

Wednesday, December 10, 2008

MEMORANDUM

To: Sawmill Cove Industrial Park Board of Directors (SCIP Board)

From: Garry White, Director

Subject: True Alaska Bottling Co. Update and Request

Background

True Alaska Bottling Co ("TAB") has failed to take delivery of and export at least 20 million gallons of water in the past 24 months as per Subsection 3.1 of its Purchase Agreement for Raw Water in Bulk for Export between the City and Borough of Sitka and True Alaska Bottling Co. A forty-five day cure letter was sent on 12/09/2008 per SCIP Board request. Please see attached letter.

Request for TAB

TAB is requesting that CBS extend its contract for another 1 year period. Please see attached request from TAB's legal council.

Purchase Agreement Information

Per Section 3.1 of the Purchase Agreement for Raw Water in Bulk for Export, "Sitka will make available to TAB a total of 8,960 acre-feet of raw water for a period of 24 months after the effective date of this Agreement."

CBS has permits available to export in bulk approximately 28,000 acre-feet of raw water. The remaining 19,040 acre-feet of raw water can be sold to a third party as long as CBS and the third part comply with Section 5.2 of the Purchase Agreement. Please see Section 5.2 below.

Per Section 5.2 of the Purchase Agreement for Raw Water in Bulk for Export, "Providing that TAB is in compliance with all terms of this agreement Sitka agrees to refer all inquiries from third parties for the purchase of bulk water to TAB. If TAB is unable to come to terms for sale of bulk water to said third parties within 90 days of the referral by Sitka to TAB, Sitka may proceed with direct negotiations with said third party without further obligations to TAB."

The following Purchase Agreement section related to pricing of bulk water.

Per Section 5.1 of the Purchase Agreement for Raw Water in Bulk for Export, "Provided that TAB is in compliance with all terms of this agreement Sitka agrees to not sell water

for export to other entities for a price less than the price currently charged to TAB for equivalent Blue Lake water without offering the same price to TAB.”

The SCIP Director continues to get a steady stream of inquiries regarding bulk water. Inquiries have been sent to TAB to negotiate terms. The following prospective bulk water clients have completed their 90 day negotiation with TAB and have contacted the SCIP Director directly to purchase bulk water:

1. Wendell Adams

Wendell has not submitted a written proposal for purchase of bulk water to the current SCIP Director's knowledge. The Director has had multiple conversations with Wendell and hopes to get a written proposal sometime in the future. Wendell has made many statements that CBS's proposed price per gallon is too expensive.

2. Freddy Fuller/James Pak.

The SCIP Director has had multiple conversations with Mr. Fuller. Mr. Fuller has brought Mr. Pak into the conversation on purchasing bulk water. Negotiations have stalled with both gentlemen at this point.

The SCIP Director does not have knowledge of other prospective Bulk Water clients that have completed the 90 day negotiation window.

Additional Information

A memo from CBS Finance Director to CBS Administrator shows that TAB owes \$68,153.87 to CBS in lease payments, property taxes and utility bills. Please see attached memo.

Action Item


1. Extension of TAB contract for a 1 year term?
2. Adjustments to contract?



GARY

City and Borough of Sitka

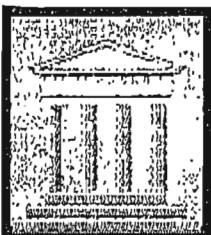
100 LINCOLN STREET • SITKA, ALASKA 99835

TO: Jim Dinley, Administrator
FROM: David Wolff, Finance Director 
DATE: December 9, 2008
SUBJECT: True Alaska Bottling bills owed to the CBS

The following amounts are due from True Alaska Bottling Co.:

Lease payments for the three lots at SCIP (Lease was cancelled in Febr, 2008)	\$34,748.84
Property taxes on the above leased property	\$15,607.78
Miscellaneous billing for testing at bottling plant	\$ 2,292.58
Utility bills July through November, 2008	\$15,504.67
Total amount due to the City and Borough of Sitka	\$68,153.87

Jones Law Group PLLC Trust Account has deposited in the CBS checking account the amount of \$50,000 on December 8, 2008.



JONES LAW GROUP, PLLC

11819 N.E. 34TH STREET
BELLEVUE, WASHINGTON 98005
Telephone: (425) 576-8899
Facsimile: (425) 576-9898

FACSIMILE COVER SHEET

Date: December 8, 2008

Pages (including cover): 3

Recipient

Sawmill Cove Board
City and Borough of Sitka
Theresa Hillhouse

Company

Phone No.

907 747 1810

Fax No.

907 747 7403

Sender

Marianne K. Jones, Attorney at Law

MESSAGE:

Please see attached letter from True Alaska Bottling Company

Please contact me via facsimile at (425) 576-8899 or by phone at (425) 576-9898 if you have any questions or comments. Thank you.

ORIGINAL:

- Will follow by mail
- Will follow by overnight courier
- Will not follow

CONFIDENTIAL INFORMATION: Reading, copying or disseminating by anyone other than the intended recipient is prohibited. If you are not the intended recipient, please telephone us immediately to arrange return of this transmission.

FILE: TRUEAL01
COPY TO ATTY? Yes No

JONES LAW GROUP, PLLC

11819 NE 3RD STREET
BELLEVUE, WASHINGTON 98005

MARIANNE K. JONES
MONA K. MCPHEE

TELEPHONE (425) 576-8899
FACSIMILE (425) 576-9898

December 8, 2008

TRANSMITTED BY FAX

Sawmill Cove Board and
City and Borough of Sitka
100 Lincoln St
Sitka, AL 99835

Re: Extension Agreement between True Alaska Bottling Company and the City and Borough of Sitka

Dear Directors of the Sawmill Cove Board and City and Borough Assembly Members:

We represent True Alaska Bottling Company and we write you to request confirmed approval of a one year extension of the True Alaska Bottling Company Purchase Agreement for Raw Water in Bulk for Export effective date November 9, 2006 ("Bulk Water Agreement") between our client and the City and Borough of Sitka.

In consideration for the one year extension of the requirement to export minimum volumes of raw water in bulk within 24 months of the effective date of the Bulk Water Agreement, we wired payment in the amount of \$50,000, which should be received by the City today. We further propose that an additional \$50,000 be paid to the City upon approval by the Sawmill Cove Board and Assembly of the extension. The first \$50,000 would only be returned in the event the one year extension is not approved. The second \$50,000, upon payment and approval, would be a non-refundable deposit for the benefit of True Alaska Bottling Company to be applied toward any bulk water payments that might be due in the future. However, if no bulk water payments are due in the future, then the second \$50,000 deposit would be nonrefundable to True Alaska and considered a donation to the City of Sitka. Essentially the second \$50,000 is a "use it or lose it" deposit by True Alaska Bottling Company.

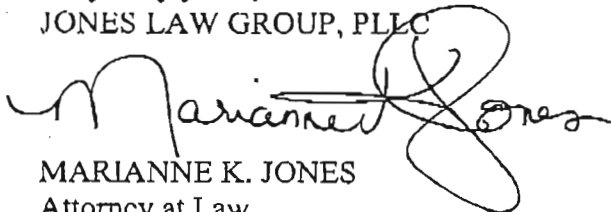
All terms of the agreement effecting the requirement to export raw water in bulk within 24 months of the effective date of the agreement shall be modified by the extension. All other terms and conditions of the Bulk Water Agreement would remain in full force and effect, the only modification would be the extension of the date by which True Alaska would be required to export minimum amounts of water and paying for the export of raw water in bulk.

In addition, True Alaska Bottling Company would respectfully request that the \$100,000 paid to the City under this modification of the Bulk Water Agreement be used to support the Hames Athletic and Wellness Center. The City's support of this facility is appreciated and True Alaska Bottling Company has considered this in proposing the consideration for this extension.

City and Borough of Sitka
Sawmill Cove Board
December 8, 2008
Page 2 of 2

We appreciate your attention to this matter and look forward to the benefits that this modification can provide for both parties. Please contact me with any questions.

Very truly yours,
JONES LAW GROUP, PLLC

A handwritten signature in black ink, appearing to read "Marianne K. Jones". The signature is fluid and cursive, with a large loop at the end of the last name.

MARIANNE K. JONES
Attorney at Law

cc: Theresa Hillhouse, Municipal Attorney



City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

December 9, 2008

Sent via certified and Regular Mail

CR. Kearns
President True Alaska Bottling Co.
4500 Sawmill Creek Road
Sitka, Alaska 99835

RE: Forty-five day written notice to cure default related to TAB taking delivery of and exporting at least 20 million gallons of water within 24 month period from effective date of Purchase Agreement for Raw Water in Bulk for Export.

Dear Mr. Kearns:

True Alaska Bottling Co ("TAB") has failed to take delivery of and export at least 20 million gallons of water per Subsection 3.1 of its Purchase Agreement for Raw Water in Bulk for Export between the City and Borough of Sitka and True Alaska Bottling Co. You must now take delivery of and export 20 million gallons of water in Bulk within forty-five (45) days of the date of this letter, or the City and Borough of Sitka, may at its discretion, exercise its legal rights to terminate the Purchase Agreement for Raw Water in Bulk for Export.

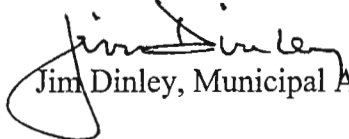
3. Water Volumes Contracted by TAB from Sitka

3.1 Sitka will make available to TAB a total of 8,960 acre-feet of raw water for a period of 24 months after the effective date of this Agreement. At the conclusion of the 24-month period described in the previous sentence, TAB's access to water will revert to the stages outlined in Subsection 3.2 of this Agreement, providing TAB has met the minimum export volumes set out in Section 3 (this Section) of this Agreement. During the 24-month period immediately after the effective date of this Agreement, TAB must take delivery of and export at least 20 million gallons of water. If TAB does not take delivery of and export at least 20 million gallons of water from Sitka pursuant to this Agreement in the first 24 months after the effective date of this Agreement, this Agreement shall, at Sitka's election, terminate and expire without further action by Sitka on the forty-fifth (45th) day after Sitka gives notice to TAB by certified mail that TAB has breached or failed to comply with one of more of the conditions or requirements of this Agreement, unless within said 45-day period, TAB cures the

C. R. Kearns
December 9, 2008
Page 2 of 2

specified default or defaults to Sitka's satisfaction, as determined by Sitka in its sole discretion.

Sincerely,


Jim Dinley, Municipal Administrator

cc: Assembly Members
Sawmill Cove Industrial Park (SMCIP") Board Members
Garry White, SMCIP Director
Theresa Hillhouse, Municipal Attorney
Dave Wolff, Finance Director
