



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

April 9, 2010

JAY V. JENSEN
WATER DIST NO 34
PO BOX 53
MACKAY, ID 83251-0053

Mr. Jensen:

Congratulations on your appointment as Watermaster of Water District 34, Big Lost River. Enclosed is your certificate of appointment.

As you know, the Idaho attorney general issued an opinion discussing whether you can serve both as watermaster and as a director for the Big Lost River Irrigation District ("BLRID"). As I interpret the opinion, the law does not directly prohibit you from serving in both positions. Nonetheless, a watermaster is considered an employee of the Department, and must adhere to the Department's guidelines of employee conduct. Importantly, the opinion stated:

... [T]he conflict of interest provisions of the Department's "Employee Conduct" policy generally would bar the same person from simultaneously serving as the WD34 watermaster and as a director of the BLRID. The Department's policy has an important exception, however: it does not apply "upon written authorization of the Director."

The granting of the authority to except from the general prohibition to you serving in both positions does not excuse you or me from our joint responsibilities to prevent the conflicts and appearances of conflict that the provisions of the Department's Employee Conduct protect against. As a result, the Director will expect the following actions in both your roles as watermaster and as a BLRID director:

1. In any activities of the BLRID board, whether you are acting independently as a board member or collectively as an entire board, you must identify any possible conflict between the board activity and your watermaster responsibility. You cannot excuse yourself from your watermaster duties when there is a conflict. As a result, you must openly identify the conflict to avoid the appearance of conflict and recuse yourself from the BLRID activity when it conflicts or may conflict with your watermaster duties.

2. You should not receive any monetary compensation or pecuniary benefits for serving as a BLRID director, regardless of how small the compensation may be.

3. All administration of water in the following areas may only be implemented following consultation with Department staff: (1) Delivery of water above Mackay Reservoir separately from the remainder of the Big Lost River; (2) Rotation of water rights into storage; (3) Determinations of whether a call for delivery of water is futile; (4) Allocation of losses between storage water and natural flow; and (5) Any other decision that would place the rights of BLRID in conflict with other water rights.

4. The rules for distribution of water in Water District 34 require that, when there is a dispute in canals and laterals, the watermaster may investigate the dispute to resolve the conflict. Because of the inherent conflict in delivery of water through BLRID conveyance works and oversight by BLRID ditch riders and your watermaster duties, this function should be performed by the advisory committee of Water District 34.

5. Idaho Code § 42-605(8) authorizes the director of the Department to remove a watermaster upon complaint of a water user and a determination that the watermaster has failed to perform his duty. One of your duties is to ensure at all times that you have properly disclosed potential conflicts or the appearance of conflicts to the Department and the water users and that you avoid all actual conflicts. As a result, when the Department receives any complaint from a water user alleging a conflict between BLRID board and watermaster responsibilities, you must overcome a Department presumption that the allegation is true. As a result, the Department will forward a copy of the complaint to you, and you must explain, in detailed narrative why the action complained of is not a conflict of interest or a violation of ethics. The response must be filed with the Department within seven days of your receipt of a copy of the complaint. Failure to adequately explain that the action is not a conflict could result in your removal.

6. In addition to the water rights accounting program maintained by the Department, past watermasters have maintained a separate or parallel accounting of water right deliveries. The separate accountings have sometimes shown discrepancies, raising suspicion about possible manipulation or inappropriate water delivery. To promote consistency and accuracy, and to avoid the appearance of manipulation, you must use the Department's accounting program for administration.

Note that the requirements listed above are intended to address potential conflict of interest issues that may arise. However, as we cannot foresee the specific conflicts you will face, these requirements may be subject to change. As the season progresses, I may choose to refine these requirements to more adequately address issues as they arise. Note also, that these requirements can be withdrawn from your duties if the conflict of interest is no longer present.

Jay V. Jensen
April 9, 2010
Page 3 of 3

Again, congratulations on your appointment. Please contact me if you have any further questions or concerns on this matter.

Regards,



Gary Spackman
Interim Director, IDWR

Enclosures

State of Idaho
Department of Water Resources
Certificate of Appointment

This is to certify that I have on this day appointed JAY V JENSEN *as*
WATER MASTER *of* WATER DISTRICT 34 *for*
THE PERIOD APRIL 30, 2010 TO THE NEXT ANNUAL MEETING *or until his successor is*
appointed and qualified under the provisions of Sections 42-605 *,*
Idaho Code, at such rate of compensation as established by applicable law.



This certificate has been issued and the seal of the
Director fixed at Boise, Idaho, this 9th
Day of APRIL *, 2010*

Cary Spackman
Interim Director

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

State of Idaho)
County of Custer/Batta) SS

Official Oath

I do solemnly swear or affirm that I will support the Constitution of the United States, the Constitution and laws of the State of Idaho, specifically including the provisions of Section 42-605 and 42-607, Idaho Code, and that I will faithfully discharge all the duties of the office of Watermaster of District 34 according to the best of my ability. So help me God.

Jay V. Jensen
Watermaster

SUBSCRIBED AND SWORN TO before me this 3rd day of March, 2010

SEAL



Dawn Brown
Notary Public
Residing At Mackay
Commission Expires 10/16/12

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

State of Idaho)
County of Custer ^{ss} Butte

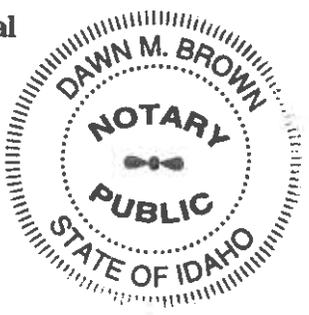
Official Oath

I do solemnly swear or affirm that I will support the Constitution
Of the United States, and the Constitution and laws of the State of Idaho,
specifically including the provisions of Sec. 42-619, Idaho Code, and that I will
faithfully discharge all the duties of the office of treasurer of Water
District #34 for the calendar year of 2010 - 2011 according to the best of
my ability. So help me God.

[Signature]
Treasurer

SUBSCRIBED AND SWORN TO before me this 3rd day of March, 2010

Seal



Dawn Brown
Notary Public
Residing at MacKay
Commission Expires 10/16/12

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

State of Idaho)

County of Custer/Batta) ss

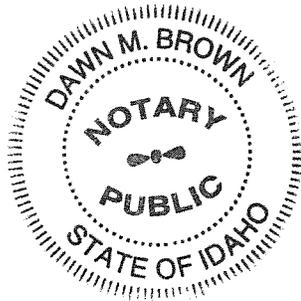
Official Oath

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Jay V. Jensen
Watermaster

SUBSCRIBED AND SWORN TO before me this 3rd day of March, 2010

SEAL



Dawn Brown
Notary Public
Residing At Mackay
Commission Expires 10/16/12

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

State of Idaho)
County of Custer/Butte) SS

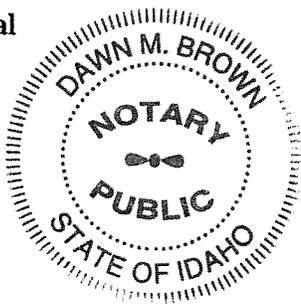
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District #34 for the calendar year of 2010 - 2011 according to the best of
my ability. So help me God.

[Signature]
Treasurer

SUBSCRIBED AND SWORN TO before me this 3rd day of March, 2010

Seal



[Signature]
Notary Public
Residing at MacKay
Commission Expires 10/16/12

PETITION FOR WATERMASTER'S SERVICES

mackay, Idaho
march 1, 2010

RE: Water District No. 34
Stream: Big Lost River

TO: IDAHO DEPARTMENT OF WATER RESOURCES

I, the undersigned, owner or manager of ditches or person controlling ditches in Water District No. 34, hereby request the services of a watermaster for the reason that there is a necessity for the use and control of the waters of the District.

NAME OF WATERMASTER: Jay V. Jensen

ADDRESS OF WATERMASTER: 3320 west 2800 NO.
moore, Id 83255

PHONE NUMBER: 569-8011

Date watermaster is to start: 3/2/2010

If known, the date services of watermaster are to terminate: ?

Jay V. Jensen 3320W 2800 N Moore Id 83255
signature address telephone
208-527-2093

W A R N I N G: Watermaster cannot begin services until ALL conditions of appointment have been fulfilled.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region, 900 North Skyline Drive, Suite A • Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

March 12, 2010

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

Cindy Smyer
PO Box 43
Mackay ID 83251

RE: Secretary / Treasurer Appointment for Water District 34

Dear Cindy:

A treasurer is not required if the County Treasurer provides collection and payment services for the district. The District must elect a treasurer if the Water District collects and pay expenses on its own, or if the county collects expenses but does not provide payment of expenses. Prior to assuming the duties of office, a treasurer must complete an Oath of Office and sign it before a notary and return the oath to the Department of Water Resources if their adopted budget is over \$3000.00 a year. The State will issue a certificate to the treasurer confirming an appointment once the signed and notarized has been received.

Any Water District having an annual budget of \$3000.00 or less may adopt a resolution at the annual meeting to authorize the Watermaster to serve as Water District Treasurer. Only one Oath of Office is required if the Watermaster also serves as treasurer. Watermasters in Water District with annual budges exceeding \$3000.00 shall not be authorized to act as Water District treasurer.

If your budget is over \$3000.00, please sign the enclosed Oath of Office in front of a notary and return to us as soon as possible.

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

Respectfully submitted,

Sharla Cox
Administrative Assistant

Enclosure

Cox, Sharla

From: Luke, Tim
Sent: Tuesday, March 09, 2010 12:45 PM
To: Cox, Sharla
Cc: Swank, Lyle; Cefalo, James; Carlson, Dave; Dunn, Dennis; Yenter, Cindy; Homan, John
Subject: WD34 Watermaster Appointment

Sharla and all,

Please be advised that a new watermaster was elected at last week's annual water district 34 meeting. The watermaster elected is Jay Jensen. Jay is also a board member of the Big Lost River Irrigation District and late last week the AGs Office and IDWR already received an inquiry from the BLRID attorney inquiring about conflict of interest issues. In response to this matter, and the fact that WD140 elected Brian Higgs as watermaster, who holds a number of employment and consulting contracts with irrigation districts within the water district, the Director has asked the AGs to provide a memorandum or legal analysis addressing watermaster conflict issues. The memo was also requested due to a need for some general guidance in the future. The issue has been raised a few times in the past. We anticipate that a draft or even a final memo may be out in another week or so.

Please delay issuing any watermaster certificate of appointment in WD34 until further notice by me or Gary, which will be after further clarification from the AG's office. I understand Mr. Jensen is already working at the WD office and is essentially assuming duties on his own. That may not be problematic given that the irrigation season has not started and water rights are not yet being administered. Nick Miller and I have advised Mr. Jensen of the potential conflict issues, the BLRID request and the fact that an AG's memo is forthcoming. We understand he will not make any decisions regarding his status with the BLRID board until receiving further direction or determination from the AG's office.

Staff should also delay sending any water right transfer watermaster comments forms or requests to the watermaster or water district office until a formal watermaster appointment is made.

Please also be advised that Seath Beal, Butte County Commissioner, called me yesterday to discuss submittal of a petition for a drought emergency in Butte County. Their next commission meeting is March 22. I anticipate we will likely get a petition from Butte County after March 22, probably on or before April 1.

Regards,

Tim Luke
Idaho Department of Water Resources
322 E Front St, PO Box 83720
Boise, ID 83720-0098
208-287-4959



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

APRIL 5, 2010

JAY V. JENSEN
WATERMASTER, WATER DISTRICT NO. 34
PO BOX 53
MACKAY, ID 83251-0053

RE: TEMPORARY WATERMASTER APPOINTMENT

Dear Mr. Jensen:

As you are aware, your election for appointment as watermaster of Water District No. 34 has not yet resulted in your appointment as watermaster due to concerns regarding a possible conflict of interest with your other duties to the Big Lost River Irrigation District as a member of their board of directors. However, as users in the water district have made requests for delivery of winter stockwater, it has become necessary to appoint a watermaster on a temporary basis pending the resolution of the conflict of interest issues. As a result, I am enclosing a Certificate of Appointment based on your oath of office received by the Idaho Department of Water Resources Eastern Regional Office on March 11, 2010.

The enclosed certificate documents your appointment as watermaster of Water District No. 34 from today (April 5, 2010) through the end of the non-irrigation season on April 30, 2010. Given the ongoing concerns regarding your potential conflict of interest, as well as the legacy of concern for accurate and transparent water delivery in the basin, I ask that you work closely with Department staff to ensure that the concerns of the users are addressed.

Please contact my office if you have any further questions.

Sincerely,

Gary Spackman
Interim Director, Idaho Department of Water Resources

enclosures: *Certificate of Appointment -- Jay Jensen, Watermaster, Water District No. 34*

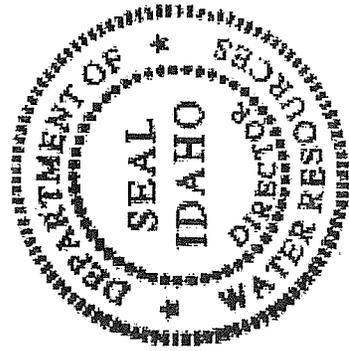
c: *IDWR Eastern Region*
Tim Luke, IDWR State Office
Nick Miller, IDWR State Office

State of Idaho
Department of Water Resources

Certificate of Appointment

This is to certify that I have on this day appointed JAY V. JENSEN as
WATER MASTER of WATER DISTRICT 34 for
THE PERIOD APRIL 5, 2010 THROUGH APRIL 30, 2010 or until his successor

is appointed and qualified under the provisions of Sections 42-605
Idaho Code, at such rate of compensation as established by applicable law.

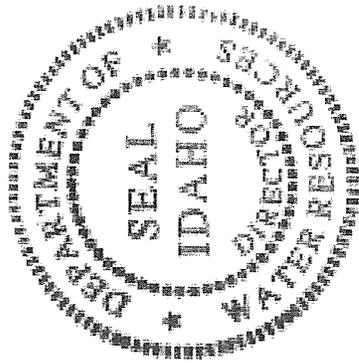


This certificate has been issued and the seal of the
Director fixed at Boise, Idaho, this 5th
Day of APRIL, 2010

Ray Spackman
Interim Director

State of Idaho
Department of Water Resources
Certificate of Appointment

This is to certify that I have on this day appointed Gary L Brinton as
Deputy Watermaster of Water District 34 for
the 2010 irrigation season or until his successor is
appointed and qualified under the provisions of Sections 42-605,
Idaho Code, at such rate of compensation as established by applicable law.



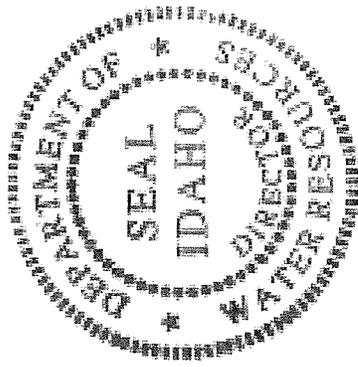
This certificate has been issued and the seal of the
Director fixed at Boise, Idaho, this 20th
day of May, 2010.

Gary Spackman

Interim Director

State of Idaho
Department of Water Resources
Certificate of Appointment

This is to certify that I have on this day appointed Kiley Smith *as*
Deputy Watermaster *of* Water District 34 *for*
the 2010 irrigation season *or until his successor is*
appointed and qualified under the provisions of Sections 42-605
Idaho Code, at such rate of compensation as established by applicable law.



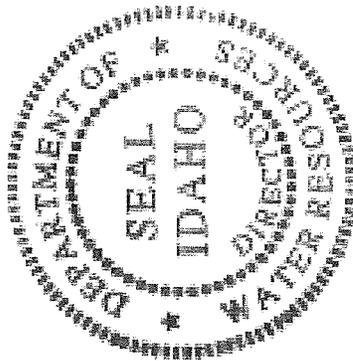
*This certificate has been issued and the seal of the
Director fixed at Boise, Idaho, this* 20th
day of May, 20 10.

Bing Spackman

Interim Director

State of Idaho
Department of Water Resources
Certificate of Appointment

This is to certify that I have on this day appointed Steve Avery *as*
Deputy Watermaster *of* Water District 34 *for*
the 2010 irrigation season *or until his successor is*
appointed and qualified under the provisions of Sections 42-605 *,*
Idaho Code, at such rate of compensation as established by applicable law.



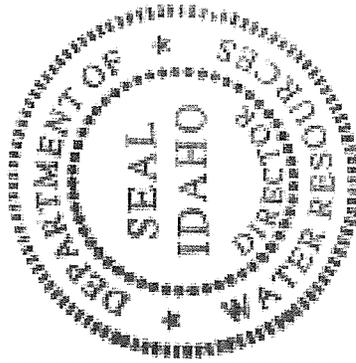
This certificate has been issued and the seal of the
Director fixed at Boise, Idaho, this 20th
day of May *, 20* 10 *.*

Gay Spackman

Interim Director

State of Idaho
Department of Water Resources
Certificate of Appointment

This is to certify that I have on this day appointed Roger Totten as
Deputy Watermaster of Water District 34 for
the 2010 irrigation season or until his successor is
appointed and qualified under the provisions of Sections 42-605,
Idaho Code, at such rate of compensation as established by applicable law.



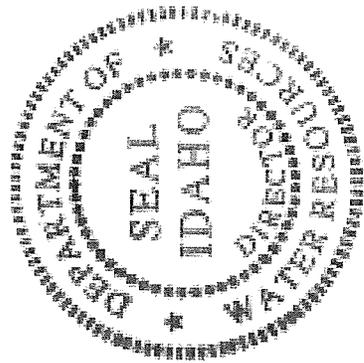
This certificate has been issued and the seal of the
Director fixed at Boise, Idaho, this 20th
day of May, 20 10.

Gary Spackman

Interim Director

State of Idaho
Department of Water Resources
Certificate of Appointment

This is to certify that I have on this day appointed Dean Andersen as
Deputy Watermaster of Water District 34 for
the 2010 irrigation season or until his successor is
appointed and qualified under the provisions of Sections 42-605,
Idaho Code, at such rate of compensation as established by applicable law.



*This certificate has been issued and the seal of the
Director fixed at Boise, Idaho, this* 20th
day of May, 20 10.

Gay Spackman

Interim Director

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

RECEIVED
MAY 19 2010
Department of Water Resources
Eastern Region

State of Idaho)
County of Custer & Butte) ss Official Oath

I do solemnly swear or affirm that I will support the Constitution of the United States, the Constitution and laws of the State of Idaho, specifically including the provisions of Section 42-605 and 42-607, Idaho Code, and that I will faithfully discharge all duties as Deputy Watermaster of District #34 according to the best of my ability. So help me God.

Gary Brinton
Deputy Watermaster

SUBSCRIBED AND SWORN TO before me this 7th day of May, 2011.



Sandra Moncur
Notary Public
Residing At Arco, IDAHO
Commission Expires 11-01-2011

Gary L. Brinton
Printed Name:
Deputy Watermaster
Ditch Rider

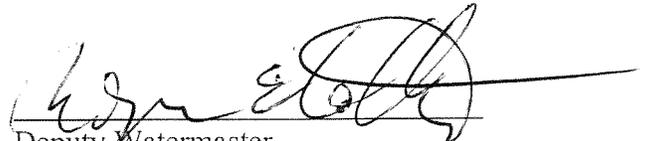
BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

RECEIVED
MAY 19 2010
Department of Water Resources
Eastern Region

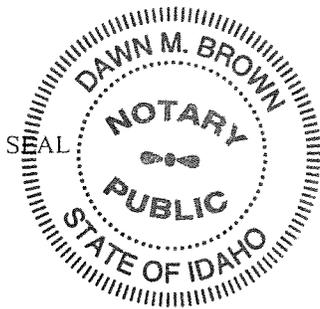
State of Idaho)
County of Butte & Custer) ss

Official Oath

I do solemnly swear or affirm that I will support the Constitution of the United States, the Constitution and laws of the State of Idaho, specifically including the provisions of Section 42-605 and 42-607, Idaho Code, and that I will faithfully discharge all duties as Deputy Watermaster of District #34 according to the best of my ability. So help me God.


Deputy Watermaster

SUBSCRIBED AND SWORN TO before me this 5th day of May, 2010




Notary Public
Residing At Mackay
Commission Expires 9-10-16-12

Roger Totten
Printed Name:
Deputy Watermaster
Ditch Rider

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

RECEIVED
MAY 19 2010
Department of Water Resources
Eastern Region

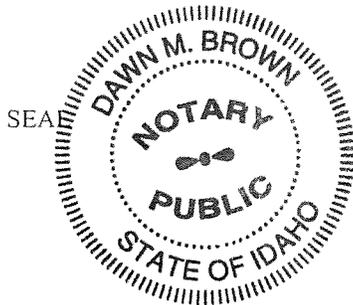
State of Idaho)
County of Butte & Custer ^{SS}

Official Oath

I do solemnly swear or affirm that I will support the Constitution of the United States, the Constitution and laws of the State of Idaho, specifically including the provisions of Section 42-605 and 42-607, Idaho Code, and that I will faithfully discharge all duties as Deputy Watermaster of District # 34 according to the best of my ability. So help me God.

Dean Andersen
Deputy Watermaster

SUBSCRIBED AND SWORN TO before me this 30 day of April, 2010.



Dawn Brown
Notary Public
Residing At Mackay
Commission Expires 10/16/12

DEAN ANDERSEN
Printed Name:
Deputy Watermaster
Ditch Rider