



Bank of Oakland

Entitlement Assessment:

Assessor Parcel Numbers 333-222-111 & 444-555-666

July 17, 2018

I. **Project Scope:** BUILDZIG conducted an investigation to identify documents that would indicate whether two parcels owned by Bank of Oakland still retain their water rights as granted by the creation of the Deer Peak Water District (DPWD). We reviewed files, official documents and meeting notes from the City of River Canyon and Napa County in the course of our investigation. The purpose of this memo is to summarize our research and findings. It should be noted that BUILDZIG is not a law firm and cannot provide legal counsel and does not purport to do so. Rather, we recommend that Bank of Oakland retain an attorney to advise, given the information provided below and any additional information discovered henceforth.

II. **About the Deer Peak Water District (“DPWD”):** DPWD is a private mutual water company that receives its water through the City of River Canyon through a metered connection to the North Bay Aqueduct (NBA). The water supplied is untreated water allocated to the City of River Canyon as a sub-contractee with the Napa County Flood Control and Water Conservation District, the water contractor for the California Department of Water Resources. (See *Michael Downen, Director of Public Works, City of River Canyon, letter to Donald Barrella, Planner III, County of Napa, June 25, 2017, attached*)

III. **Findings:** Below, please find a summary of the documents found by BUILDZIG related to the status and nature of the water rights of the subject properties.

❖ ***The City of River Canyon recognizes the entitlement of the private water districts, which includes the Deer Peak Water District in the following documents:***

- *City of River Canyon Meeting Notes, Blue Ribbon Commission on Water Resources, July 27, 2017*

“The City has several contracts for delivering raw (untreated) water to vineyards for irrigation purposes. This raw water comes straight off the top of our SWP allocation and amounts to approximately 500 AF or 10% of our total water supply. Mark Joseph remarked that the City had an agreement to get the 500 AF from Vallejo, and that is where the water comes from. Rich Ramirez said that was part of the story, but there are other issues, such as equity in contracts.

Michael (Michael Downen, Director of Public Works for the City of River Canyon) said the issue came to light because one raw water customer is a group of property owners who had joined



together to form a small water company. One of their members wants to expand his operation and came to us to request more water. When staff went through the review process, we found that there was no agreement between the private water company and the City. Then we looked at other raw water contracts and found that the terms of those agreements are all different.

Michael said it poses a real conundrum. Since we have been providing water to these customers, it implicitly creates an entitlement, but the question is: Should we be in the business of supplying raw water? Are there alternatives? Can we substitute a different source that will leave the raw water available for treatment and potable use?" (Emphasis added)

❖ ***The City of America Canyon recognizes the water rights of Deer Peak Water District, but also states the need to negotiate a formal contract with DPWD in the following:***

- *Michael Downen, Director of Public Works, City of River Canyon, Council Agenda Staff Report, May 18, 2017*

"Recently, the issue of how the City allocates raw water to commercial customers has come to light by the need to establish a formal water supply agreement with Deer Peak Water Company, a water company formed to serve five private parcels outside the city limits but within the original River Canyon County Water District boundaries. During a building permit review requested by Napa County for one of the Deer Peak water company customers, a records search was conducted as part of the preparation of will-serve letter required by the County. Unlike the seven other agricultural customers served by River Canyon, it was found that Deer Peak does not have a water service agreement, although they have taken delivery of and paid water quantity charges since the late 1990s."

❖ ***The City of River Canyon approved of the plan for the raw waterline connection:***

- *Cheryl Braulik, PE, Associate Civil Engineer, City of River Canyon, letter to Richard Dickson, February 26, 1997*

"The City of River Canyon has reviewed your submittal for a water service connection to the NBA raw water line at the City turnout and has the following comments..."

"...Proposed plan for the waterline connection is acceptable to the Public Works Department..."

❖ ***The City of River Canyon directly recognized the water rights of the two subject parcels:***

- *Civil Engineer Greg Baer, City of River Canyon, letter to Dr. Jacob Goldenberg, previous owner of subject parcels, February 1, 2008*



"Per your request, City staff performed a review of the subject parcels (057-080-029 and 057-080-035) and verified that both currently have raw water available to them through the City of River Canyon.

This information was confirmed by a previously issued encroachment permit for the construction of the connection to the North Bay Aqueduct adjacent to State Highway 12 and Lynch Road, billing records from Mr. Richard Dickson, and field verification."

- ❖ ***Mr. Richard Dickson, the person who negotiated the necessary permits with the State of California Department of Water Resources and the City of River Canyon to establish the Deer Peak Water District, and who arranged for the construction of the water line, recognized the existence of the separate rights of each parcel owner in access to the raw water:***

- *Letter from Richard Dickson to Jacob Goldenberg, January 22, 2017*

"On October 1, 1996, preliminary discussions commenced with the State of California Department of Water Resources and the City of River Canyon for permission to obtain raw (sic) water for crop irrigation purposes (sic). I, Richard Dickson made the contacts, presented the plan, obtained permits, and arranged for the construction of the water line."

"...Each parcel has one two inch connection from the six inch main line..."

"...The system was paid for equally by each of the property owners."

- ❖ ***The Erosion Control Plan, Grading and Encroachment Permits issued to Jacob Goldenberg, previous owner of the subject parcels, were based, in part, upon evidence showing that he has access to water rights per the Deer Peak Water Company's agreement with the North Bay Aqueduct and a Notice of Completion and Acceptance by the City of River Canyon. The approval of the plan is evidence that Napa County and the City of River Canyon recognize the water rights to this parcel. (Multiple documents exist as evidence, attached)***
- ❖ ***The Deer Peak Water Company agreement recognizes the rights of each parcel owner to as much water as they need, except when the City of River Canyon restricts the supply, in which case a meeting will be held by the members to determine how the restricted water is to be divided. (See the Deer Peak Water Company Agreement, attached)***
- ❖ ***The only evidence of any party questioning the validity of unlimited water rights to these two subject parcels (except in the situation where the City of River Canyon limits supply to***



the entire district) is in a letter to the County of Napa Conservation Development and Planning department related to the approval of a Building Permit for Lopes Erosion Control Plan Application for parcel 057-080-028:

➤ *Michael Downen, Director of Public Works, City of River Canyon, letter to Donald Barrella, Planner III, County of Napa, June 25, 2017*

“The City understands from information provided by the County and Mr. Jeff Hill, the agent for the applicant, that Deer Peak will not be consuming water at a level consistent with its historic demands because approximately 33 acres of vineyard is not being cultivated due to property foreclosure (the former Goldenberg parcels at APN 057-080-029 and -035, Parcels #3 and #4 in the Deer Peak Water Company agreement).”

“...In the meantime, the City will be pursuing a water supply agreement with Deer Peak that will accommodate present conditions and consider future potential agricultural needs.”

IV. **Conclusion:** As demonstrated above, the attached records indicate:

1. The creation of the Deer Peak Water District (“DPWD”) was created with the authorization and permission of the California Department of Water Resources, the North Bay Aqueduct, and the City of River Canyon.
2. Each parcel owner party to the Deer Peak Water Company was granted access to unlimited water, via the DPWD contract, unless it was limited by the City of River Canyon, in which case a meeting of the owners would need to take place (per the same) to discuss allocations. It is our understanding that the Bank of Oakland has not partaken in such a meeting, so no reduction in its water rights on both its parcels has occurred, to the knowledge of the Bank of Oakland staff.
3. The 2011 Erosion Control Plan that the previous owner, Jacob Goldenberg, applied for required confirmation by the City of River Canyon that these parcels had access to sufficient water for the vineyard areas under the plan. Since this plan is still in effect, it seems reasonable to assume that the underlying water rights are still in effect.
4. The only evidence of any question of whether the two subject parcels still retain their water rights under the DPWD and the EPWC agreement is a letter that assumes a reduction of usage for the entire DPWD on the foreclosure of these two lots.