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January 15, 2004

Via E-Mail & U.S. Mail

Ronald D. Carlson
Idaho Department of Water Resources
900 N. Skyline Drive, Ste. A
Idaho Falls, ID 83402

Re: JRG Partners II Mitigation Water Right
GP File No. 4989-7

Dear Ron:

You may recall responding to questions John Marshall and I had last year in our efforts to obtain water right permit no. 22-13220 in the name of JRG Partners II ("JRG"). The permit includes a mitigation condition that requires JRG to either retire water right 31-2327B, a separate irrigation right owned by JRG, or to place this right in the water bank.

In our discussions during the application process, you suggested that JRG place the mitigation right in the water bank in lieu of retiring it to implement your idea of allowing the Water Resource Board to use mitigation rights flexibly to solve future water supply problems. This is explained in Exhibit 3 to the enclosed draft application. (I have not included Exhibits 1 and 2, which are voluminous ownership exhibits not relevant to your review.)

JRG is hesitant to turn right no. 31-2327B over to the Water Resource Board without your review and comment on the enclosed draft application. We would appreciate your thoughts on the format and substance of the application, particularly with regard to the overview of the transaction we describe in Exhibit 3.

Ronald D. Carlson
January 15, 2004
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The Department is requiring JRG to implement its mitigation measure soon. Accordingly, we would appreciate your prompt review of this application. Please contact me at 388-1217 with your comments.

Sincerely,

A handwritten signature in cursive script, reading "Jeffrey C. Fereday".

Jeffrey C. Fereday

JCF:JMM:hcm

Enclosure

S:\clients\4989\7JCF ltr to Carlson re review of water bank app.DOC

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**APPLICATION TO SELL OR LEASE A WATER RIGHT
TO THE WATER SUPPLY BANK**

Name of Seller/Lessor JRG Partners II Phone 408-366-0581

Post Office address Attn: Mr. Gregory S. Young, 22050 Regnart Road, Cupertino, CA 95014

Copy to John M. Marshall, Givens Pursley LLP, P.O. Box 2720, Boise, Idaho 83701

1. DESCRIPTION OF WATER RIGHT

Right evidenced by:

- a. Decree No. 31-2327B Decreed to Kirk and Katherine Egbert
in case of In Re SRBA, Case No. 39576 vs. _____
dated February 02, 2002 in The District Court of the Fifth Judicial District county of Twin Falls
- b. License No. 31-2327B issued by the Idaho Department of
Water Resources.
- c. Permit No. _____ issued by the Idaho Department of Water
Resources.

**2. DESCRIPTION OF PORTION OF RIGHT FOR SALE OR LEASE: (if the entire right is for sale or
lease, show "all on line a. below and skip the remainder of part 2.)**

- a. Amount of water under right: _____ cubic feet per second &/or
_____ acre-feet per annum
- b. Point of diversion: _____ of _____ of Section _____ Township _____ Range _____
_____, B.M. in _____ County.
Additional points _____

c. Place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE1	NW	SE	SW	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

If the right is for irrigation, show the number of acres for the part of the right to be put in the bank

Total number of acres 70

3. ADDITIONAL INFORMATION ABOUT RIGHT, OR PORTION THEREOF, FOR SALE OF LEASE

- a. Explain how the seller/lessor acquired the right, or portion thereof, and attach a copy of the deed to the land to which it is appurtenant or other evidence of ownership of the right. If the right is not recorded in the name of the seller/lessor, attach a copy of the change of ownership for as required by Section 43-248 or 42-1409(6), Idaho Code, together with required documentation.

The Applicant acquired the right through a warranty deed from Kirk and Katherine Egbert, a copy of which is attached as Exhibit 1. The Applicant filed Notice of Change of Ownership on March 11, 2003, copy attached as Exhibit 2. However, the Department's records still indicate that the Egberts own the right.

- b. Describe the frequency of water use under the right, or portion thereof, during the past 5 years. Attach watermaster records, pumping power bills, or other evidence to demonstrate that the right has not been lost through abandonment or forfeiture. (This information is not required if a partial decree has been issued on the right within the last 5 years).

This right was partially decreed on February 2, 2002.

- c. . If the right is from a surface water source, describe the period of year that water is typically available to satisfy the right.

This right is a ground water right

- d. . Describe any other water right with the same purpose and place of use as the right, or portion thereof. Will the present place of use continue to receive water from any source? If so, describe.

This right allows for the irrigation of 70 acres within a 283-acre permissible place of use.

Two other rights are associated with this same 283-acre place of use: 31-7080 and

31-11671. After right 31-2327B is accepted into the Water Bank, the place of use associated with these rights will be reduced by 70 acres to 213 acres as the 70 acres associated with right 31-2327B will no longer be irrigated.

- e. . If the water right is a permit describe the work accomplished toward developing the right..

Not applicable

- f. . If the right to the use of the water or the use of the diversion works or irrigation system is represented by shares of stock in a company or corporation, or if such works or system is owned or managed by an irrigation district, a written consent of the sale of lease must be attached.

Not applicable

4. Remarks See Exhibit C

5. SALE/LEASE AGREEMENT

1. The water right, or portion thereof, described above is offered to the Idaho Water Resources Board:

_____ For sale;

_____ For lease for a period from _____ to _____
(Day, month, year) (Day, month, year)

(the lease period may be shown as "indefinite", if the total duration of lease is unknown); or

X As a gift to the state of Idaho. (with conditions on its rental and use (see Exhibit 3))

2. Show the minimum payment acceptable to the Seller/Lessor. Include the method of determining the minimum payment. The minimum payment may be shown as the "current rental rate".

Not applicable.

I hereby assert that the information contained in this application is true to the best of my knowledge and that I have the authorities necessary to offer the sale or lease of this right to the Idaho Water Resources Board.

The owner/lessor acknowledges the following:

1. Payment to the owner/lessor is contingent upon the sale or rental of the right from the bank.
2. While a right is in the bank, the owner of the right may not use the right even if the right is not rented.
3. A right accepted into the bank stays in the bank until the Board releases it or until the lease term expires.
4. While a water right is in the bank, forfeiture provisions are stayed.
5. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right.

Date _____

Signature _____

FOR DEPARTMENT USE ONLY

Received by _____ Date _____ Preliminary Check by _____

Watermaster recommendation requested on _____ Received _____

Recommended for _____ approval _____ denial by _____

EXHIBIT 3

NARRATIVE IN SUPPORT OF WATER BANK APPLICATION

Water Right Number 31-2327B

Applicant: JRG Partners II ("JRG")

On August 9, 2002, the Idaho Department of Water Resources approved JRG's Application for Permit No. 22-13220 (the "Permit"). Condition No. 7 of the Permit precludes diversions under new water right 22-13220 "until the applicants provide mitigation by formally placing ground water right no. 31-2327B into the Water Supply Bank or notifying the department that they have permanently abandoned Right 31-2327B." This Water Bank Application (the "Application") is meant to comply with Condition No. 7.

JRG acquired Right 31-2327B (the "Mitigation Water Right") specifically to cease pumping and using it to mitigate for JRG's new ground water right 22-13220. With this Application, JRG proposes to mitigate, and comply with Condition No. 7, by placing the Mitigation Water Right in the Idaho Water Resource Board's Water Supply Bank (the "Water Bank") in lieu of retiring or permanently abandoning it. While JRG also is willing to retire and abandon the Mitigation Water Right, Department Officials have suggested that placing it in the Water Bank avoids forfeiture and also may allow the State to use it to mitigate for injury to other water rights, potentially those unrelated to JRG's water uses, in times of water shortage. For example, Department officials have suggested that, once the Mitigation Water Right is in the Water Bank, the Water Resource Board could seek departmental approval to pump water under the Mitigation Water Right from an aquifer where sufficient stored water exists if doing so is effective in enhancing water supplies in areas in deficit and does not injure any other water rights.

By selecting the Water Bank option, JRG's Application is intended to assist in achieving maximum State flexibility in water administration. However, the reason for doing so, as required by the Permit, is solely to mitigate the effects of pumping and using water pursuant to JRG's new ground water right 22-13220. Any use of the Mitigation Water Right after it is placed in the Water Bank must be consistent and not interfere with this specific mitigation purpose. Thus, while JRG agrees that the State may use the Mitigation Water Right to achieve mitigation in ways that are not limited to simply holding the right, JRG requires that its placement in the Water Bank be expressly conditioned to assure that any future use of the Mitigation Water Right will not impair the right to divert ground water and place it to beneficial use under Right 22-13220 pursuant to the terms of the Permit. If the Water Board and the Department cannot assure that the Mitigation Water Right will be diverted and used only in ways that guarantee it will fulfill this primary mitigation purpose, then the Mitigation Water Right must be held in the Bank solely as mitigation for Right 22-13220 without further diversion or use.