natural flow or storage, on a long-term, as-needed basis. The amount of water involved likely would be small. BARI's consumptive use through its plant is only about 11 percent of its pumping, and it is entitled to pump 3,906 acre-feet per year. Accordingly, it is quite possible that only a maximum of about 430 acre-feet could be seen as the amount to be mitigated annually. Because section 43-335 contemplates that the lease be supported by a district landowner's election not to receive a like amount of district water, BARI itself could make this election as to an appropriate portion of its 260 acres. Alternatively, there might be other water users within the District who do not need their allotment of water and would make such an election during a period when mitigation might be necessary.

In summary, as a member of the District and a central component in eastern Idaho's agricultural economy, BARI would appreciate your accommodation in meeting BARI's potential future mitigation needs, as remote as they may be. We believe existing

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P 004/004

Blair J. Grover, Esq.
March 18, 2002
Page 3

statutes provide ample authority for the District to do so, and look forward to meeting with you and the Board to explore how it might best meet both parties' needs.

Sincerely,



Jeffrey C. Fensday

JCF/jf

cc: Anthony Taylor, Esq.
Tim Jensen
Dr. Charles Brundage

AGREEMENT FOR MITIGATION WATER

Idaho Irrigation District ("District") and Busch Agricultural Resources, Inc. ("BARI") enter into the following Agreement, effective November 1, 2002.

WHEREAS, BARI operates a malting plant near Idaho Falls, Idaho, that uses water obtained under two water rights from two wells on the same property as the malting plant;

WHEREAS, BARI owns approximately 260 acres of real property adjacent to the malting plant and located within the District, described more fully in Exhibit A attached hereto and hereinafter referred to as the "Property," on which it grows a mix of potatoes and barley;

WHEREAS, BARI is entitled to the delivery of 259 63 inches (5.19 cfs) of water for use on the Property from the canal system and water rights and contract storage rights held by the District in trust for the benefit of its landowners, hereinafter referred to as "Water Entitlement," and BARI uses the Water Entitlement to irrigate the Property;

WHEREAS, BARI desires to secure a sufficient quantity of water to be used for possible mitigation in the event BARI's existing ground water rights are ever curtailed to fill a senior water right holder's "call" for water, or to comply with order of the Idaho Department of Water Resources, or for any reason;

WHEREAS, the District recognizes BARI is a central participant in Eastern Idaho's agricultural community and desires to ensure the viability of its patron landowners' operations;

THEREFORE, in consideration of the premises and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District and BARI agree as follows:

1. Subject to the condition in paragraph 2 below, BARI shall be entitled, but not obligated, to use any or all of its Water Entitlement from the District for the Property as mitigation water in any mitigation plan BARI might devise. Water so used will not be available to BARI for irrigation.

2. This Agreement excepts storage water unless or until such time as BARI obtains approval from the United States Bureau of Reclamation to include storage water, at which time, BARI shall have the option to also use storage water for mitigation.

3. This Agreement is binding upon the District and BARI, as well as any assigns or successors in interest of the District or BARI.

DISTRICT:

By:

William R. Hampton
Bill Hampton, President

Sonja Tawzer
Sonja Tawzer, Secretary

10-16-02

BARI:

By:

Tim Jensen
Tim Jensen, Plant Manager

AGREEMENT FOR MITIGATION WATER -- 1

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Received Time Mar 8 9:39AM

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Robert B. White

Raymond D. Givens
James A. McClure
Stephanie C. Westermarck
of counsel:

John A. Miller LL.M.
Tad D. Miller, "and"

"Licensed in Oregon only"
"Licensed in Kentucky only"

Via Federal Express

October 15, 2002

Ms. Sonja Tawzer
Idaho Irrigation District
469 E. 14th Street
Idaho Falls, ID 83404

Re: Agreement for Mitigation Water
Our File No. 6096-1

Dear Ms. Tawzer:

Enclosed please find two original Agreements for Mitigation Water which have been signed by Tim Jensen on behalf of Busch Agricultural Resources, Inc. Please arrange to have the Agreements reviewed and executed at the Idaho Irrigation District Board Meeting on October 16, 2002. Once the Agreements have been signed please retain one original for your records and return the second to me in the enclosed self-addressed, stamped envelope.

Thank you for your assistance with this matter. If you have any questions or require any additional information please call.

Sincerely,

Jeffrey C. Fereday

Jeffrey C. Fereday

Enclosures

cc: Blair Grover

JCF:kdt 2002-10-15 Mitigation Plan 2002-10-15 JCF Let to Irrigation District Doc

TAX NOTICE, 2001

Idaho Irrigation District

496 E. 14th St. ♦ Idaho Falls, ID 83404 ♦ 208-522-0451 VED

Received From:

BUSCH AGRI RESOURCES
2 Tim Jensen
PO Box 51628
IDAHO FALLS ID 83405

Givens Pursley, LLP

The law made by the Board of Directors for the year 2001 is as follows:
Operation, Maintenance of the District, District & American Falls Irrigations,
and Reclamation of Indian Lands (Over Assessment)

Minimum Charge (1.5-2.00 per acre-foot)
TOTAL \$ 5.00 per acre
\$ 5.00

2001 TAXES, TREASURER

DESCRIPTION	SECTION LOT	TWP BLOCK	RANGE	ACRES (Approx)	AMOUNT OF TAX
NEA E of IR & J. 12ac REASNA E of IR	2	18	37	99.63	846.86
80ac EZEKASBA & KOWA	2	18	37	80.00	680.00
80ac SHASBA La E/N SHASBA	2	18	37	80.00	680.00
					2,206.86

NOTE: Delinquent Assessments as follows:

YEAR	NOTICE #	AMOUNT	PENALTY 1%	INTEREST 12%	RECORD CERTIFICATE	TOTAL DUE

DUE AS OF DECEMBER 20, 2001
SECOND HALF DUE JUNE 20, 2002

IF NOT PAID THEN CALL FOR AMOUNT DUE WHEN YOU WANT TO PAY

NOTE: Sale of property MUST be reported to the treasurer
Receipt Not Good Until Your Check Has Been Cashied by BANK



2001

IDAHO
IRRIGATION DISTRICT

READ CAREFULLY

Taxes are due and become delinquent on December 20, 2001. If one-half of the taxes due are paid on or before December 20, 2001, the balance will not become delinquent until June 20, 2002. If the first part is not paid as specified on or before December 20, 2001, 2% penalty and interest at the rate of 1% per month or 12% per annum will be added on the full amount of taxes from January 1, 2002.

IDAHO IRRIGATION DISTRICT
496 E. 14th St.
Idaho Falls, ID 83404

Please return the
**Partial or Final
Payment Stub**
along with your payment
in the self-addressed
envelope enclosed for
your convenience.

NOTE: It is the
responsibility of the owner
to notify the Secretary of any
change in ownership, or
any sale of any portion of
your property.

Your check will serve as
your receipt unless
receipt requested.

2001

IDAHO
IRRIGATION DISTRICT

**FINAL PAYMENT
STUB**

Date: _____ 20____

Received From:

Received From:

Total Tax \$	
Penalty	
Interest	
TOTAL \$	

Please return this stub
with final payment.

Receipt Not Good Until Your
Check Has Been Cashied By Bank

2001

IDAHO
IRRIGATION DISTRICT

**PARTIAL PAYMENT
STUB**

Date: _____ 20____

Total Tax \$	
Penalty	
Interest	
TOTAL \$	

Please return this stub
with partial payment.

Receipt Not Good Until Your
Check Has Been Cashied By Bank

Received Time May 8 9:44AM

Exhibit A



IN REPLY REFER TO:

WTR-4.10
SRA-6434

United States Department of the Interior

BUREAU OF RECLAMATION

Snake River Area Office
1359 Hansen Avenue
Burley, Idaho 83318-1821

JUN 20 2002

Mr. Bill Hampton, President
Idaho Irrigation District
496 East 14th
Idaho Falls Idaho 83404Subject: Contract No. 14-06-W-33 Dated December 12, 1952, and the Mitigation
Agreement With GModelo Agriculture, Inc. Dated April 3, 2002

Dear Mr. Hampton:

On April 3, 2002, the Idaho Irrigation District signed an Agreement for Mitigation Water with GModelo Agriculture, Inc. (GModelo). I understand the District agreed that the water appurtenant to GModelo property, including contract storage, could be used as mitigation water under GModelo's mitigation plan to be submitted to Idaho Department of Water Resources with their application for a water permit.

At this time, we are uncertain as to how the mitigation plan will work and how the change in use will occur. None the less, I feel obligated to remind you that under your contract with the United States, the purpose for use is irrigation. Any changes in this use must be analyzed for legal authority to make such changes. If a change in use is authorized, the contract would have to be amended to reflect the new use and charge. We request the contract storage water be eliminated from the agreement for mitigation water, or you contact us to review the legal authority for such use if you choose to leave it in the agreement.

Sincerely,

Stuart L. Stanger
Deputy Area Manager

A Century of Water for the West
1902-2002

Received Time Mar 8 9:51AM