

June 17, 2013

Transmitted by Email: Rick.Couroux@gov.bc.ca

Mr. Rick Couroux  
Secretary to the Comptroller of Water Rights  
Utility Regulation Section  
Water Stewardship Division  
Ministry of Forests, Lands and Natural Resource Operations  
PO Box 9340 Stn Provincial Government  
Victoria, BC V8W 9M1

Dear Mr. Couroux:

**Re: Intervenor Submission**  
**Total Water Quality Management Project – EPCOR White Rock Water Inc.**

This letter is further to the City's official registration as an Intervenor to the proposed Total Water Quality Management Project ("TWQM"). The City makes the following formal submission under this proceeding.

**City Position Re: Acquisition of Water Utility**

At the time of the City's March 28, 2013 submission, the City advised that it was considering all options with respect to the future of this water utility. The City further advised that it was initiating the preparation of a business case to consider whether it would be feasible for the City to acquire the water utility.

Since that time, the City has undertaken some initial investigations and based on the information gleaned, City Council, at its June 10, 2013 meeting, resolved to authorize staff to:

- (a) Provide notice to EPCOR White Rock Water Inc. (EPCOR) of the City's intention to exercise its option to assume ownership of EPCOR's water utility works and all associated licenses and real and personal property in respect of the water utility service which provides water to the City of White Rock, which ownership would enable the City to provide water service to the residents of White Rock,

Administration  
P: 604.541.2124 | F: 604.541.9348

City of White Rock  
15322 Buena Vista Avenue, White Rock BC, Canada V4B 1Y6

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- (b) To commence negotiations with EPCOR to acquire this property, and
- (c) To report to and obtain approval of the City of White Rock Council before completing the purchase.

The City subsequently met with EPCOR on June 11, 2013 to discuss a framework of how best to proceed with negotiations.

### TWQM Project

The City's March 1st submission on the TWQM Project included a statement that, as part of the Greater Vancouver Regional District, the City would have access to water treatment and supply that a private water utility, such as EPCOR, does not enjoy. The City concluded that this alternative water supply option would eliminate a significant portion of the TWQM Project and its associated costs.

As part of the City's information gathering since that March 1<sup>st</sup> submission, the City has learned that access to water treatment and supply through the Greater Vancouver Regional District would not be a financially viable option for the City at this time, and the City would retain the existing water supply as the source of its municipal water service.

Accordingly, the City supports EPCOR's position in this matter and recognizes the need for the TWQM Project.

### City Consultation

Because the City has a right to acquire the water utility (as discussed in the next section of this letter) and because the City has an intention to acquire the water utility, the City requests that any approval by the Comptroller of the TWQM Project be on the condition that EPCOR consult with the City and have ongoing communication with the City regarding implementation of the TWQM Project, and that the City have some level of input into decisions about a water system that it expects to be inheriting.

The City considers that the Comptroller has the jurisdiction to impose these conditions. Pursuant to section 9 of the *Water Act*, the Comptroller may grant an approval in writing for a person to make changes in and about a stream, and the City expects this section is engaged as part of EPCOR's application for approval of the TWQM Project. Under that section 9, the Comptroller may grant approval on any conditions that he or she considers advisable.

Under section 18(4) of the *Water Act*, where an approval under section 9 is being amended, the Comptroller may amend that approval on the conditions that he or she considers advisable.

Furthermore, pursuant to section 72(2) of the *Utilities Commission Act* – which applies to the Comptroller pursuant to section 4 of the *Water Utilities Act* - the Comptroller has jurisdiction to hear and

determine an application by a party interested – the City, in this case - requesting the Comptroller to give a direction or approval or prohibit or require anything in relation to a matter within the Comptroller's jurisdiction.

### 1922 Agreement

As mentioned above, and in the City's March 1<sup>st</sup> submission, the City considers that it has a legal right to acquire the water utility from EPCOR.

The City has a copy of a signed agreement dated the 29<sup>th</sup> day of September 1922 between The Corporation of the District of Surrey and White Rock Waterworks Company Limited. We refer to this as the "1922 Agreement". This 1922 Agreement was authorized by By-law No. 230 – "White Rock Water Works By-law, 1922".

Although for the most part the 1922 Agreement granted the Waterworks Company the permission to use public streets, section 17 of the Agreement granted Surrey the right to acquire the water utility.

The 1922 Agreement was amended by an Agreement dated November 23, 1939 between The Corporation of the District of Surrey and White Rock Water Works Company Limited. This 1939 amendment was authorized by "White Rock Water Works By-law, 1922 Amendment By-law 1939, No. 617."

The 1939 Amendment Agreement did not change section 17 of the 1922 Agreement. That is, it did not change Surrey's right to acquire the water utility.

A signed Agreement dated November 23, 1953 between The Corporation of the District of Surrey and White Rock Water Works Company Limited referred to the 1922 Agreement and the 1939 Amendment, made amendments to them (but no amendment of section 17), and ratified them by this wording in section 5:

"Subject to such modifications or extensions as are herein contained, the 1922 Agreement shall remain in full force and effect and Conditions, provisions and reservations therein and in this Agreement contained shall apply to the whole of the Company's system, as if the privileges hereby granted had formed part of the 1922 Agreement."

In 1957 the City of White Rock was incorporated from a portion of what had been the District of Surrey.

In 1966 two agreements were entered into. By an Agreement dated April 30, 1966 White Rock Water Works Company Limited assigned to White Rock Utilities Limited all of its interest in the water utility, including under the 1922 Agreement as it was amended in 1939 and 1953.

By an Agreement dated May 28, 1966 among White Rock Water Works Company Limited, White Rock Utilities Limited, and The Corporation of the City of White Rock, White Rock consented to the

assignment of the water utility. This Agreement recites that “upon its incorporation as a City Municipality the Corporation [of White Rock] succeeded to all of the rights and obligations of the Corporation of the District of Surrey under the 1922 Agreement...”

Furthermore, under section 2 of this Agreement:

“2. The New Company [White Rock Utilities Limited] hereby assumes all the liabilities and obligations of the Old Company [White Rock Water Works Company Limited] under the 1922 Agreement, and covenants and agrees with the Corporation [of White Rock] to carry out and perform and discharge the same.”

On January 29, 1969, and again on June 6, 1978, the Public Utilities Commission issued a Certificate of Public Convenience and Necessity and

“certified that the assignment by White Rock Waterworks Co. Ltd. to White Rock Utilities Limited of its franchise Agreement with the Corporation of the District of Surrey dated September 29, 1922, as amended by Agreements dated November 25, 1939 and November 23, 1953, respectively, is in accordance with public convenience and necessity and is hereby approved.”

On May 1, 2006 White Rock Utilities Limited was amalgamated into Maranta International Resources Corp., which was amalgamated on May 2, 2006 into EPCOR White Rock Water Inc. Section 282(1)(g) of the B.C. *Business Corporations Act* provides that “an amalgamated company continues to be liable for the obligations of each amalgamating corporation.”

Accordingly, the City considers that there is no question that EPCOR is the inheritor of the obligations to the City of White Rock under the 1922 Agreement, including the obligations under section 17 to transfer the water utility to the City.

Section 17 provided that the initial term of the 1922 Agreement was 20 years, and Surrey was not entitled to acquire the water utility until expiration of the first 10 years. Section 17 provides for a perpetual renewal of the agreement until such time as the water utility is acquired:

“...in case the Corporation shall fail to assume ownership of the Company’s said undertakings within the period of twenty (20) years ... the Company shall be entitled to a renewal of this agreement for further and other term or terms of ten (10) years until the Corporation shall assume ownership of the Company’s undertakings...”

There is no doubt that the 1922 Agreement has been automatically renewing, since EPCOR continues to use White Rock’s public streets for its utility works and since section 4 of the May 28, 1966 Agreement confirmed the automatic renewals of the 1922 agreement:

**"4. Subject to paragraph 2 hereof, so long as the New Company [now EPCOR] shall hold and possess any assets of a public utility nature which are employed in the distribution of water in the City of White Rock, the 1922 Agreement shall remain in full force and effect and is hereby declared to be renewed pursuant to paragraph 17 of the 1922 Agreement, and shall be applicable, mutatis mutandis, to the New Company [now EPCOR]."**

In conclusion, the elected officials of this public body, the City of White Rock, want control over the water service to their community and they intend to achieve this. This TWQM project is an important part of that process and the City needs to be included as it expects to be operating the service at some point in the near future.

Yours truly,

A handwritten signature in black ink, appearing to read "Dan Bottrill", written in a cursive style.

**Dan Bottrill**  
**Chief Administrative Officer**

cc: Betty Icharia M.Sc., Utility Manager  
EPCOR White Rock Water Inc.