**CHRISTOPHER HARVEY, Q.C.\*** DIRECT LINE: 604 443 1201

EMAIL: charvey@macfuj.com WEB: www.macfuj.com

\*Law Corporation

# OUR FILE NO. G2674-000

**VIA EMAIL**

Minister of Forests, Lands, Natural Resource

Operations and Rural Development

**Attention: Ross McElroy,**

Director of Authorizations, West Coast Ross.McElroy@gov.bc.ca

Ministry of Forests, Lands, Natural Resource Operations and Rural Development

**Attention: Cali Melnechenko,**

Water Authorizations Section Head Cali.Melnechenko@gov.bc.ca

Dear Sirs/Mesdames:



May 3, 2022

Ministry of Public Safety & Solicitor General

**Attention: Angela Cameron**

Angela.M.Cameron@gov.bc.ca

Comox Valley Regional District

**Attention: Alana Mullaly**,

Senior Manager of Sustainability and RGS

Planning amullaly@comoxvalleyrd.ca

**Re: Application to amend conditional water licence 500169 granted on November 21, 2017 to divert groundwater from aquifer 408 for industrial (fresh water bottling) use**

We write on behalf of Bruce Gibbons, a resident of the Comox Valley, with respect to the above-noted amendment application. We understand that the application is presently under consideration by the statutory decision-maker and by the Comox Valley Regional District on referral.

First, we request a copy of the application.

From the limited information we have the application relates to an extension of the deadline for commencing beneficial use (which expired on December 31, 2020) and for a change of industrial use from item 7 (fresh water bottling) of Column 1, Schedule A, of the Water Sustainability Regulation to a use that is not listed in the said Schedule, namely the bulk shipment of groundwater in tanker trucks within the Province.

If our information is correct, there is no authority under the *Water Sustainability Act* to permit such a use. The authority granted to the comptroller or a water manager to issue a licence authorizing the diversion or use of water from an aquifer is limited to one or more of the water use purposes designated by regulation. The Water Sustainability Regulation includes “fresh water bottling” as a designated industrial water use purpose, but the bulk shipment of water by land is not a designated use. It would therefore take an amendment of the Regulation to render permissible such a use.

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**1600 – 1095 West Pender Street**  **Vancouver, BC**  **V6E 2M6**

**T 604 689 3281**  **F 604 685 6494**  **www.macfuj.com**

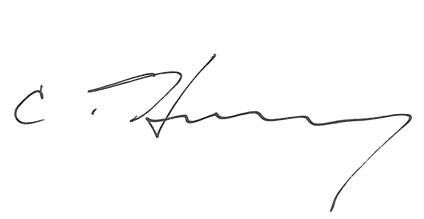


We are further informed that the application for this novel form of industrial use is being processed by way of amendment of licence rather than by way of a fresh application for a licence. This deprives our clients of the due process protections that they would have under the Act if the matter were treated as a fresh application. Since it involves a wholly different use from that contemplated in the original licence application, basic rules of procedural fairness require that the application be treated as a fresh licence application.

Moreover, the acceptance of an amendment application some 15 months after the expiry of the time for commencing beneficial use under the original licence may in itself be grounds for setting the process aside for unreasonableness. It effectively seeks to amend a licence that has expired by effluxion of time.

For these three independent reasons we anticipate being instructed to challenge by way of judicial review any approval of the application. Given the factual and legal constraints bearing on the decision-maker we would anticipate that a Court would strike down the decision as unreasonable within the meaning of recent jurisprudence from the Supreme Court of Canada.

Yours truly,

**MACKENZIE FUJISAWA LLP**

Per:

CHRISTOPHER HARVEY, Q.C.

CWH:jc

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