

802.2(c)

March 31, 2005

Via Facsimile and Regular Mail

Nancy M. Ovuka
Compliance Specialist
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
6th Street and Pennsylvania Ave., N.W.
Washington, DC 20580

Re: Acquisition of Water Rights

Dear Nancy:

I am writing to confirm my understanding of your Hart-Scott-Rodino ("HSR") analysis of a transaction I discussed with you during a March 21, 2005, telephone call.

Specifically, we discussed the following transaction: Company A intends to purchase certain shares of Company B – a nonprofit corporation – for approximately \$100 million. Company A is acquiring the shares in order to obtain the water rights associated with those shares, based on the understanding that each share is, in effect, a water right.

It is your understanding that because the Premerger Notification Office deems water rights as "natural resources" this acquisition falls within the HSR exemption set forth in 16 C.F.R. § 802.2(c) *Unproductive real property*. That exemption states that "unproductive real property is any real property, including ... natural resources ... that has not generated total revenues in excess of \$5 million during the thirty-six (36) months preceding the acquisition." Furthermore, the Statement of Basis and Purpose to § 802.2 states the following: "'Natural resources' refers to any assets growing or appearing naturally on the land, such as timber and mineral deposits." (61 FR 13675, March 28, 1996).

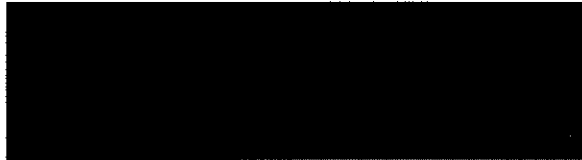
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Essentially, all of the consideration paid by Company A in the transaction described above is for the water rights (*i.e.*, natural resources) represented by the shares Company A is acquiring from Company B. Additionally, those water rights have not generated total revenues in excess of \$5 million during the preceding thirty-six (36) months. Therefore, this transaction is exempt from the reporting requirements of the HSR Act and, consequently, no HSR Notification need be made prior to consummating the transaction.

If you should disagree with the conclusions outlined above, or if you have additional questions regarding this transaction, please contact me at [REDACTED] or at [REDACTED] as soon as possible. Your assistance in connection with this matter is very much appreciated.

Sincerely,



Cc: [REDACTED]

4/6/05
Confirmed advice
N. OVUKA
M. Verse concurs