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JUL 20 2012

DEPARTMENT OF
WATER RESOURCES

Adrienne Maydole
Watermaster
Sub District No 72D
3001 East Fork Road
PO 151
Clayton Id. 83227

Nick Miller
Watermaster
Water District No. 170
3001 East Fork Road
PO 151
Clayton Id. 83227

July 10, 2012

BY CERTIFIED MAIL

Dear Ms. Maydole and Mr. Miller

We are in receipt of your letter of June 25, 2012 entitled;

"Notice for Termination of Water Delivery"

Please take this letter as constructive notice that we are paying these water fees under formal protest. The creation of the water district, the seizure of our rights and the taking of our own water under government duress is specifically unconstitutional under the U.S. constitution and under several statutes of the Idaho constitution. (See notations below) We are grandfathered with regards to our rights as we have owned this property prior to the creation of the Water District and object to the creation of an agency that charges us for our own water without just compensation. Numerous other property owners have also indicated to us their agreement with this letter.

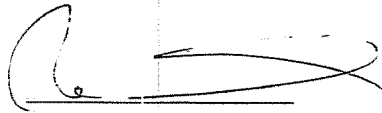
This water has been running through this property for more than a millennium and we have owned this property and utilized the water with the other owners without issue. There was never any problem that needed to be solved through the creation of a water master. We do not understand the purpose of these fees other than to pay for government employees whose function is not needed. We ask rhetorically, what problem does this solve, what purpose does this serve?

However, we are also pragmatic enough to realize that the costs to litigate this are in excess of any benefit to us at this time. Consequently our litigation will have to wait until the accumulated charges equal the potential return from advocating our position and the position of other property owners that also object to these assessments and abridgement of rights. Consequently, counsel has advised to mark our payments "under protest"

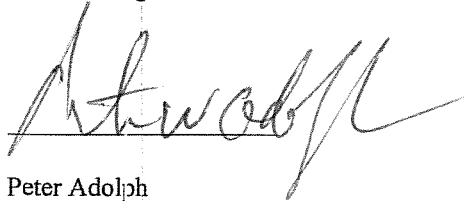
Please rest assured that if you were to cut off our water, we would immediately instigate litigation to assert claims against you arising from your actions on an aggregate basis regardless of the economics of such an action. We will not hesitate to take all necessary actions including but not limited to pursuing all legal remedies. Please note as follows:

The Fifth Amendment's guarantee "that private property shall not be taken without just compensation was designed to bar Government from forcing some people alone to bear burdens which, in all fairness and justice, should be borne by the public as a whole."

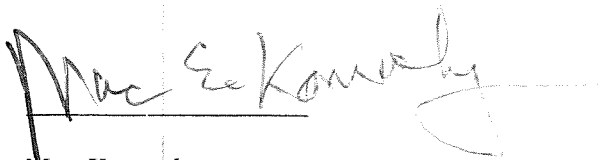
The just compensation required by the Constitution is that which constitutes "a full and perfect equivalent for the property taken." Originally the Court required that the equivalent be in money, not in kind, but more recently has cast some doubt on this assertion. Just compensation is measured "by reference to the uses for which the property is suitable, having regard to the existing business and wants of the community, or such as may be reasonably expected in the immediate future," . . . [but] "mere possible or imaginary uses or the speculative schemes of its proprietor, are to be excluded." The general standard thus is the market value of the property, i.e., what a willing buyer would pay a willing seller. If fair market value does not exist or cannot be calculated, resort must be had to other data which will yield a fair compensation.



Frank Berlage



Peter Adolph



Marc Komorsky

[Footnote 192] *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 326 (1893). The owner's loss, not the taker's gain, is the measure of such compensation. *United States ex rel. TVA v. Powelson*, 319 U.S. 266, 281 (1943); *United States v. Miller*, 317 U.S. 369, 375 (1943); *Roberts v. New York City*, 295 U.S. 264 (1935). The value of the property to the government for its particular use is not a criterion. *United States v.*

Chandler-Dunbar Co., 229 U.S. 53 (1913); United States v. Twin City Power Co., 350 U.S. 222 (1956). Attorneys' fees and expenses are not embraced in the concept. Dohany v. Rogers, 281 U.S. 362 (1930).

[Footnote 190] Backus v. Fort Street Union Depot Co., 169 U.S. 557, 573, 575 (1898).

[Footnote 191] Armstrong v. United States, 364 U.S. 40, 49 (1960). "The political ethics reflected in the Fifth Amendment reject confiscation as a measure of justice." United States v. Cors, 337 U.S. 325, 332 (1949). There is no constitutional prohibition against confiscation of enemy property, but aliens not so denominated are entitled to the protection of this clause. Compare United States v. Chemical Foundation, 272 U.S. 1 (1926) and Stoeck v. Wallace, 255 U.S. 239 (1921), with Silesian- American Corp. v. Clark, 332 U.S. 469 (1947), Russian Fleet v. United States, 282 U.S. 481 (1931), and Guessefeldt v. McGrath, 342 U.S. 308 (1952).

[Footnote 193] Van Horne's Lessee v. Dorrance, 2 U.S. (2 Dall.) 304, 315 (C.C. Pa. 1795); United States v. Miller, 317 U.S. 369, 373 (1943).

[Footnote 194] Regional Rail Reorganization Act Cases, 419 U.S. 102, 150 - 51 (1974).

[Footnote 195] Chicago B. & Q. R.R. v. Chicago, 166 U.S. 226, 250 (1897); McGovern v. City of New York, 229 U.S. 363, 372 (1913). See also Boom Co. v. Patterson, 98 U.S. 403 (1879); McCandless v. United States, 298 U.S. 342 (1936).

[Footnote 196] United States v. Miller, 317 U.S. 369, 374 (1943); United States ex rel. TVA v. Powelson, 319 U.S. 266, 275 (1943). See also United States v. New River Collieries Co., 262 U.S. 341 (1923); Olson v. United States, 292 U.S. 264 (1934); Kimball Laundry Co. v. United States, 338 U.S. 1 (1949). Exclusion of the value of improvements made by the Government under a lease was held constitutional. Old Dominion Land Co. v. United States, 269 U.S. 55 (1925).

[Footnote 197] United States v. Miller, 317 U.S. 369, 374 (1943).

[Footnote 198] United States v. 564.54 Acres of Land, 441 U.S. 506 (1979) (condemnation of church-run camp; United States v. 50 Acres of Land, 459 U.S. 24 (1984) (condemnation of city-owned landfill). In both cases the Court determined that market value was ascertainable.

[Footnote 199] United States v. Felin & Co., 334 U.S. 624 (1948); United States v. Commodities Trading Corp., 339 U.S. 121 (1950). And see Vogelstein & Co. v. United States, 262 U.S. 337 (1923).

[Footnote 200] United States v. Cors, 337 U.S. 325 (1949). And see United States v. Toronto Navigation Co., 338 U.S. 396 (1949).

[Footnote 201] Almota Farmers Elevator & Warehouse Co. v. United States, 409 U.S. 470 (1973). The dissent argued that since upon expiration of the lease only salvage value of the improvements could be claimed by the lessee, just compensation should be limited to that salvage value. *Id.* at 480.

[Footnote 202] United States v. Fuller, 409 U.S. 488 (1973). The dissent argued that the principle denying compensation for governmentally created value should apply only when the Government was in fact acting in the use of its own property; here the Government was acting only as a condemnor. *Id.* at 494.

[Footnote 203] Danforth v. United States, 308 U.S. 271, 284 (1939); Kirby Forest Industries v. United States, 467 U.S. 1 (1984) (no interest due in straight condemnation action for period between filing of notice of lis pendens and date of taking).

[Footnote 204] United States v. Klamath Indians, 304 U.S. 119, 123 (1938); Jacobs v. United States, 290 U.S. 13, 17 (1933); Kirby Forest Industries v. United States, 467 U.S. 1 (1984) (substantial delay between valuation and payment necessitates procedure for modifying award to reflect value at time of payment).

[Footnote 205] Albrecht v. United States, 329 U.S. 599 (1947).

[Footnote 206] Henkels v. Sutherland, 271 U.S. 298 (1926); see also Phelps v. United States, 274 U.S. 341 (1927).

[Footnote 207] United States v. Welch, 217 U.S. 333 (1910).

[Footnote 208] United States v. General Motors, 323 U.S. 373 (1945).

[Footnote 209] Bauman v. Ross, 167 U.S. 548 (1897); Sharp v. United States, 191 U.S. 341, 351-52, 354 (1903). Where the taking of a strip of land across a farm closed a private right-of-way, an allowance was properly made for the value of the easement. United States v. Welch, 217 U.S. 333 (1910).

[Footnote 210] Bauman v. Ross, 167 U.S. 548 (1897).

[Footnote 211] Monongahela Navigation Co. v. United States, 148 U.S. 312, 326 (1893).

[Footnote 212] Reichelderfer v. Quinn, 287 U.S. 315, 318 (1932).

[Footnote 213] Lynch v. United States, 292 U.S. 571, 579 (1934); Omnia Commercial Corp. v. United States, 261 U.S. 502, 508 (1923).

[Footnote 214] James v. Campbell, 104 U.S. 356, 358 (1882). See also Hollister v. Benedict Mfg. Co., 113 U.S. 59, 67 (1885).

[Footnote 215] Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984).

[Footnote 216] Monongahela Navigation Co. v. United States, 148 U.S. 312, 345 (1983).

[Footnote 217] Omnia Commercial Co. v. United States, 261 U.S. 502 (1923).

[Footnote 218] International Paper Co. v. United States, 282 U.S. 399 (1931).

[Footnote 219] Armstrong v. United States, 364 U.S. 40, 50 (1960).

[Footnote 220] Duke Power Co. v. Carolina Env'tl. Study Group, 438 U.S. 59, 88 n.32 (1978).

[Footnote 221] Bowen v. Public Agencies Opposed to Social Security Entrapment, 477 U.S. 41 (1986).

[Footnote 222] "Congress is not, by virtue of having instituted a social welfare program, bound to continue it at all, much less at the same benefit level." Bowen v. Gilliard, 483 U.S. 587, 604 (1987).

[Footnote 223] Mitchell v. United States, 267 U.S. 341 (1925); United States ex rel. TVA v. Powelson, 319 U.S. 266 (1943); United States v. Petty Motor Co., 327 U.S. 372 (1946). For consideration of the problem of fair compensation in government-supervised bankruptcy reorganization proceedings, see New Haven Inclusion Cases, 399 U.S. 392, 489-95 (1970).

[Footnote 224] United States v. General Motors Corp., 323 U.S. 373, 382 (1945).

[Footnote 225] United States v. General Motors Corp., 323 U.S. 373 (1945). In Kimball Laundry Co. v. United States, 338 U.S. 1 (1949), the Government seized the tenant's plant for the duration of the war, which turned out to be less than the full duration of the lease, and, having no other means of serving its customers, the laundry suspended business for the period of military occupancy; the Court narrowly held that the Government must compensate for the loss in value of the business attributable to the destruction of its "trade routes," that is, for the loss of customers built up over the years and for the continued hold of the laundry upon their patronage. See also United States v. Pewee Coal Co., 341 U.S. 114 (1951) (in temporary seizure, Government must compensate for losses attributable to increased wage payments by the Government).

[Footnote 226] United States v. Miller, 317 U.S. 369, 375-76 (1943). "On the other hand," the Court added, "if the taking has in fact benefitted the remainder, the benefit may be set off against the value of the land taken." *Id.*

[Footnote 227] United States v. Jones, 109 U.S. 513 (1883); Bragg v. Weaver, 251 U.S. 57 (1919).

[Footnote 228] 28 U.S.C. Sec. 1403. On the other hand, inverse condemnation actions (claims that the United States has taken property without compensation) are governed by

SUB-DISTRICT NO. 72D

Clayton Area Sub-district of Water District No. 170

SUB-DISTRICT NO. 72D
3001 EAST FORK ROAD
PO BOX 151
CLAYTON, ID 83227

Watermaster - Adrienne Maydole
Treasurer - Melodie Baker

Statement

To:
FRANK BERLAGE BERLAGE, FRANK R AND THE FRANK R BERLAGE PO BOX 1771 LA JOLLA CA 92038

Date
5/21/2012

Amount Due	Amount Enc.
\$97.01	

Please return the upper portion with your payment...retain lower portion for your records

Date	Transaction	Amount	Balance
04/19/2012	Balance forward		96.14
05/21/2012	INV #223B. Due 05/21/2012. --- Fin Chg \$0.87	0.87	97.01
<p>If you have already paid your assessment before April 19, please disregard this statement.</p> <p>4e. RESOLUTION OF DISTRICT PAYMENT TERMS It is herewith resolved that the following payment terms be put into effect:</p> <p>1. Assessments shall be payable within thirty (30) days of the billing date. The postmark date will be considered the date of payment. Accounts not paid within thirty (30) days shall be charged in accordance with Idaho Code § 42-617 which provides for a late fee of 10% of the amount due and interest of 1% per month for each month.</p> <p>2. The Watermaster will terminate water delivery to any water user whose assessments are not paid in full within sixty (60) days of the billing date and will not resume delivery until that user's amount due is paid in full.</p>			

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.87	0.00	96.14	0.00	0.00	\$97.01

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

water
Mr. Nick Miller, master
water District #170
Upper Salmon River Basin
322 E. Front St.
Boise, ID 83720

2. Article Number

(Transfer from service label)

7011 2970 0002 1114 4318

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

S F T r r e e

C. Date of Delivery

7/20/20

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

PO BOX 83720
Boise ID 83720-
0098

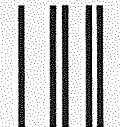
3. Service Type

☐ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Adolph
936 morning Glory Ct.
Hamdenburg, VA
22802