



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

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JAMES E. RISCH
Governor

KARL J. DREHER
Director

August 31, 2006

LOY PEHRSON
WD34 ADVISORY COMMITTEE CHAIRMAN
RT 1 BOX 48
DARLINGTON, ID 83255

RE: Telephonic Meeting with Advisory Committee

Mr. Pehrson:

The attached letter was received by IDWR on August 29, 2006 and is forwarded to the Advisory Committee for their reference. IDWR would like to discuss this letter, and other WD34 issues with the Advisory Committee. IDWR asks you, as chairman of the WD34 Advisory Committee, to coordinate with other members of the committee to attend a conference call on Monday September 18th at 10:00 am to discuss issues raised in this letter as well as the scheduling and content of a post-irrigation season meeting of WD34 users, WD34 staff, and IDWR, as contemplated in previous correspondence. The number to call for the conference call is 713-577-1201 and enter a guest code of 504265.

If the scheduled time is not convenient, please contact our office and we can reschedule the call to a time that better fits your schedule. A proposed agenda for the conference call and a draft outline of the meeting topics are attached to this letter for your reference.

If you have any questions, please feel free to contact IDWR.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nick Miller', is written over a light blue horizontal line.

Nick Miller
Water Distribution Section

Enclosures:

- 1) *Letter of July 23, 2006 from "WD 34 Users" to Dave Tuthill, IDWR*
- 2) *Draft outline of topics for post-season meeting*
- 3) *Draft conference call agenda*

cc:

Lin Hintze – PO Box 125, Mackay, ID, 83251
Logan Williams – HC 86 Box 4160, Mackay, ID 83251
Kieth Hill – Mackay, ID 83251
Preston Bell – Rt 1 Box 58, Darlington, ID 83231
Alvin Crawford – 3943 W Antelope Rd, Moore, ID 83255
Jay Jensen – 3165 W 3300 N, Moore, ID 83255
Bob Waddoups – 3474 W 2850 N, Moore, ID 83255
Eric Aikele – 3477 W 2700 N, Moore, ID 83255
Young Harvey Walker – Rt 1 Box 200, Arco, ID 83213
Bob Duke – Watermaster, Water District 34, PO Box 53, Mackay, ID 83251
IDWR Eastern Region, Idaho Falls

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Draft Agenda for September 18th Conference Call

- Discuss issues raised in the August 23 letter and discuss ways of resolving the grievances of the “Water District 34 Water Users”.
- Discuss schedule, place, time, etc. for the post-season meeting
 - Propose mid November in the Big lost Valley.
- Discuss the proposed meeting and review the outline of topics.
- Discuss Advisory Committee’s involvement in developing resolutions, procedures, etc. for 2007 and beyond.
- Other topics for discussion??

Draft Outline of Topics for post-Irrigation Season Meeting

The intention of the post-season meeting is to: 1) inform water users of activities that have been undertaken this season to improve the water district, 2) provide a summary of the distribution of water in 2006, and 3) discuss future irrigation seasons.

- Summary of 2006 watermaster removal request, timeline, parties involved, actions, responses, etc.
 - Received request March 17, 2006
 - IDWR performed an investigation and presented the results in a meeting in Boise on May 4, 2006
 - IDWR chose to focus efforts on improving operation of the district rather than immediately pursuing a hearing. IDWR issued recommendations to WD34 and has provided ongoing guidance to WM and increased district oversight
 - After the irrigation season, hold this meeting to review the data and demonstrate improvements
 - Following the meeting, IDWR will schedule a hearing unless the request for removal is withdrawn

- Overview of accomplishments of 2006
 - Provided updated water rights lists to WM and interested parties and made them available on the internet
 - Provided access to daily diversion data on IDWR web page
 - Worked on IDWR WR records to improve our ability to quickly answer questions and review data
 - Provided additional guidance to WM on a variety of topics
 - Conducted verification measurements throughout the district
 - Corrected a number of errors in IDWR's Big Lost River Water Rights Accounting Program
 - Performed additional review of accounting results and have worked with WM when discrepancies arose.

- Review of IDWR verification measurements
 - Summary and results

- Presentation of 2006 distribution data
 - Summary and results

- Necessary steps to take before 2007 WD34 Annual Meeting
 - Develop voting policy to be adopted by resolution
 - Determine how voting is to occur at 2007 Annual meeting – how and if 5-year averages should be used
 - Determine the need for additional funding for gages, staff, and equipment.
 - Possibly hold a special meeting to adopt any new policies by resolution.

RECEIVED

AUG 29 2006

DEPARTMENT
WATER RESOURCES

Aug. 23, 2006

David R. Tuthill, Jr P E
Water Management Division Administrator
Idaho Dept. of Water Resources
P O. Box 83720
Boise, ID 83720-0098

Dear Mr. Tuthill:

We, the WD 34 water users (as signatories of July 12, 2006 letter) find your delayed response to our July 12th letter inadequate, along with your continuation of a process that does not utilize established procedures in addressing issues that have an impact on all water users in District 34. Your letter of August 11, 2006, does not address our call for a hearing now or a dropping of the request (by Mr. Foster) for the removal of the Watermaster.

Idaho Code 42-605(9) requires the Director of I.D.W.R. to hold a hearing upon request. That request was made on March 17, 2006. The meeting in Boise on May 4, 2006 obviously did not resolve the dispute since the request for a hearing was conveniently delayed. At the meeting nothing was presented that demonstrated "violations of the law, the inconsistencies and inaccuracies of the Watermaster's records and the improprieties and gross unfairness that has resulted" (from Mr. Foster's inflammatory letter of March 17, 2006 asking for a removal hearing)

If Mr. Foster's "main objective is not removal of Bob Duke as Watermaster", then why ask for it and then continue to delay it? We find this demand for removal slanderous to the Watermaster and to the water users in the District. We do believe that clearing Mr. Duke's record now is a clear benefit to the District or if found guilty of some misconduct, the benefit to the District would be obvious. Due-process implies a reasonable time: it has passed. The hearing must happen now or be dropped.

The continuing delay just makes the whole process appear to be a gross manipulation of the integrity of Water District 34 and by implication, IDWR. A few of the "leaders" of Mr. Foster's March 17, 2006 letter to IDWR presented some of their concerns to the advisory board of Water District 34 on March 15, 2006. It was decided at that meeting to invite IDWR to look into accounting methods in the District and have more Watermaster oversight by IDWR to help alleviate those concerns. Just two (2)days later, you received a request for Watermaster removal from the same leaders. The advisory board was obviously just used for appearance of correct procedure.

Then after the meeting in Boise and the continuing delay of a hearing, changes to the administration of Water District 34 have been implemented by IDWR solely on the suggestions of Mr. Foster, without presenting the changes or getting any advise from the advisory committee or making any attempt to include the general members

of Water District 34 We, as Water District 34 water users, feel manipulated, abused and angry at the process that has taken place by this call for Watermaster removal. The first step towards honesty and transparency is to have the hearing or drop it.

When and if a hearing is to take place we question the impartiality of a IDWR hearing officer. From a recent telephone conversation between personnel of IDWR and a member of the advisory board, IDWR implied that if the lower valley could elect "their Watermaster", this objectionable situation of mistrust in Water District 34 would absolve itself. We find this statement implies bias and is wrongheaded, though illuminating. Mr. Duke was elected by an overwhelming majority; election of a Watermaster by a minority is not democratic.

Why is IDWR attempting to implement a one (1) year accounting of assessments for voting purposes even though Idaho Code 42-605 clearly states a five (5) year average for voting is entitled? Why is Mr. Foster questioning the legality of the vote count and the credentials of some voters when two (2) members who signed the "leaders" letter and are members of the advisory committee and credentials committee were at the table verifying the credentials of water user voters along with Cindy Smyer, the Water District 34 office manager. If anyone is to blame on this count, look no further than the signers of the letter to remove the Watermaster. We want the voting years assessment accounting clarified so any legal questions can be resolved before the next election. Also, we would like legal and procedural clarification on the ability of a person (ranch manager) who has the power of attorney over the use of a water right for the ensuing irrigation season to vote that right at the annual meeting.

You have set up a meeting with water users at the end of the irrigation season by consulting with Mr. Foster. This is the way to make progress in Water District 34? No procedural consultation with the advisory committee? The advisory committee was dismissed by Mr. Foster as powerless; IDWR, dismissed them too. The advisory committee can have great influence if used for advice, consulted on needed changes and procuring needed support.

The fall meeting has been set up to discuss progress, made by this call for Watermaster removal hearing. We feel the handling of this matter has set progress backwards in this Water District by it's display of elitism and made the division of upper and lower valley more pronounced and hardened. Most of the changes you have made in the Recommendations for Operation of Water District 34 are not in themselves objectionable. The process of how they happened to be implemented continues to be a problem. The first step in accountability is to have the hearing for Watermaster removal or to have Mr. Foster honorably drop it. Not only is there a mistrust of the intentions of some lower valley "leaders", there is now mistrust of IDWR in it's ability to handle this situation with openness, fairness and to follow the rules and procedures equitably.

Also, the expense to IDWR, the Water District and the advisory committee and water users (examples: the trip to Boise, the meetings and time in answering these

accusations) has been substantial. We feel a bond should be posted with such a call, such as Watermaster removal, to ensure its seriousness and legitimacy.

We have sought approval of this letter by fax and telephone with the previous signatories of the July 12, 2006 letter. We found no objections to its conclusions.

Sincerely,
Water District 34 Water Users