



900 S.W. Fifth Avenue, Suite 2600
Portland, Oregon 97204
main 503.224.3380
fax 503.220.2480
www.stoel.com

GREG D. CORBIN
Direct (503) 294-9632
gdcorbin@stoel.com

March 24, 2006

VIA U.S. FIRST-CLASS MAIL

Maurice L. Russell, II
Presiding Administrative Law Judge
Office of Administrative Hearings
PO Box 14020
Salem, OR 97303-4924

Re: Treat River Contested Case involving City of Lincoln City's Water Right Applications (S-73409 and R-73407)

Dear Judge Russell:

Stoel Rives represents Miami Corporation ("Miami") in its protest to the City of Lincoln City's (the "City") water rights applications (S-73409 and R-73407) affecting the Treat River (the "Treat River Applications"), and in Miami's response to the City's request that the Water Resources Commission (the "Commission") reserve Treat River water for multi-purpose storage (the "Request"). Miami received a copy of the March 15, 2006 letter from Mike Reynolds of the Water Resources Department (the "Department") to you concerning the Treat River Applications and the Request. That was the first Miami had heard of the Department's request to you. Miami is concerned that the Department's letter does not communicate fully the posture of these matters, and is disturbed by the Department's failure to communicate with Miami in advance of contacting the Office of Administrative Hearings (the "OAH"). Accordingly, this letter provides additional information that Miami believes the OAH should be aware of when evaluating the Department's letter.

For over a decade, the City and Miami have been parties to an unresolved contested case proceeding concerning the Treat River Applications, which, if approved, would give the City water rights necessary to construct an earthen dam and reservoir on Miami's property (the "Treat River Contested Case"). The City, however, has made no effort to prosecute the Treat River Contested Case since the last continuance it requested expired on December 27, 2002.

Oregon
Washington
California
Utah
Idaho



Maurice L. Russell, II
March 24, 2006
Page 2

Moreover, after thoroughly searching Miami's files and the Department's records, Miami has been unable to find any evidence that the Department ever referred the Treat River Contested Case to the OAH. Nor has the Department been able to determine the procedural status of the Treat River Contested Case. Judge Mize, who originally handled the case, has retired, making resolving questions concerning the procedural status even more difficult.

Miami believes the Department's March 15 request that the OAH take no action on the Treat River Contested Case is inappropriate. As already noted, it appears the Department has not referred the Treat River Contested Case to the OAH. Until the Department does so, the Department, not the OAH, is the adjudicative authority for resolution of the case. In light of that role, Miami is disturbed that the Department is contacting the OAH and coordinating with the City without coordinating, communicating, or even notifying Miami in advance. Miami believes the Department should determine the procedural status of the Treat River Contested Case, communicate its position on that status to the parties, then if it believes the case should be further prosecuted, officially refer the case to the OAH after permitting Miami an opportunity to respond to the referral. Instead, the Department's letter appears to be an inappropriate protective move to bolster the success of the City's Request and insulate a settlement agreement between the Department and the City, discussed below.

As the Department's March 15 letter describes, the Department has entered into a settlement agreement with the City and several other entities (the "Agreement"). In short, while much of the Agreement is devoted to resolving specific issues not related to the Treat River Contested Case, it also includes a provision obligating the City to request that the Commission initiate a public rulemaking to reserve the waters of three water sources, one being the Treat River. In exchange, the City agreed that if the Commission granted the Request and approved a reservation of Treat River water, then the City would withdraw the Treat River Applications. Understandably, Miami is concerned that the reservation of Treat River water will facilitate an unwanted development on its property. Miami is therefore opposing the City's Request and will appear at the May 2006 Commission meeting to voice its opposition. As additional background and information, I enclose Miami's comments to the Commission concerning the City's Request.

Finally, Miami continues to reserve all rights with respect to the Treat River Contested Case, including its right to file a motion to dismiss the case because there is no evidence that the case has been referred to the OAH and that the case has not been prosecuted within a reasonable time. Miami respectfully requests that the OAH not act on the Department's letter or with



Maurice L. Russell, II
March 24, 2006
Page 3

respect to the Treat River Contested Case without first providing Miami a full opportunity to respond to any proposed action or file appropriate motions.

Respectfully yours,



Greg D. Corbin

Enclosure

cc: Allan Foutch
William Holmes
Mike Reynolds
Dwight French
David Shannon
Dorothy Northrup
Dave Wagner
Jeffrey Ring
Kenneth J. Gish, Jr.
City of Lincoln City