

EXHIBIT 5

November 2, 2015

Kathleen L. Mazure, Esq.
Duncan, Weinberg, Genzer
& Pembroke, P.C.
1615 M St., N.W.
Suite 800
Washington, DC 20036

Re: "Offer of Withdrawal of Intervention"
Docket No. P-5-100
Accession No. 20151022-5037
Accession No. 20151022-5038

Dear Ms. Mazure,

Thank you for your email correspondence of this morning inquiring about whether our prior "Offer of Withdrawal of Intervention," dated October 23, 2015, is still valid, and whether we have added any new conditions to it.

The answer to your questions is a conditional Yes.

In light of events transpiring since the issuance of that offer, said offer now consists of the following conditions set forth below, with respect to which a written Stipulation of Agreement ("Agreement") is required, on behalf of your client(s), from you, in your capacity as Washington, D.C.-based FERC Counsel for the Flathead, Mission and Jocko Irrigation Districts and the Flathead Joint Board of Control of the Flathead, Mission, and Jocko Irrigation Districts, and from Bruce Frederickson, Esq. and Kristin Omvig, Esq., the Montana-based Counsels for the Flathead, Mission and Jocko Irrigation Districts and the Flathead Joint Board of Control of the Flathead, Mission, and Jocko Irrigation Districts:

1. The FJBC, through its abovementioned counsels, agrees not to proceed legally or otherwise, at the state, federal or local levels, against FJBC Board Member-at-Large and Executive Committee Member, Ted Hein with respect to any FERC-related matter before the Board for consideration, particularly, the FERC-related matter(s) previously and/or currently identified and included on today's special meeting agenda, and to ensure that Mr. Hein serves out the remainder of his one-year term (from May 2015 until May 2016) as FJBC Board Member-at-Large and Executive Committee Member, without incident or harassment;

2. The FJBC, through its abovementioned counsels, agrees to include Mr. Hein in all FJBC Board and Executive Committee sessions, without exception, and to share with Mr. Hein all Board and Executive Committee communications (handwritten, electronic, verbal or otherwise) from the date of inception of his term(s) until the expiration of his term(s) in each such body. FJBC, through its undersigned counsels, agrees not to seek Mr. Hein's removal from either body for any reason(s) directly or indirectly related to the FERC matter in which the FJBC is currently involved; Page | 2
3. The FJBC, through its abovementioned counsels, agrees to include and inform Mr. Dean Brockway, an elected FJBC Board Member and representative of the Jocko Irrigation District, in and regarding all FJBC Board meetings (regular and special) and to share with Mr. Brockway all Board communications (handwritten, electronic, verbal or otherwise) from the date of inception of his three-year term (April 2015) until the expiration of said term (April 2018). The FJBC, through its undersigned counsels, agrees not to seek Mr. Brockway's removal from the Board for any reason(s) directly or indirectly related to the FERC matter now before the FJBC;
4. All abovementioned FJBC counsels agree not to single out for communication in any form, directly or indirectly, any of the clients of The Kogan Law Group, P.C. ("KLG") identified in the FERC intervention in question, including Messieurs Hein and Brockway, at any formal regularly or specially scheduled FJBC Board and/or Executive Committee meetings, or in any informal private meeting, without first going through me;
5. The FJBC, through its abovementioned counsels, agrees to provide District Members with the final settlement position statement they previously developed through its abovementioned counsels, exchanged with the Parties to the settlement conference proceedings (i.e., the Tribes, the State of Montana and the U.S. Department of the Interior), and filed with the settlement judge in anticipation of the October 26, 2015 settlement conference meeting convened at the FERC in Washington, D.C. on October 28, 2015, as well as all future settlement position statements the FJBC, through its abovementioned counsels, may develop prospectively for exchange with the Parties, and which already has been or will be filed with the assigned settlement judge, during the entire course of these settlement conference proceedings, and to provide said statements at least three days prior to each prospectively scheduled exchange of information, filing with the settlement judge and/or convened meeting (e.g., per FERC Order dated, October 27, 2015, and subsequently issued orders);
6. The FJBC, through its abovementioned counsels, agrees to provide the District Members with all prior settlement position statements it already has received, and all future settlement position statements it will receive in the future, from all other Parties to the settlement conference proceedings (i.e., the Tribes, the State of Montana and the U.S. Department of the Interior), during the entire course of these settlement conference proceedings, within three days following each prospectively scheduled exchange of information, filing with the settlement judge and/or convened meeting (e.g., per FERC Order dated, October 27, 2015, and subsequently issued orders);
7. The FJBC, through its abovementioned counsels, agrees to admit KLG, as District Members' other retained counsel, to all FJBC Board-scheduled and convened FERC Kerr Dam license Article 40(c) settlement conference and public hearing-related meetings, telephone conference calls and correspondences (handwritten, electronic, verbal or otherwise), and to admit KLG as an

observer/representative at-large of the FJBC to all FERC-related settlement conference meetings scheduled by the settlement judge, for the purpose of reporting the details of each such meeting to its District Member clients (former Movants for FERC Intervention) and submitting comments, on their behalf, to and for serious consideration by the FJBC through its abovementioned counsels prior to each such meeting;

8. The FJBC, through its abovementioned counsels, agrees to explain to all District Members in understandable terms the legal significance of 1985 license Article 40(c)(ii) and explain why they did not include Article 40(c)(ii) issues in their draft and final settlement negotiating position and request for an Article 40)(c) public hearing; Page | 3
9. The FJBC, through its abovementioned counsels, agrees to explain to all District Members in understandable terms how the Bureau of Indian Affairs' Mission Valley Power ("MVP") was and is able to resell at low cost to Reservation irrigators, residents and businesses the electricity Energy Keepers, Inc. will generate (and NorthWestern Energy previously generated) from their operations of Kerr Dam (i.e., approximately 19% of the electricity MVP admittedly sold/sells to the Reservation), and the electricity MVP has acquired and will continue to acquire from the Bonneville Power Administration (i.e., approximately 80% of the electricity MVP admittedly sells to the Reservation);
10. The FJBC, through its abovementioned counsels, agrees to clarify and verify whether the FJBC still adheres to the legal position expressed by former FJBC representative Ray Jensen on pp. 5-6 of his prepared direct testimony of April 1984, in response to the following question, to wit:
"Q. How do you understand the Project's reserved and appropriated water power rights relate to Winters rights?
A. Under the Supreme Court's Winters decision (Winters v. United States, 207 U.S. 564 (1908)), creation of the Reservation reserved, for the benefit of practicably irrigable Reservation lands, that portion of Reservation streams and other water sources necessary to achieve irrigation of such lands. When later, pursuant to the Act of April 23, 1904, 33 Stat. 302 (the 1904 Act), as amended, allotment of the best lands was made to individual Indians, and unallotted lands were opened for sale to settlers for payments credited or paid to the Tribes, the Joint Board believes that ownership of appurtenant Winters irrigation water rights passed with the allotted and unallotted lands to the landowners and their successors in interest; that is, to the individual Indians and non-Indians who, in addition to the Tribes, now own the irrigable Reservation lands. The Joint Board understands that the remainder of the Reservation waters and water power rights in Reservation streams including the water power rights in the navigable Flathead River at the site of the present Kerr Development (Kerr site), remained the unencumbered and absolute property of the United States, subject to control and disposition by Congress. As stated, Congress exercised its power by reserving and appropriating water power rights at the Kerr site for the Project, and by authorizing the Secretary to contract with the Districts with respect thereto."
11. The FJBC, through its abovementioned counsels, agrees to disclose and make available to

District members copies of all formative documents evidencing the establishment of the FJBC as a legally valid state, federal and/or local private or governmental entity, and to publish/post said documents, along with the executed FJBC bylaws, on the FJBC website (<http://www.flatheadjointboard.org/historical-documents>). The FJBC, through its abovementioned counsels, agrees that it shall ensure the publication/posting of these documents within ten days of the execution of this Agreement;

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12. The FJBC, through its abovementioned counsels, agrees to publish/post on the FJBC website (<http://www.flatheadjointboard.org/fjbc-agenda-and-minutes>) within one week of any and all regularly and specially scheduled FJBC meetings, the Agendas and Minutes of all such meetings. The FJBC, through its abovementioned counsels, agrees that it shall ensure the publication/posting of all past, present and future agendas and minutes within ten days of the execution of this Agreement;
13. The FJBC, through its abovementioned counsels, agrees to disclose to and make available for viewing by all District members, the complete contents of all formal and informal contracts, arrangements, consultations, advisories, liaisons, written or otherwise, which the FJBC has entered into with third parties in furtherance of FJBC business, especially with persons who are directly and indirectly related to the Montana Land and Water Alliance.

Please discuss this modified offer of withdrawal immediately with your clients. Unless I hear back from you by close of business today, Mountain Time, I will proceed to make a supplementary filing with FERC to further support the motion filed on October 21-22, and to share such filing with the settlement judge.

If the terms of this modified Offer of Withdrawal of Intervention meet with your approval, KLG will file its motion to withdraw the intervention within forty-eight hours after the execution of a Stipulation of Agreement, and provide to FERC Settlement Judge Haubner a copy of the executed Agreement.

Very truly yours,

Lawrence A. Kogan

Lawrence A. Kogan
Managing Principal

Cc: Bruce Frederickson, Esq., Rocky Mountain Partners, PLLC
Kristin Omvig, Esq., Rocky Mountain Partners, PLLC