

O'Donnell, Mary Beth



CP16#0504

From Orjiako, Oliver
Sent Tuesday, February 03, 2015 3:37 PM
To Euler, Gordon
Cc O'Donnell, Mary Beth
Subject FW: Orjiako Ltr re Pioneer North Property
Attachments LDM-20150203-152906.pdf

Follow Up Flag Follow up
Flag Status Flagged

FYI

-----Original Message-----

From Jamie Howsley [mailto:jamie_howsley@jordanramis.com]
Sent Tuesday, February 03, 2015 3:34 PM
To Madore, David, Stewart, Jeanne, Mielke, Tom, Orjiako, Oliver, Cook, Christine
Cc Steve Stuart, Ron Onslow, Jamie Howsley
Subject Orjiako Ltr re Pioneer North Property

Resending with PDF attachment

Dear David, Tom and Jeanne

As you know our office is working for the property owners desiring to bring their properties into the Ridgefield UGA. The properties in question before the Council tonight on consent. Our office has been working very hard on a legal analysis for the properties and had hoped to finish it this week. The attached letter is meant to accompany the more complete analysis that we are producing. However because the request is going to be before the Council tonight I thought I would bring it to your attention now.

The Council may be aware that a report from Globalwise suggests that this property does not meet the definition of "long term commercially significant agriculture." One of the critical points in the Globalwise report is that the land as it is currently presented does not meet or cannot meet this definition. The attached letter strikes directly at the issue of whether additional irrigation can bring forward revenue from crops.

As you can see from the letter prepared by one of our firm's water lawyers, the site does not or is not likely to obtain water rights to irrigate the property in a more intensive capacity because of its location.

Again we ask that the Council remove this item from the consent agenda tonight to let the additional information from the Property owner and City be submitted so it can appropriately be evaluated.

Best,

Jamie

JAMES D HOWSLEY | Attorney
Jordan Ramis PC | Attorneys at Law
WA Direct 360-567-3913
OR Direct 503-598-5592
OR Main 503-598-7070

CONFIDENTIALITY NOTICE Please do not read, copy, or disseminate this communication unless you are the intended addressee. This e-mail may contain confidential and/or privileged information intended only for the addressee. If you have received this in error, please notify me via return e-mail.

TAX ADVICE NOTICE IRS Circular 230 requires us to advise you that if this communication or any attachment contains any tax advice, the advice is not intended to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties or (ii) promoting, marketing, or recommending any transaction, plan, or arrangement. A taxpayer may rely on professional advice to avoid tax-related penalties only if the advice is reflected in a comprehensive tax opinion that conforms to stringent requirements. Please contact us if you have any questions about this requirement, or would like to discuss preparation of an opinion that conforms to these IRS rules.

-----Original Message-----

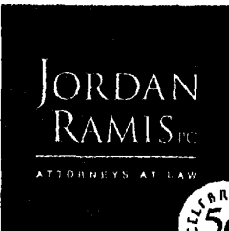
From: Lisa McKee
Sent: Tuesday, February 03, 2015 3:31 PM
To: Jamie Howsley
Subject: Orjiako Ltr re Pioneer North Property

Here you go

LISA McKEE | Legal Assistant
Jordan Ramis PC | Attorneys at Law

-----Original Message-----

From: "Lisa McKee" [<mailto:lisa.mckee@jordanramis.com>]
Sent: Tuesday, February 03, 2015 3:30 PM
To: Lisa McKee
Subject: Attached Image



Lake Oswego
Two Centerpointe Dr., 6th Floor
Lake Oswego, OR 97036
503-698-7070
www.jordanramis.com

Vancouver
1499 SE Tech Center Pl., #380
Vancouver, WA 98683
360 567 3900

Bend
360 SW Bond St Suite 400
Bend, OR 97102
541 647 2970

VIA E-MAIL

February 3, 2015

Oliver Orjiako
Clark County Planning Director
PO Box 5000
Vancouver WA 98666-50001

Re **Pioneer North Property / Water Availability Analysis**
Our File No 50734-38971

Dear Mr Orjiako

I am writing to provide comments concerning the availability of surface and groundwater to the above referenced 18 adjacent parcels. Consisting of approximately 110 acres in total, these parcels are located just north of the City of Ridgefield's UGB within the Allen Canyon Creek drainage of the Lower Lewis River Basin (the "Property"). My comments below are based primarily on documents obtained from the Department of Ecology's ("DOE") web site, applicable Washington state statutes, and applicable regulations promulgated by DOE governing the use of surface and ground water within the Lower Lewis River Basin. As stated further below, an initial review of documents addressing the use and extent of surface and ground water in the area indicates that only nominal amounts of water resources are available for agricultural production on the Property.

Existing Water Rights of Record

According to DOE records, there are potentially two irrigation water rights of record associated with the Property. The two irrigation water rights consist of one ground water right identified as Certificate No 1929 (authorizing the irrigation of 13.5 acres in the N1/2 S1/2 SE 1/4 of Section 17) and one surface water right identified as Certificate No 3946 (authorizing the irrigation of six acres total in the S1/2 S1/2 SE 1/4 of Section 17 and the N1/2 S1/2 SE 1/4 of Section 17), copies of which are attached as *Appendix A*. Whether either of these water rights (collectively, the "Water Rights") are susceptible to claims of statutory forfeiture for lack of use as required by law cannot be determined at this time. However, if assuming both of these water rights remain viable as a matter of law, as a matter of fact, they do not provide viable amounts of water for irrigation of the Property.

Although the Water Rights only authorize the irrigation of 18.5 acres in total — which represents only approximately 15% of the Property — the amount of irrigated acreage on the Property is apt to be much less. By example only, of the six acres of land authorized for irrigation under Certificate No 3946, not all of this acreage is located within the boundaries of the Property. Further, surface water is often not available for diversion under Certificate No 3946 for much of the irrigation season and, therefore,

Oliver Orjiako
February 3, 2015
Page 2

cannot be considered a reliable source of irrigation water. Such a condition generally also applies to most other irrigation water sources within the Allen Canyon Creek watershed including connected ground water withdrawals that also often produce at rates too low for commercial application.¹

Availability of New Water Supplies

Applicable DOE regulations significantly limit the ability to appropriate new water supplies within the Lewis River Basin. In its general assessment, DOE states that *all* streams within the basin are closed to new appropriations, but for specified reservations of water allocated for future domestic uses. See generally, DOE WRIA 27 assessment, DOE Pub No 11-11-031. Such restrictions have been imposed due to the lack of water to satisfy existing senior water rights in addition to those instream flow levels established to benefit protected fish species. These restrictions also apply to any new approval of ground water rights to the extent that such withdrawals would be connected to and ultimately adversely affect surface flows. However, while such restrictions do cover much of the entire basin, they do not necessarily reach to the development of ground or surface water within the very small watershed where the Property is located.

The Lower Lewis River basin is closed to any new appropriations of surface or ground water from River Mile (RM) 7.1 up to the outfall of the Merwin Dam. See, WAC 173-527-070(1). The Property, however, is located within the small watershed of Allen Canyon Creek which empties into the Lewis River at approximately RM 2.0. Therefore, at least on paper, it is possible that *new* water rights authorizing the development of additional surface or ground water could be sought for use on the Property. Although, for reasons stated above, conditions in the drainage appear to lend to a much less promising conclusion. This overall tendency of low water availability is also evidenced by the very small size of the Allen Canyon Creek itself, which possesses an average width throughout its length calculated to be less than 5 feet wide.²

In addition, any ability to divert more surface or connected ground water within the Allen Canyon Creek watershed may be further constrained by the presence of protected fish species. As of the date of this letter, the creek is designated as critical habitat for LCR steelhead and remains subject to potential designation as *critical habitat* for LCR salmon.³ Thus, any pursuit of *new* additional surface or connected ground water rights in the Allen Canyon Creek watershed in amounts sufficient to irrigate more of the Property stand to be even further limited (if that's possible) by additional instream flow restrictions for the benefit of listed species.

¹ Phone conference with DOE Staff, February 2, 2015

² *Discovery Corridor Wastewater Transmission System, Wetland Mitigation/Bank Use Plan*, p 9, Bergen ABAM (Sept 30, 2013)

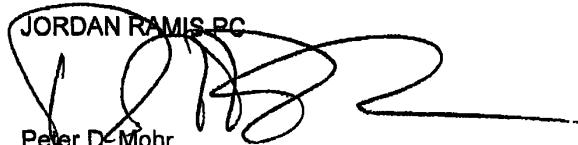
³ *Shoreline Inventory and Characterization*, Chp 8, 21, DOE (June 2010)

JORDAN RAMIS PC
ATTORNEYS AT LAW

Oliver Orjiako
February 3, 2015
Page 3

Please feel free to contact me with any comments or questions

Sincerely,

JORDAN RAMIS PC


Peter D. Mohr
Admitted in Oregon, Washington, and Colorado
Peter.Mohr@jordanramis.com
OR Direct Dial (503) 598-5529

Enclosure

Appendix A

1929

Certificate Record No. 4 Part No. 1929-A

State of Washington, County of Clark.

Certificate of Ground Water Right

Issued in accordance with the provisions of Chapter 122, Laws of Washington for 1929, and amendments thereto, and the rules and regulations of the State Supervisor of Water Resources thereunder.

This is to Certify That PAUL M. BELLOWE and MARIÓN G. BELLOWE

of RIDGEFIELD, Washington, has made proof

to the satisfaction of the State Supervisor of Water Resources of Washington, of a right to the use of

the ground waters of a well

located within the NE 1/4 of SE 1/4 of Sec. 17, Twp. 4 N., Rge. 1 E.W.M.

for the purpose of irrigation and domestic supply

under and subject to provisions contained in Ground Water Permit No. 2889

issued by the State Supervisor of Water Resources and that said right to the use of said ground waters has been perfected

in accordance with the laws of Washington, and is hereby confirmed by the State Supervisor of Water

Resources of Washington and entered of record in Volume 6 at page 1929-A

that the right hereby confirmed dates from May 2, 1928

that the quantity of ground water under the right hereby confirmed for the purposes aforesaid, is limited to an amount actually

beneficially used for said purposes, and shall not exceed 60 gallons per minute per acre

and for domestic supply for irrigation of 25 acres.

A description of the lands to which such ground water right is appurtenant, and the place where such water is put to beneficial use, is as follows:

NE 1/4 of SE 1/4 of Sec. 17, Twp. 4 N., Rge. 1 E.W.M.

The right to the use of the ground water aforesaid hereby confirmed is restricted to the lands or place of use herein described, except as provided in Sections 6 and 7, Chapter 122, Laws of 1929.

WITNESS the seal and signature of the State Supervisor of Water Resources signed this

22nd day of August, 1929.

EMILY JUNG RAY State Supervisor of Water Resources

[Signature] State Supervisor of Water Resources

CERTIFICATE OF SURFACE WATER RIGHT

(to be read in connection with the provisions of the laws of Washington for the use of surface waters thereof, and the rules and regulations thereunder)

This is to certify that G. R. BURRIS

of RIDGEFIELD, State of Washington, has made
proof to the satisfaction of the State Supervisor of Hydraulics of Washington, of a right to the use of
the waters of AN UNNAMED STREAM, a tributary of LOVELL RIVER,
with point or points of diversion within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of
Sec. 17, Twp. 4 N., R. 1 E., W. M., under Appropriation Permit No. 6570
issued by the State Supervisor of Hydraulics, and that said right to the use of said waters has been per-
fected in accordance with the laws of Washington, and is hereby confirmed by the State Supervisor of
Hydraulics of Washington and entered of record in Volume B, at Page 2846, on the 7th
day of February, 1951; that the priority date of the right hereby confirmed is
August 2, 1942; that the amount of water under the right hereby confirmed,
for the following purpose is limited to an amount actually beneficially used and shall not exceed
0.05 of a cubic foot per
second for the purpose of
irrigation of 6 acres.

A description of the lands under such right to which the water right is appurtenant, and the
place where such water is put to beneficial use, is as follows:

The SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 17 and NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 20,
all in Twp. 4 N., Rge. 1 E.W.N.

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of
use herein described, except as provided in Sections 6 and 7, Chapter 122, Laws of 1929.

WITNESS the seal and signature of the State Supervisor of Hydraulics affixed this 7th day
of FEBRUARY, 1951.

Chas. P. ...
State Supervisor of Hydraulics

ENGINEER'S SEAL
[Signature]