

SANDOVAL COUNTY ADMINISTRATIVE OFFICES



BOARD OF COUNTY COMMISSIONERS

June 29, 2009

David Maniatis
RECORP
7835 E. Redfield Road, Ste. 102
Scottsdale, AZ 85260

JUL 01 2009

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JUAN R. VIGIL
County Manager

Dear David:

Thank you for your letter of June 12, 2009. Let me take this opportunity to bring you up to date on recent activities related to water in the Rio West area. The County has contracted with a team of engineers to evaluate the water treatment options for Well 6. This is expected to be a six-month process and a critical pre-requisite for determining the feasibility of the project and the design phase. Sandoval County has acquired funding from the State's Water Trust Board to pursue this next phase.

Water from the wells was flowed during October, 2008 to determine an estimated amount of the source waters. Preliminary evaluation of this test suggests that the source area may be from just over 500,000 acre feet to just over 2,500,000 acre feet of brackish water; further, drilling and testing is required to determine a more precise estimate of the total water we may be able to access. Of this water, perhaps as much as 50% may not be recoverable. The process of making the water potable will further reduce the total amount, and that percentage will be more clearly defined in our current testing stages and, ultimately, by the design and efficiency of the desalination processes.

While the existing wells are listed as production wells in the Office of the State Engineer (OSE), the construction was an exploratory design and, as such, is not optimized for recovery of water on a utility scale, with or without installation of a pump. As you know, the wells flow artesian at the surface, so we have not had to install pumping equipment to facilitate the testing to date. To support development of the area, several things need to happen: 1) we need assurance that we have sufficient water to support the levels of development proposed; 2) we need to ensure we can sustain a level of flow which may require installation of pumping equipment and/or expansion of the capacity of the well itself; and, 3) the water will require treatment in the desalination facility yet to be designed or built.

I have sent you the New Mexico Constitution provisions (Article XVI), regarding the Appropriation (section 2) and Beneficial Use (section 3) of water. The State's water rights are for the "use of water," and are not ownership rights. Because there has been a recent change in the Statute exempting the deep waters in New Mexico from control by the OSE (72-12-25 NMSA), new language has not yet been written that would clarify the status of our claims. The OSE has acknowledged our project as being grandfathered under the provisions of the previous Statute; overall, this is a good thing for both Aperion and the County. The grandfathering is based on the dates of the Notices of Intent submitted to the OSE, and the fact that the County has wells in the ground, while most other filers of Notices of Intent for these waters do not have wells.

DEFENDANT'S
EXHIBIT

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SANDOVAL COUNTY ADMINISTRATIVE OFFICES

With regard to the 18,000 acre feet per year, it is clear in the Memorandum of Agreement, Section III (Agreement), paragraphs 2 and 9, that Aperion is guaranteed 18,000 acre feet of water per year (paragraph 2). Further, that portion of the 18,000 acre feet of water not used by Aperion in Rio West will be available to the County, as the County has the right of first refusal (paragraph 9). Your attention is directed to the Development Agreement, page 6, paragraph 2.1.1, for additional provisions applicable to the 18,000 acre feet of water

The capital costs for the construction of the Desalination Facility are to be funded through the formation of a Public Improvement District, or PID (see paragraph 2.1.1 of the Development Agreement, page 6). Based on current estimates, costs of the treatment facility, associated wells and collection systems may be approximately \$87,000,000.00 (current year dollars). The developer has obligated himself to petition the County for the formation of this PID. The County has contributed all the monetary costs of the resource development to date. The above reference (2.1.1) addresses the rights to the 18,000 acre feet of water: "The County shall retain the rights to a portion of the 18,000 acre feet of water, based on the proportion of County participation in the cost of drilling any exploratory wells." Based on the County's contributions thus far, that "portion" would translate as the County retaining the rights to the entire 18,000 acre feet.

As settled upon in the Development Agreement (paragraphs 3 and 5 are germane), Aperion / Recorp may be granted consideration (potentially as offsets for taxes, etc.) for Rights-of-Way and Easements conveyed to the County for roadways and utility development properties (including, but not limited to well sites, desalination properties, and utility easements, etc.) As these provisions exist in current agreements between Sandoval County and Aperion / Recorp, there is no compelling requirement for re-negotiation or modification at this time.

The County has provided a Grant of Easement document for your consideration that will allow access to continue work in our joint interests. In order to proceed with the project, we strongly urge that you sign and return the easement extension. Sandoval County looks forward to working with you in pursuit of our common goals in this joint venture partnership.

Sincerely,



Juan R. Vigil
County Manager