

WD 37
RECEIVED

JAN 25 2008

DEPARTMENT OF
WATER RESOURCES

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Mr. Tim Luke
Water District Specialist
P.O. Box 83720
Boise, Idaho 83720-0098
Ph: 208-287-4800

Re: Irregularities at January 14, 2008 Annual Meeting of Water District 37 & 37M

Dear Tim:

I called Allen Merritt recently and discussed my concerns about the resolution that was passed at the January 14 meeting of 37 and 37M. He stated that he had concerns and had sent information to your office regarding the meeting. My concerns is that the resolution passed at the meeting titled **2008 RESOLUTION No.4 RESEARCH TO REBUILD DISTRICT RECORDS** was initially sent out by the 37 office some time the week of the 7th of January and received by me about the 10th in another form and was titled **2008 RESOLUTION No. INVESTIGATION OF WATER USEAGE & ASSESSMENT THEREFORE.** I have enclosed the two resolutions and a copy of the MEMO that accompanied the January 7th resolution stating how it was derived by a special Meeting.


I took the January 7th resolution, that I had received by mail to the meeting, and argued against it not realizing that the Resolution of January 14th had been substituted the day of the meeting and placed at the door going into the meeting. I ask the secretary of the water office today where that resolution had come from and she said she had no idea. My reading of Title 42 of the Code seems to state that the meeting and agenda need to be published 21 days prior to the meeting. My first point of objection is lack of notice, only hours, of the change in the proposed resolution substituted for the original one sent out on January 7th, which also was not 21 days notice.

My second point is that the resolution No. 14 that was substituted for the January 7th one and adopted by the meeting members resolved "*that Water Districts 37 & 37M retains the services of an independent contractor and not as an employee of the Water District to research water rights records and provide mapping information to the Water Districts*" for the sum of \$90,000 for the year 2008. I maintain that this is not a legal expense to assess the water users by Idaho Code 42-612 section 2, that states that expenses of resolutions "*shall come from funds available pursuant to section 42-613A, Idaho Code.*"

Setting aside that the resolution adopted is not permitted by Code in its language and notification, the specifics of the Resolution are very vague. It is logical to ask: 1. What is the job description of the independent contractor?, 2. What water right records are to be researched and what mapping is to be conducted?, 3. Who supervises the work?, 4. Who does the contractor report to? 5. What criteria is there to say when \$90,000 worth of work has been done? It appears by the Resolution last sentence that the "*expert's statements for work performed when delivered to the Advisory Board will constitute reimbursement by the Water District.*" I can't imagine your division approving such loose criteria for the payment of \$90,000 of water user's fees.

I would hope your department is concerned by these actions of a few water users who unfortunately have the water votes to adopt any action they desire in the district even though it is not well thought out or perhaps even legal. Please advise me of your thoughts.

Sincerely,


Nick Purdy
37M water user

*Resolution
at last day of meeting and passed*

**2008 RESOLUTION No. 14
RESEARCH TO REBUILD DISTRICT RECORDS**

WHEREAS, water rights have been transferred, split, and otherwise moved around to parts of Basin 37 away from the original place of use, and have likewise been transferred to new purposes of use;

WHEREAS, a comprehensive knowledge of the current and prior uses is a critical factor in the Water District's ability to properly administer water rights in Basin 37;

WHEREAS, water rights in the upper part of Basin 37 if not properly administered could deprive senior water users throughout Basin 37 of their water supplies;

WHEREAS, it is in the interests of all water users in Basin 37 to have all water usage properly cataloged and mapped, including those uses without valid rights and to learn where water spreading has occurred;

WHEREAS, historical records of Water Districts 37 & 37M were destroyed in an office fire in 1994 and complete records are essential to proper management of water rights within the districts;

NOW, THEREFORE, BE IT RESOLVED, that Water Districts 37 & 37M wish to retain the services of an expert as an independent contractor and not as an employee of the Water Districts to research water rights records and provide mapping information to the Water Districts. The Water Districts authorize the expenditure of up to \$90,000 for the year 2008, to be included in the assessments pursuant to Idaho Code §42-612 (1). The expert's statements for work performed on behalf of the Water District shall be submitted to the Advisory Board through the Water Master for reimbursement by the Water District.

• List of Rts that he needs help w/ Administering
Listed # of Rts & DVS.

how many Rts tied together, Delving totals,



Idaho Statutes

TITLE 42
IRRIGATION AND DRAINAGE -- WATER
RIGHTS AND RECLAMATION
CHAPTER 6
DISTRIBUTION OF WATER
AMONG APPROPRIATORS

42-612. BUDGET OF WATER DISTRICT -- ADOPTION AND CONTENTS -- DEBT OF WATER USER. (1) At any annual meeting the water users must adopt a budget covering the estimated expenses of delivering the water of the district for the ensuing year, and by resolution determine that the budget shall be collected. The compensation of the watermaster and the watermaster's assistants and any other expenses of delivering the water of the district to the users thereof, including the costs of the advisory committee in implementing resolutions adopted by the water users of the district for activities other than the payment of the salary and operating expenses of the watermaster and assistants, shall be paid in the manner hereinafter, in this section, provided.

(2) To the extent possible, funding for advisory committee expenses associated with implementing resolutions adopted by the water users for other than the payment of the salary and operating expenses of the watermaster and assistants shall come from funds available pursuant to section 42-613A, Idaho Code.

(3) The budget shall show the aggregate amount to be collected from all the water users in the district, and the amount to be paid by each ditch, canal company, irrigation district or other water user. For the purpose of computing the respective amounts, to be paid by each water user, the water delivered to the various ditches, canal companies, irrigation districts or other users during the past season or seasons, not exceeding five (5) seasons, shall be used as a basis.

(4) Upon the adoption of the budget the amount payable by each ditch, canal company, irrigation district or other water user, as shown by the budget, shall become the debt of each respectively and shall become due and payable as hereinafter provided. Other provisions of chapter 6, title 42, Idaho Code, notwithstanding, water users may at the annual meeting by resolution provide for an annual minimum charge not to exceed fifty dollars (\$50.00) per water user for watermaster services. The minimum charge is applicable whenever the prorated charge against any ditch, canal company, irrigation district or other water user is less than the minimum charge.

(5) Other provisions of chapter 6, title 42, Idaho Code, notwithstanding, water users at the annual meeting may provide, by resolution, that the respective amounts owed by each water user as shown in the adopted budget shall constitute a final determination of the amount due for that year without the need to carry forward any water user debits or credits to the following year.

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Idaho Statutes

TITLE 42
IRRIGATION AND DRAINAGE -- WATER
RIGHTS AND RECLAMATION
CHAPTER 6
DISTRIBUTION OF WATER
AMONG APPROPRIATORS

42-613A. PROCEEDS FROM THE LEASE OF STORED WATER -- DISTRICT RETENTION -- CONTROL AND USE BY ADVISORY COMMITTEE. The advisory committee of a water district created pursuant to section 42-604, Idaho Code, and chosen pursuant to section 42-605(6), Idaho Code, when appointed by the water resource board to facilitate the rental of stored water in the district pursuant to section 42-1765, Idaho Code, shall be authorized to manage and retain in a special account the proceeds accruing within the district from the rental of storage water leased under the provisions of section 42-1765, Idaho Code. Notwithstanding the supervisory responsibilities of the director of the department of water resources over the activity of watermasters delivering water within water districts, the account shall be under the exclusive control of the advisory committee of the water district when such committee has been appointed by the water resource board to facilitate the rental of stored water in the district within which the leased water is stored.

All proceeds from the lease of stored water which are retained by the advisory committee of any district under this section shall be used in accordance with the resolutions duly adopted by the water users of the district solely for one or more of the following public purposes:

- (1) Expenses of the district.
- (2) Improvements to the district's facilities, including a reasonable reserve for future improvements.
- (3) Educational projects designed to increase public awareness in the area of water distribution, water rights and water conservation.
- (4) Other public projects designed to assist in the adjudication, conservation or more efficient distribution of water.

All funds retained by an advisory committee pursuant to this section shall be deposited by the water district treasurer pursuant to the public depository law.

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Gentlemen,

Please find enclosed a rough draft of the proposed resolutions that are tentatively planned to be presented by the Concerned Water Users group at the Water Districts' annual meeting to be held January 14, 2008 at the Shoshone Masonic Hall. If you have any questions, please call.

Cyndi

Received
Jan 10th or 7th

MEMO

To: Water District 37 & 37M Advisory Board Members

From: Cyndi McCowan, Secretary

Date: January 4, 2008

Subject: Discussion of Resolutions for January 14, 2008 Annual Meeting

A group of individuals met at the Water District office on January 3, 2008 to discuss the possibility of resolutions that may be brought to the floor for discussion and vote during the Annual Meeting of Water District 37 & 37M to be held on January 14, 2008. This memorandum is a summary of the meeting.

Pete Van Der Meullen gave an overview of the SRBA and how the Idaho Dept. of Water Resources had handled some water rights in the past. He went on to say individuals within the district felt that due to the fire the Water District office had in the early 90's, there may be abuse of water rights by expansion, transfer of power rights to ag use and other issues. Mr. Vander Muellen stated the group he was working with (Concerned Water Users) was intending to ask that two resolutions be brought up for discussion at the annual meeting.

The first resolution would involve the financial support of the District for research of water rights within District 37 & 37M, the district would oversee the researchers and gather the information from them, the research would be intended to rebuild the districts records and help in the adjudication process.

There was some discussion of the IDWR's "Accomplished Transfer". Watermaster Kevin Lakey said he would be in touch with Norm Semanko, IWUA for clarification of the term and see what the states statues read.

The second resolution to be brought for discussion at the annual meeting would be to ask for Interim Administration from the Director of the Idaho Dept. of Water Resources.

The discussion continued concerning the recommendation of the Advisory Board to bring to the annual meeting for a vote the hiring of a new deputy above Magic. Watermaster Kevin Lakey told the group that unless there was interim administration the new deputy may not be able to due the job effectively. Kevin stated he would visit with Norm Semanko concerning the interim administration.

Kevin also stated he would ask Mr. Semanko if the Concerned Water Users group could be put on the legislative committee meeting agenda at the annual IWUA meeting on January 22-24 to discuss a statute concerning aesthetic, non-consumptive water rights.

Attachments

Resolution received Jan 7 or 8th

substituted on day of meeting

**2008 RESOLUTION No.
INVESTIGATION OF WATER USEAGE & ASSESSMENT THEREFORE**

WHEREAS, water rights have been transferred, split, and otherwise moved around to parts of Basin 37 away from the original place of use, and have likewise been transferred to new purposes of use, particularly as a result of real estate development in the Basin;

WHEREAS, a comprehensive knowledge of the current and prior uses is a critical factor in the Water District's ability to properly administer water rights in Basin 37;

WHEREAS, water rights in the upper part of Basin 37, where much of the development has taken place, if not properly administered could deprive senior water users throughout Basin 37 of their water supplies;

WHEREAS, it is in the interests of all water users in Basin 37 to have all water usage properly cataloged, including those uses without valid rights and to learn where water spreading has occurred;

WHEREAS, some Basin 37 water users have commissioned an ongoing study of water use in Basin 37 by Dr. Wendy Pabich (PhD);

WHEREAS, the information collected and to be collected by Dr. Pabich would be beneficial to the Water District and all of its water users;

WHEREAS, to the extent that any water users chose to object to water right recommendations, including any objections based on the information collected by Dr. Pabich, costs involved in such objections should not be borne by the Water District, but by the individual objectors;

WHEREAS, Dr. Pabich has provided a cost estimate of \$90,000 for information gathering, mapping and water use analysis for 2008, exclusive of any role in providing assistance on individual objections;

NOW, THEREFORE, BE IT RESOLVED, that the Basin 37 Water District supports the retention of Dr. Pabich by the Basin 37 Water District to provide water use and mapping information to the Water District and authorizing the expenditure of sum of \$90,000 for the year 2008, to be included in the assessments pursuant to Idaho Code §42-612 (1).

3323
Gail
M. J. J.