

February 27, 2009

VIA E-MAIL AND FIRST CLASS MAIL

Stuart L. Somach
Somach, Simmons & Dunn
Hall of Justice Building
813 Sixth Street, Third Floor
Sacramento, CA 95814

Re: River Garden Farms: 2009 Water Transfer to Drought Water Bank

Dear Stuart:

I am writing to you in your capacity as special counsel to the County of Yolo. As we discussed previously, my client River Garden Farms (RGF) proposes to transfer water during 2009 to the Department of Water Resources' Drought Water Bank. The proposed transfer will include the transfer of up to 3,500 acre-feet of surface water that will be made available through groundwater substitution pumping from wells located on RGF land. The purpose of this letter is to propose an approach for addressing the requirements of Yolo County Ordinance No. 1195 in connection with the proposed 2009 transfer.

As you will recall, when RGF undertook a groundwater substitution transfer to Metropolitan Water District of Southern California in 2003, RGF worked cooperatively with the County of Yolo to address the County's interests relating to groundwater substitution transfers. RGF recognizes that the County has significant and legitimate interests in fostering water management practices that avoid the potential adverse effects of overdraft of the groundwater resources in the County and in maximizing the utilization of groundwater and surface water resources within the County.

To ensure that the 2003 transfer would not have adverse effects on the County's groundwater resources and to satisfy the intent of Yolo County Ordinance No. 1195, RGF conducted the transfer in voluntary compliance with the guidelines developed by the California Department of Water Resources, commonly referred to as the "DWR White Paper." The essence of the DWR White Paper with respect to groundwater substitution transfers is that wells need to be chosen so as to avoid an adverse impact on adjacent wells. DWR requires that the proponent of a water transfer establish a groundwater monitoring program to detect any problems at neighboring wells at the earliest possible time and also develop a mitigation program that is designed to ameliorate any problems that might develop. These requirements were made part of the State Water

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Resources Control Board's order approving the 2003 transfer, and the subsequent monitoring report prepared by DWR shows that the groundwater basin recovered from the effects of the 2003 transfer the following spring. A copy of the report is attached for your reference. In addition, RGF contributed \$5,000 to the County from a trust funded by Metropolitan Water District of Southern California for the transfer, in support of the County's undertaking groundwater monitoring and data collection.

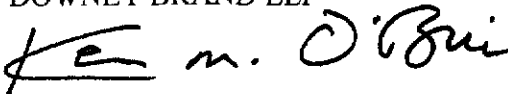
RGF wishes to actively cooperate with the County in the development of an effective groundwater management program for Yolo County. In this regard, Reclamation District 787, which covers all of the RGF lands, retained Luhdorff & Scalmanini Consulting Engineers to develop amendments to the RD 787 groundwater management plan previously adopted pursuant to Water Code section 10750 *et seq.* RD 787 adopted these amendments in 2005.

Based on the foregoing, RGF respectfully requests that the County approve the groundwater substitution transfer of up to 3,500 acre feet of water from RGF to DWR's Drought Water Bank during 2009, under the same terms and conditions applied to the 2003 transfer, as described above. It would be our understanding that such approval would satisfy any permit requirements that may apply to the 2009 transfer under Yolo County Ordinance No. 1195. If RGF's understanding is inaccurate in light of any recent amendments to Ordinance No. 1195, RGF respectfully requests guidance on how the County would like to proceed. RGF further reserves all rights regarding the authority of the County to regulate RGF's extraction, use or transfer of water.

We look forward to working with the County. Please feel free to call Marty Stripling (530) 735-6274 or myself if you have any questions.

Very truly yours,

DOWNEY BRAND LLP



Kevin M. O'Brien

KMO

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Enclosure



SOMACH SIMMONS & DUNN

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March 9, 2009

**VIA E-MAIL
AND FIRST CLASS MAIL**

Kevin M. O'Brien
Downey, Brand
621 Capitol Mall, 18th Floor
Sacramento, CA 95814-4686

Re: River Garden Farms: 2009 Water Transfers to Drought Water Bank

Dear Kevin:

Yolo County has reviewed your February 27, 2009 letter regarding the above referenced matter, as well as the materials enclosed with that letter. Moreover, the County believes that making water available to address current drought conditions is in the public interest. As you have noted, however, the proposed transfer would implicate Yolo County Ordinance No. 1195. In your letter you propose that River Garden Farms provide "mitigation" funds associated with the transfer to meet the obligations and concerns that underlie the Ordinance. I have discussed the matter with the Board of Supervisors who authorized the following response.

The County of Yolo is in the process of reviewing and, if appropriate, will amend or otherwise revise Yolo County Ordinance No. 1195 dealing with the Regulation of the Extraction and Exportation of Groundwater from Yolo County. The purpose of this effort would be to generally further the declaration of findings and purposes found at Section 10-7.101 of Ordinance No. 1195. In particular, the County intends to focus on the permitting and export provisions within Ordinance No. 1195 in an effort to insure that the Ordinance is crafted in a manner that, in fact, protects the safe yield of affected groundwater basins as well as the quality and structural integrity of these same basins. This process has been and will continue to be an open and public one involving interested parties and "stakeholders."

We have reviewed the proposed transfer noted above, considering its possible impact upon the concerns addressed in Ordinance No. 1195, the nature of the current drought emergency, and have considered your offer to provide the County \$5,000 from funds obtained through the transfer if it, in fact, takes place. This money would be utilized by the County to undertake groundwater monitoring and collect other data associated with the relevant groundwater basin. This information would then be utilized to facilitate the

Kevin M. O'Brien

Re: River Garden Farms: 2009 Water Transfers to Drought Water Bank

March 9, 2009

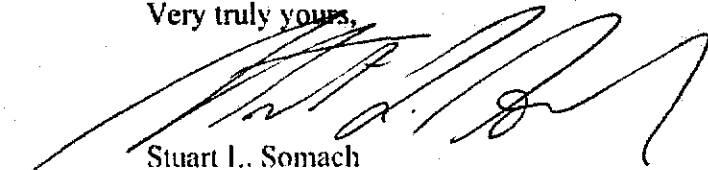
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County's groundwater data collection and analysis to determine whether revisions to the present regulation of groundwater exports out of the County are warranted.

Based upon the foregoing, it is our view that, for the purposes of the Ordinance, no adverse impact will be caused to the relevant groundwater basins due to this specific transfer of up to 3,500 acre-feet of surface water based on groundwater substitution. This approval assumes that River Garden Farms will promptly mitigate direct adverse impacts, if any, associated with the transfer. This approval is further conditioned on your express understanding that it is for a transfer this year only, in part due to the drought emergency that currently exists, and will not be a precedent for any further or additional transfers. We have agreed that the County of Yolo and River Garden Farms each reserves and retains all rights as to the extent of County authority to regulate or tax water transfers of this type.

Please do not hesitate to contact me if you have any questions or need additional information.

Very truly yours,



Stuart L. Somach
Special Legal Counsel
County of Yolo

SLS:sb

cc: Board of Supervisors
Robyn T. Drivon, County Counsel