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June 6, 1985

Board of Directors
Redwood Valley County Water District
Post Office Box 412
Redwood Valley, California 95470

Re: Bureau of Reclamation

Gentlemen:

We have reviewed the Bureau's letter of May 30, 1985, addressed to the Board. We shall comment upon the Bureau's demands.

Tax Assessments. Paragraph 16(a) of the Contract Between the United States and Redwood Valley County Water District For a Loan For Construction of a Small Reclamation Project provides that the obligation of the District to pay the Bureau is a general obligation of the District notwithstanding the manner in which the obligation may be distributed among the water users. The effect of this paragraph is that the entire loan amount is an obligation of all of the District including areas not served with water. We analyzed the tax assessment proposal for you in our confidential communication of November 13, 1984. To initiate the tax process, this Board on or before August 1, 1985, must furnish to the Mendocino County Board of Supervisors and to the Mendocino County Auditor an estimate of the minimum amount of money required to be raised by taxes, together with certain other information. If the Board of Supervisors, the Auditor, and the Tax Collector proceed, the tax would be levied and collected. If any of them resisted, suit would be filed on behalf of this Board to obtain a Court order requiring the County agencies to proceed. If you wish to initiate a tax, please advise me as soon as possible in order that we might prepare the necessary resolutions and documents.

M & I Water Rate Increases. Water rate increases may be adopted by the Board at such times and in such amounts as the Board deems proper.

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Existing Capital Funds. The State Department of Health has threatened a moratorium in Redwood Valley unless the capacity to treat water is increased. Unless more customers can be served, the financial problem will not be solved. We understand that the District has been collecting fees from each new user for the announced purpose of increasing treatment plant capacity. The money so collected has been placed in the District's general fund. The District appears to be legally authorized to use such funds for any District purpose.

We call your attention to the fact that Paragraph 16(b) provides that the District must make the payments to get the benefits of the contract. The contract provides that the electors must grant to the District the power to levy and collect taxes and assessments. Such was done by the elections approving the original Contract and the Amendatory Contract. The paragraph further provides "no water will be made available to the contractor (the District) through project facilities during any period in which the contractor may be in arrears in the advance payment of any operation and maintenance charges due the United States or in arrears for more than twelve months in the payment of any construction charges due the United States."

We will be pleased to attempt to answer any questions that you might have concerning the rights and duties of the District.

Very truly yours,

BELL, COX, MANNON & LaCASSE

By 

CLC:nao

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November 13, 1984

Board of Directors
Redwood Valley County Water District
Post Office Box 412
Redwood Valley, California 95470

Re: Levy of Taxes

Gentlemen:

This is a confidential communication. This letter and its content should be discussed by you only in executive session.

The Bureau of Reclamation has again recommended that the District levy a tax in order to raise revenues sufficient to permit the District to pay its obligation to the Bureau. This letter is written to you to advise of the potential litigation which might arise as a result of the District taking such action as is recommended by the Bureau.

California Water Code, Division 12, Part 7, Chapter 1, Article 1, Section 31650 provides as follows:

"A district may cause taxes to be levied for the purpose of paying any of its obligations and to accomplish the purpose of this division."

California Constitution, Article 13A, Section 1, which became effective July 1, 1978, provides as follows:

"Section 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any indebtedness

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approved by the voters prior to the time this section becomes effective."

On May 27, 1975, the District held an election wherein the measure presented to the voters was as follows:

"Shall Redwood Valley County Water District enter into a contract with the United States of America for a construction loan in the aggregate principal amount of not to exceed \$4,800,000.00 under laws permitting such loans and particularly pursuant to the Small Reclamation Projects Act of 1956 as amended pursuant to which contract the United States of America will advance to the district for the construction of an agricultural and municipal, industrial and domestic water use and distribution system, and other related works used for the purpose of delivering water to lands within the district for industrial and domestic purposes, an amount of money not to exceed \$4,800,000. Said sum to constitute the maximum amount of money exclusive of penalties and interest, to be repaid to the United States of America in installments at the time and in the manner provided in the form of a contract now on file in the office of the Secretary of the District subject to the California Districts Securities Commission approval, and subject to all of the terms and conditions thereof?"

Contained within the contract voted upon and later executed by the District was Article 16(b), which provides in part as follows:

"The electors for the contractor shall authorize by an election or ratify this contract in order to grant to the contractor the power to levy and collect all necessary taxes and assessments if and when needed."

At the election, 519 ballots were cast, 429 yes and 90 no. Slightly more than 82% of those voting, voted for the measure.

On April 8, 1980, the District held an election wherein the measure presented to the voters was as follows:

"Shall Redwood Valley County Water District enter into a contract with the United States of America for an escalation construction loan in the

aggregate principal amount of not to exceed \$2,513,000, under laws permitting such loans and particularly pursuant to the Small Reclamation Projects Act of 1956, as amended, pursuant to which contract the United States of America will advance to the district for the construction of agricultural and municipal, industrial and domestic water use and distribution system, and other related works used for the purpose of delivering water to lands within the district for irrigation and municipal, industrial and domestic purposes, an amount of money not to exceed \$2,513,000. Said sum together with the sum of \$4,800,000 previously borrowed from the United States of America to constitute the maximum amount of money exclusive of penalties and interest to be repaid to the United States of America in installments at the time and in the manner provided in the form of contracts now on file in the office of the Secretary of the District subject to the California Districts Securities Commission approval, and subject to all of the terms and conditions thereof?"

At the election, 420 ballots were cast, 331 yes and 89 no. Slightly more than 78% of those voting, voted in favor of the measure.

The contract being voted upon was in fact an amendment to the contract voted upon in 1975. While there were changes in a number of articles in the contract, Article 16(b) remained unchanged.

The significant events occurred as follows:

- 1) 1975 Election which approved a loan of \$4,800,000 and authorized a tax
- 2) 1978 Article 13A of the California Constitution limiting ad valorem taxes to 1% became effective
- 3) 1980 Election which approved an escalation loan of \$2,513,000

With regard to the indebtedness of \$4,800,000 incurred pursuant to the 1975 election, we are of the opinion that the District has the power to levy a tax on real property to raise funds necessary to repay that indebtedness.

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With regard to the indebtedness of \$2,513,000 incurred pursuant to the 1980 election, we have no firm opinion. Article 13A of the California Constitution does not include an exception for indebtedness incurred after 1978, however, the indebtedness which was approved by approximately 78% of those who cast votes relates back to the pre-1978 contract and indebtedness. So far as we can ascertain, this issue has not been previously been litigated. We believe that the issue is a close one, but we believe that it is more likely that a Court would reject the District's attempt to levy a tax to pay this indebtedness.

The California Water Code, Division 12, provides that if, in the judgment of the Board of Directors, the revenues of the District are inadequate to pay the interest on or principal of any bonded debt as it becomes due or any other expenses or claims against the District, the Board of Directors shall annually, on or before August 1, furnish to the Board of Supervisors and to the Auditor an estimate of the minimum amount of money required to be raised by taxes in the county, a statement that the whole District was benefited by incurring the obligation, an estimate of the minimum amount of money required to be raised by taxes to meet all of the charges, claims, expenditures and expenses, an estimate of the minimum amount of money required to be raised by taxes for expenses and claims against the District, and other matters.

The Board of Directors may, by resolution, elect to fix its own rates of taxation in which event it shall file certified copies thereof with the Auditor, the Assessor and the Clerk of the Board of Supervisors of the County on or before July 1. After such resolution is filed, the Board of Supervisors, the Auditor and the Assessor each have mandated duties.

We believe that it is reasonable to anticipate that the Board of Supervisors, the Auditor, or the Tax Collector would object to the acts of the District and would not take appropriate action. In that event, the District would file suit in the Mendocino County Superior Court seeking a Writ of Mandate. The Writ, if granted, would require the Board of Supervisors, the Auditor, and the Tax Collector to take the action provided in the Code. We believe that such a suit would be successful as to the \$4.8 million. We believe that it has no more than a 50/50 chance of succeeding as to the combined \$4.8 million and \$2,513,000.

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If the Board seriously considers levying a tax, we would like to meet with the Board to discuss the necessary findings and assist in drafting the necessary documents.

If there are any further questions, we will be pleased to discuss them with you.

Very truly yours,

BELL, COX, MANNON & LaCASSE

By

CLC:nao