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Comore Loma Water Corporation
Board of Directors:

John Buttles, President
Bruno Jackmann
Jay Dustin
Rick Evans
Marvin Bessmer

Re: Rights and Board Authority to Regulate Water Deliveries to Members

Dear Board:

I have been asked to review the Articles of Incorporation and Bylaws of Comore Loma Water Corporation (the Corporation) and applicable Idaho law to provide a legal opinion and advice to the Board of Directors regarding the following matters:

1. The authority of the Board to operate and maintain the water system to deliver culinary water to the Members;
2. The authority of the Board to administer and regulate the delivery of water to the Members, including imposing restrictions on delivery of water including but not limited to watering schedules, rotation systems and other restrictions;
3. The authority of the Board to enforce watering schedules and other delivery restrictions, including levying fines or penalties and restricting or curtailing delivery to violators;
4. The proper procedure and timing for giving notices of violation to the members and imposing fines and delivery restrictions;
5. To provide advice and recommendations concerning the Corporation's water rights, including what is necessary to change the point of diversion of Well No. 1 to another location.

INTRODUCTION

To address these issues I have reviewed the Articles of Incorporation and Bylaws of the Corporation and researched applicable Idaho law. I also have reviewed the Corporation's water rights as contained in the database of the Idaho Department of Water Resources (IDWR). Additionally, I have considered various information provided by board member Bruno Jackmann including his general overview and description of the Corporation's operations, water delivery system, members and the issues described above.

OVERVIEW OF COMORE LOMA WATER CORPORATION

The Corporation was originally organized as an Idaho nonprofit corporation pursuant to Articles of Incorporation filed with the Idaho Secretary of State's Office on April 26, 1974. The original Articles were amended and restated by Articles of Incorporation filed on August 1, 1974 (name changed to Comore Loma Water

Corporation). The purpose for which the Corporation was formed is "to engage in the business of constructing, owning, maintaining, improving, expanding and operation of a water system for the owners and possessors of the described property in Appendix A and to conduct all lawful business incident thereto." (Article IV.)

The Corporation's Articles of Incorporation and Bylaws provide the legal authority of the Board of Directors for the operations of the company and delivery of water to the members. In performing these functions the Corporation is not subject to the various statutes, rules and regulations of the Idaho Department of Water Resources ("IDWR") relating to the delivery of irrigation water in streams and canals, the laws pertaining to Water Districts contained in Title 42, Chapter 6 Idaho Code or those pertaining to Ground Water Districts contained in Title 43 Idaho Code.

The Idaho Public Utility Commission ("PUC") is given the power and jurisdiction by the Legislature to supervise and regulate every water company that is a public utility in the State of Idaho. If a water company, either profit or non-profit, is a public utility it is subject to broad authority of the PUC to regulate service area, rates and charges, service quality, customer relations and the like. However, because Comore Loma has never filed an Application for a Certificate of Public Need and Convenience and Necessity ("CPCN") to become a regulated public water company under Title 61, Idaho Code, it is not subject to PUC regulation and remains a private water company with water delivery, rates, terms and conditions established under the authority and control of its Board of Directors. Because of the small size of Comore Loma and the complexity and expense of complying with regulatory requirements it is my advise that you remain a private corporation and not seek to become a regulated public water company.

The Articles specify that the Corporation does not have capital stock, instead membership granted on the basis of one membership per lot with each member entitled to one vote per lot (Article V). The member's rights are as defined in both the Articles of Incorporation and Bylaws of the Corporation and include the right to the beneficial use of the water rights and storage and delivery facilities of the Corporation (Article V, Section 3). The Board of Directors has authority to establish water fees and other charges for the delivery of water to members, including the cost of constructing, owning, maintaining, improving, expanding and operating the water system (Article V, Section 4). The Articles also specifically provide for the suspension of services and use of the water and facilities of members who do not pay their assessments (Article V, Section 6).

The Bylaws also provide that the Board of Directors has the authority to manage and control the affairs and business of the Corporation (Article II, Section 1). The Bylaws also provide that the secretary may refuse to transfer any membership on the records of the Corporation if there are any delinquent assessments against the membership (Article V, Section 2).

Article VIII of the Bylaws further sets forth the authority of the Board of Directors to set rates and charges for the delivery of water to members to cover operational costs (Section 1), to levy and collect assessments against the members (Section 2), to require metered service (Section 4), and, in its sole discretion to determine water turns or periods of service for irrigation and in the event of the failure of any member to observe such restrictions to refuse water delivery (Section 5).

WATER SYSTEM OVERVIEW

Since the subdivision was developed in the early 1970s, the water system has been developed and expanded over time as lots were sold and homes constructed. The water system currently consists of six wells, two holding tanks and various pumps, motors and pipelines to deliver culinary and irrigation water to two pressure zones providing service to 320 homes. At full buildout, the subdivision and system could be expanded to provide service to 550 homes. 3

Water meters have never been installed. As a result of difficulties in supplying water to all members

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during peak summer usage, particularly those on the upper-most loop of the system, primarily as a result of unrestricted irrigation use, the Board has implemented a twice-per-week irrigation schedule during the heavy demand period from June 1 through October 15 applicable to full-zone irrigation, but not to drip systems or individual hose watering of small targeted areas. Each watering turn lasts a period of 24 hours.

The Board currently assesses and bills each member an equal dollar amount base fee to cover all domestic use and the irrigation of 1/2 acre. Additional irrigated acres are billed at the rate of \$120 per year per 1/10th acre.

The Board has also recently employed an engineer to examine actual irrigated acres of the members, evaluate the delivery system and make recommendations for improvements to meet current and future demand. The Board is in the process of evaluating the engineering report and proceeding with recommended improvements.

WATER RIGHTS

Our research of the IDWR database reflects that the Corporation owns the following water rights:

Water Right No.	Priority Date	Quantity	Use Limitation
25-7040	9/17/1973	0.2 cfs/8.4 AFA	7 homes
25-7042	10/26/1973	.08 cfs/2.4 AFA	2 homes
25-7161	9/29/1978	0.98 cfs/31.8 AFA	53 homes
25-7578	8/29/1990	0.3 cfs/37.2 AFA	31 homes
TOTALS		1.56 cfs/79.8 AFA	93 homes

Each water right has a specifically defined point of diversion and place of use.

The quantity of water available under these four water rights and the total limitation to 93 homes is far less than the 320 homes receiving service suggesting one of two things. First, that there are additional water rights providing water to the delivery system, perhaps private or other water rights that are not properly identified in the Corporation's name. Or, second, that there are additional individual wells and water rights that are either connected to the system or separately deliver water to other homes. This needs to be investigated. It is advisable that the Corporation own and operate all water rights delivering water through its system to the members.

Our research identifies the following additional water rights owned by Comore Development, Inc. providing irrigation water:

Water Right No.	Priority Date	Quantity	Use Limitation
25-14240	6/1/1989	3.83 cfs/953.6 AFA	Irrigation
25-14242	5/1/1980	.29 cfs/116.8 AFA	Irrigation
25-14243	5/6/1957	.53 cfs/156 AFA	Irrigation
25-14340	3/20/1961	.56 cfs/114.8 AFA	Irrigation
TOTALS		5.21 cfs/1341.20 AFA	

Perhaps you know the relationship between Comore Loma Water Corporation and Comore Development, Inc. If these rights are all supposed to be owned by the Corporation then they should be deeded over by Comore Development, Inc. and a Notice of Change of Water Right Ownership filed with IDWR so they all are retitled in the name of the corporation.

With respect to Well No. 1, it's my understanding that the current point of diversion is under-producing, by reason of which the Corporation desires to change the point of diversion and drill a well at a new location. I do not know which water right supplies water to Well No. 1. If a new well is going to be drilled at a location within the same 40-acre parcel described as the point of diversion under the existing water right, the well can be drilled without requiring any transfer or change approval by IDWR. However, if the point of diversion is going to be moved outside of the description contained in the water right, it would be necessary to obtain approval from IDWR. This involves the filing and processing of what is known as an Application for Transfer. Transfer Applications are processed administratively with notice of the transfer published one a week for three weeks in a newspaper of local circulation for protest. Absent a protest such transfers are routinely granted so long as the transfer does not cause injury to other water rights.

Because the Corporation operates a common delivery system, it may be advantageous to consider combining all of the Corporation's water rights to reflect multiple common points of diversion for all rights and a place of use that consists of the entire subdivision. This provides greater flexibility enabling any and all of the water rights to be pumped out of any or all of multiple points of diversion, which would include the existing wells and any proposed future wells. Additional new points of diversion could also be added. This could be accomplished by the filing of a single Application for Transfer including all water rights.

A word of caution is necessary if the Corporation is consideration a transfer application that would combine all of the water rights. The filing of the application will trigger a review of the water rights by IDWR to make sure that all of the rights are valid and have been properly used. All of the Corporation's water rights are "domestic" as defined in I.C. §42-111 and the exemptions in §42-227. Under domestic water rights outside irrigation is limited to one-half acre. If some members are irrigating more than one-half acre, it would require an irrigation water right. Once we have a full understanding of the Corporation's water rights, the nature and scope of a transfer application can be more fully evaluated.

AUTHORITY OF THE BOARD OF DIRECTORS

1. THE BOARD OF DIRECTORS HAS BROAD AUTHORITY UNDER THE ARTICLES OF INCORPORATION AND BYLAWS TO OPERATE AND MANAGE THE WATER DELIVERY SYSTEM.

Based upon a review of the Corporation's Articles of Incorporation and By-laws, it is clear that the Board of Directors has the full authority to manage and control the affairs of the Corporation, to construct, own, operate, maintain and improve and expand the water system for the benefit of the members and to establish fees and charges for the delivery of water and the costs of constructing, owning and operating the system. (See, Articles of Incorporation, Articles 4, 5, 6; By-laws article 2, 5, 8.) Because the Corporation is a private non-profit company that has not filed an application for Certificate of Public Need and Convenience and Necessity with the Idaho Public Utilities Commission to become a regulated public water company, it is not subject to PUC regulation. Furthermore, the various Idaho statutes contained in Title 42 and Title 43, Idaho Code, together with the rules and regulations of IDWR relating to the delivery of irrigation water in streams and canals are not applicable to the Corporation. In sum, the Corporation's authority is vested in the Board of Directors which is authorized to act and must act within the parameters of its authority specified in the Article of Incorporation and By-laws.

2. THE BOARD HAS AUTHORITY TO IMPOSE REASONABLE CONDITIONS AND RESTRICTIONS ON THE DELIVERY AND USE OF WATER, INCLUDING IRRIGATION SCHEDULES AND ROTATION.

The Board has the authority and responsibility to impose reasonable conditions and restrictions on the delivery and use of water to insure that the available water supply is made available to service the reasonable domestic and irrigation needs of all of the members. This authority includes the right to establish restrictions on delivery, irrigation schedules and rotation among the members. (See, Articles of Incorporation, Article 5.4; By-laws Article VIII, Section 1.)

3. THE BOARD HAS AUTHORITY TO IMPOSE FINES UPON MEMBERS WHO VIOLATE THE IRRIGATION SCHEDULE.

In our opinion, the Board has legal authority to impose fines or penalties upon members who violate the conditions and restrictions on water deliver established by the Board. The authority to impose penalties is within the Board's broad authority to establish water fees as set forth in Articles of Incorporation, Article V, Section 3 and also Bylaws Article VIII, Section 2.

4. THE BOARD HAS AUTHORITY TO RESTRICT OR CURTAIL THE DELIVERY OF WATER TO MEMBERS WHO DO NOT PAY THEIR ASSESSMENTS OR VIOLATE IRRIGATION DELIVERY SCHEDULES.

The Board also has authority to restrict or curtail the delivery of water to members who do not pay their assessments or violate the irrigation delivery schedules or other rules established for the Corporation. This authority is provided in both the Articles of Incorporation and By-laws. Articles of Incorporation, Article V, Section 6 specifically provides for the suspension of services and the use of water and facility of members who do not pay their assessment, to wit:

Suspension of services and use of the water and facilities provided by the Corporation shall be permitted for any period of time that charges or assessments due and owing to the Corporation from its members remain unpaid, after thirty days notice of delinquency is given to said members, and after such delinquency remains uncured; provides that upon full payment of all delinquent charges and assessments, there shall be a prompt restoration of services to said member.

Additionally, Bylaws Article VIII, Section 5 gives the Board authority to refuse water delivery to members who fail to observe restrictions on delivery and use, to wit:

... and in the event of any failure of a participant to observe such water turns or periods of service, the Corporation may refuse to furnish water to such participant until and unless such water terms and period of service are strictly observed by such participant.

5. ONE OR MORE NOTICES OF VIOLATION SHOULD BE SENT TO EACH SHAREHOLDER BEFORE IMPOSING A FINE OR CURTAILING THE DELIVERY OF WATER.

The right to suspend service or use of water for non-payment of assessment requires thirty days notice under Articles of Incorporation, Article V, Section 6. Otherwise, neither the Articles of Incorporation or By-laws set forth a procedure for giving notice before a final penalty is imposed or water delivery curtailed. Nor, is a right to appeal provided for if the member disputes the factual basis for imposing a fine or curtailment.

It is our advice and recommendation that the Board adopt rules and establish procedures that need to be followed and notices that are to be given when violations occur before penalties are assessed or water delivery curtailed. It is not only good business, but probably required by due process that the Board given proper and reasonable notice to the members in advance of imposing a penalty or water delivery curtailment, that the member

be afforded an opportunity to cure the default or breach to avoid the penalty of curtailment and that an opportunity to appeal be given to the member who may wish to challenge the factual basis upon which the violation notices were sent. It is my understanding that the Board contemplated this as a part of the adopted water delivery rules for 2013 that imposed the current water schedules. I have attached draft notices prepared for your consideration and previously provided them to Bruno electronically for discussion at your last Board meeting as follows:

1. Friendly Reminder. This notice is to provide a "friendly reminder" of violations and to request that the member correct them.
2. First Notice of Violation. This notice gives formal notice of violations and that financial penalties and/or curtailment may follow if corrections don't occur.
3. Second Notice of Violation. This gives formal notice that the first NOV has not been corrected and that a monetary penalty will be imposed after a date certain. Further, a curtailment notice may follow.
4. Third Notice of Violation and Curtailment. This gives notice of curtailment for violations that are not corrected within seven days from the date of the notice. Also, that there will be a charge to reconnect.

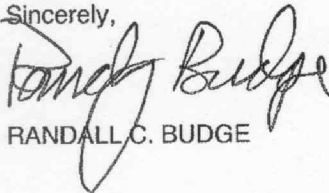
These notices are suggested and they likely will need to be further revised and edited to fit your circumstances. Also, I suggest that all board members or at least the water master and secretary have contact information provided on the notice. When the notice is given it should be either hand delivered or mailed by either regular or certified mail. Each should be signed by either the President, Secretary or Water Master. Copies of each notice sent should be maintained. Each of the NOV's contains a seven day period from the date of the notice for the member to correct the violation. You might want to consider whether these time frames are reasonable. When the three NOCs are combined, the member needs to have at least 30 days from the date of the first notice until the date of curtailment, to comply with Article V, Section 6 of the Articles of Incorporation.

CONCLUSION

The questions and concerns raised concerning your water rights are matters that need to be further investigated and addressed because it is very important that you have water rights sufficient to cover the actual quantities that you are pumping and delivering to the members. From a review of the Articles of Incorporation and By-laws, it is clear that the Board of Directors is vested with the authority to operate and maintain the water system, to establish rules and regulations pertaining to the delivery and use of water, including water schedules and delivery restrictions as well as to enforce violations by levying and collecting penalties and restricting or curtailing delivery for persistent violators.

I believe the foregoing adequately addresses each of the issues presented in a manner desired by the Board. If you have any questions or wish to discuss these matters, feel free to contact me. If it would be helpful, I would be happy to schedule a meeting with the Board in person or a conference call.

Sincerely,



RANDALL C. BUDGE

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