



State of Idaho

DEPARTMENT OF WATER RESOURCES

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February 22, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

Kevin Lakey
Watermaster, Water Districts 37/37-M
107 West 1st
Shoshone, ID 83352

Re: Your Correspondence Dated February 12, 2008 regarding Resolution No. 14 at annual District Meeting and Request for Guidance from IDWR

Dear Kevin,

I am in receipt of your letter and attachments addressed to me at the Idaho Department of Water Resources (Department) regarding the above referenced topic. I appreciate your clarification of the resolution and a more detailed description of work that may be performed by a contractor. The bullet list items shown on the last page of your attachment titled "Criteria and Explanations for Resolution #14 as Adopted at the 2008 Annual Meeting for Water Districts 37 & 37M," appear to be tasks that are related to the delivery of water in the districts and therefore represent valid water district expenses.

Upon review of the attachment, I remained concerned that the Districts still intend to have a contractor address the same twelve items in which you are asking the Department to provide guidance. However, based upon our February 19, 2008 phone conversation, you made it clear that the contractor would not be doing any research or investigation of these same items. I did agree that it may be appropriate for a contractor to provide some further assistance to the districts on item number 10 after the Department provides the requested data to the districts in a format that is agreeable to both the districts and the Department. Given this further understanding from our phone discussion, the Department does not object to the districts' implementation of Resolution No. 14 provided that the districts take the following steps or precautions:

- Limit the contractor's scope of work to the duties outlined in the last page of your attachment.
- Complete a bidding process (Request for Proposal) as recommended by the Attorney General's Office and in accordance with Idaho Code § 67-5714 et. seq. and IDAPA 38.05.01.
- Provide some written explanation of scope of work and justification of expenses to accompany district assessments.

Although the Department does not object to the general implementation of Resolution 14, we do have some concern about the potential expenditure of up to \$90,000 for the scope of work that you outlined in your last correspondence. This figure represents a significant increase in the budgets of the districts. The districts may wish to carefully consider the amount of funds actually needed for the given scope of work and how assessments are set relative to that need.

With respect to the twelve items from your letter that you requested assistance and guidance, I wanted to report to you that staff from Twin Falls and Boise met telephonically on February 20, 2008 to discuss those items. The items have been assigned to several different staff in both offices.

Our goal is to provide responses to you on all twelve items by April 15, 2008, although some follow-up may be necessary after that date. Michael Ciscell, Sr. GIS Analyst at our state office will be contacting you about the item ten data request. The Department will provide you with surface water right records for Basin 37 Part 1 (Area 1) since a majority of those rights have been partially decreed. We feel it is premature at this time to provide data for Part 2, Camas Creek and tributaries, since very few of the recommendations there have been partially decreed and because there are objections concerning the Department's water right recommendations and general provisions for that area. The Department recommends that you adhere to the status quo in 2008 in terms of watermaster administration of any water rights in the Camas Creek area. We understand that the traditional status quo for that area is limited to response or investigation of complaints from right holders in that area or upon the request and guidance from the Department. The Department does plan to address administration of water rights in the Camas Creek area after most of the main or important objections are resolved.

Finally, I wanted to take this opportunity to respond to Resolution Number 15 that was adopted at the annual meeting of the water districts. Specifically, Resolution 15 represented a request to the Department or the State to petition the Snake River Basin Adjudication (SRBA) District Court for interim administration of rights pursuant to the Director's reports in reporting areas Part 2 and 3. The resolution further stated that in absence of such a motion filed by the Department or the State, the water district should file or designate and appropriate representative to file such a motion with the SRBA Court on behalf of the district.

This letter represents the Department's response to Resolution 15. Neither the Department nor the State will formally petition the SRBA Court this year for interim administration in reporting areas Part 2 and 3. It has been the Department's understanding now for approximately the past one to two years that the SRBA Court is reluctant to grant petitions for interim administration in areas where numerous objections are pending such as currently exists in reporting areas Part 2 and 3. We believe the court has been clear in this matter. However, individual water right holders or water use entities in Basin 37 may petition the court directly on their own. Water District 37 cannot petition the court for interim administration since it holds no water rights. Although the district has an interest in the matter, it has no legal standing in the SRBA.

I hope that this response provides the necessary direction you sought in your letter dated February 15, 2008. Please call me directly at 208-287-4959 if you have additional questions or need any further assistance.

Regards,



Tim Luke
Manager, Water Distribution Section

Cc: Allen Merritt, IDWR Southern Region Manager
Jeff Peppersack, IDWR Water Allocations Bureau Chief
Michael Ciscell, IDWR
Phil Rassier and John Homan, Idaho Attorney Generals Office
Nick Purdy

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER DISTRICT NO. 37 & 37M

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Kevin Lakey
Watermaster

RECEIVED

FEB 15 2008

DEPARTMENT OF
WATER RESOURCES

Tim Luke
Water Distribution Section
Idaho Department of Water Resources
322 East Front Street, P.O. Box 83720
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February 12, 2008

Tim,

Please find attached the criteria and explanations for Resolution #14 that were approved at our February 8, 2008 advisory board meeting. I have changed them from the copy Nick Purdy sent you by deleting the language about domestic well and other ground water diversions that you and I talked about over the phone on February 11.

In writing this letter I would like to address your concerns from our phone conversations as well as address points raised by Nick in his February 9, 2008 letter.

First, I would like to formally request the Idaho Department of Water Resources issue guidance on the 12 items listed in the criteria. As we have discussed, the issues raised in these criteria are the Department's responsibility, and the Districts welcome the Department stepping in to offer enforcement guidance and/or assistance. My concern is that in the past the Department has been unable to offer much assistance because of limited manpower. With the Governor's requested budget cuts, I don't see the situation changing in the future. If the Department continues to be understaffed, then it would be beneficial for local water districts to fund increased enforcement. But, a precursor to increased enforcement is the understanding of what to enforce. That understanding only comes with hours of research when dealing with the issues I mention in the Criteria. Sometimes I don't even have enough understanding to ask a decent question of the Department. For these reasons I can personally defend the request for research.

As to Nick's concerns about this being a strictly District 37 issue, District 37 voted to fund another enforcement position, but much of the record keeping and paper work will benefit both districts. This double benefit is why the cost for Resolution #14 was split between the districts.

As to the Deputy Attorney General's concerns of issuing an RFP, the Advisory Board moved to follow his direction. The Districts will move forward when the issues concerning Resolution #14 are settled.

Water users in the district who want to see enforcement and administration improved brought Resolution #14 forth. The voting body passed the Resolution believing that it fell within the parameters of water district expenses as described in Idaho Code 42- 612 that Nick addressed in his January 14th letter. If the water users are mistaken in their beliefs, then the Department may need to step in and call for another annual meeting to rescind Resolution #14 and reset the budget.

I realize that I am merely a watermaster. I do not set policy; I merely enforce it. I just want to do my job. But, to do my job, I need help in sorting out the policies set forth by the Department. I welcome your direction and look forward to hearing from you.

Respectfully,

A handwritten signature in cursive script, appearing to read "Kevin Lakey". The signature is written in dark ink and is positioned above the printed name.

Kevin Lakey

**CRITERIA AND EXPLANATIONS
FOR RESOLUTION #14
AS ADOPTED AT THE 2008 ANNUAL MEETING
FOR WATER DISTRICTS 37 & 37M**

Up until the 2006 water season, Water District 37 did not concern itself with diversions not directly tied to the Big Wood River and its tributaries. The district took a "look the other way" approach to any other diversions. Beginning in 2005, concern developed about improving enforcement of water rights within the district. With that concern as a motivation, Water District 37 hired a full time employee to investigate potential water use abuses in the district. From those investigations as well as additional concerns brought forth from the finalization of the Snake River Basin Adjudication (SRBA), water districts 37 & 37 M realized that some of their water delivery as well as ownership records might be incomplete. In order to update district records, districts 37 & 37 M adopted Resolution #14. Resolution #14 as accepted at the January 14, 2008 annual meeting authorizes the collection and expenditure of \$90,000.00 to update district records for the proper administration and enforcement of water rights in Basin 37. Water Districts 37 & 37M will allocate the additional \$90,000.00 as authorized in Resolution #14 to update records as well as address issues listed below:

1.) Lane Ranch

- The back file explaining how to administer this diversion contains 333 pages. There are two surface water rights out of two different streams (Big Wood River and Elkhorn Creek). There are also ground water rights but how many is not exactly known. The uses listed on the IDWR public website include: asthetic, irrigation, recreation, and wildlife. There are also issues of water storage in multiple ponds. The district needs help sifting through all of this data to determine how to administer these rights.

2.) Golden Eagle Subdivision.

- There are 8 different water rights tied to this property that the district is aware of. On one right specifically (37-154C), the district's records show a diversion rate of 2.85 cfs. The state's records show an additional 6 cfs is allowed for asthetic use on this right. Why the discrepancy exists is unknown at this time. The groundwater rights although tied to surface asthetic (non-consumptive) rights are not regulated at this time. Recent transfers from Homeowner's Associations to individual ownership further complicate this diversion. The district needs help administering all of these rights.

3.) Comstock Ditch

- There are multiple non-consumptive permits along with irrigation rights in this ditch. The Big Wood River feeds the upper part of this system. The middle section of the original system has been abandoned, but the lower end of this system is fed by spring water. One diversion from the lower section of this ditch owns a piece of the "Rockwell Bypass Saved Water" that is tied to the Big Wood River, but the Big Wood River water does not make it to this particular diversion. Also, the lower end of this system feeds the upper part of the Golden Eagle Subdivision referred to in #2. The Comstock ditch water that is delivered to the Golden Eagle Subdivision is not regulated. How to administer this extra water to Golden Eagle is not understood at this time. The District needs help understanding how to administer this system.

4.) Purdum Slough

- Harry Rinker Company owns water rights in this system that can also be delivered to the Hiawatha Canal. The district has never been contacted by the Rinker Company to say when and/or where the water is to be delivered. The district is concerned that double delivery could take place, but we are unsure of what water still exists in this system, because multiple transfers to multiple locations took place. In times past this system used to return to the river, but because of development and/or poor maintenance that is no longer the case. Consequently, the district is not sure whether to administer this system as a natural stream or a canal. The District needs help understanding how to administer this system.

5.) Fuld Estate (Old KOA Campground)

- No Surface water rights exist at this location, but irrigation in excess of 10 acres has taken place in the past. This location is also served by the Ketchum City Municipal place of use. The district is not sure what water rights are used at this location and/or how to administer them.

6.) Demi Moore/Bruce Willis/Aspen Lakes Canal Co./Aspen Lakes Homeowners/Perry Thomas

- There are multiple owners of multiple water rights with multiple uses delivered from one pump. How to enforce consumptive vs. non-consumptive rights to respective owners is problematic at best. The Willis property also owns non-consumptive rights out of spring-fed sources that are tied to irrigation rights of other individuals who claimed their source as the Big Wood River. How to establish priority of delivery on this system is an ongoing struggle. The District will need to devote more resources to solve the problems of this system.

7.) East Fork of the Big Wood River

- Some of the issues on the East Fork are slowly being solved, but there is still a lot of work to do. In the past, water rights on this tributary were administered as a separate stream from the Big Wood River. The district has never found documentation to explain why this happened. Water right owners on this system became accustomed to never having their water shut off, so it is taking considerable time to educate owners of how the system will be administered in the future. There may be “futile call” issues raised on this tributary if surface water does not make it to the Big Wood River, but those issues will also have to be governed by conjunctive management policy if it is enforced in this basin. Multiple water rights with multiple uses are also an issue on most of the diversions out of the East Fork. Also, some ponds exist with no rights attached to them, but they may be exempt under the 24-hour storage rule. As said earlier, much research still has to be done on the East Fork.

8.) Hiawatha Canal

- The Hiawatha Canal raises multiple concerns. First and foremost, the district is unsure whether it is delivering the proper totals to the river headgate. Because of multiple transfers, splits, sales, name changes, and mitigation losses, the Watermaster is not sure if the decree book reflects the proper delivery totals to the Hiawatha Canal. There are also ponds attached to the Hiawatha Canal that are not supported by a water right. There are also issues of how to administer the Indian Creek water that enters the Hiawatha Canal. All of these issues raise concerns about whether the Watermaster is/can be given authority to administer and enforce water rights on the Hiawatha Canal. Regardless, the Water District will use considerable resources in solving these issues.

9.) Cove Canal

- Delivery totals to the Cove Canal are also a question that needs to be answered. There are some spring sources claimed in the Cove Canal area that are not listed in the district decree book and consequently are not administered. The district needs help clarifying these rights.

10.) Partial Decrees for Areas 1 and 2

- When Partial Decrees for Areas 1 and 2 were issued, the district received the information on 2 discs. The discs contain information on groundwater as well as surface water and disallowed water rights as well as recommended water rights. The problem is that the information on the discs is not in a format that the district can use to adapt the old decree books. Many hours of paper work lay ahead to rewrite the decree books for areas 1 and 2, but the IDWR has offered little if any help in organizing the information. It is imperative that the decrees books for areas 1 and 2 be somewhat finished before the partial decrees for area 3 are issued, but the manpower requirements to finish such a task are beyond the resources of Water Districts 37 & 37M.

11.) Ground Water Sources with Surface Water priorities

- In the past, these sources were issued curtailment notice by mail, but no personal contact was made between the District and the water right owner. The District is concerned that many of the notices were disregarded and diversion of ground water continued without interruption. The Watermaster is personally developing a daily enforcement route to administer these rights. With this added enforcement, the Watermaster will be less available to address other issues listed above and the district will be forced to seek additional resources to make up for the added time requirements.

12.) Rinker 11 & 11A Canals and Gimlet #9 Canal

- Changes in the river channel have caused all of these systems to undergo major changes in headgate construction. Return flow measuring devices are being installed this year in conjunction with take out measuring devices at the newly installed headgates. Water right owners in these systems have also become accustomed to never having their water shut off because their rights are largely non-consumptive with small irrigation rights attached. Extremely dry years like 2007 prove that these systems do consume water when the water table drops low enough to prevent gaining reaches within the systems. Considerable time and resources will be dedicated to these systems in educating the water right owners of how the system will be managed in the future. The district will likely use support from the Idaho Department of Water Resources in this education process.

In addressing all of the issues listed above, it becomes apparent that Water Districts 37 & 37 M may need to consider hiring additional personnel.

Duties that additional personnel would be responsible for could include the following:

- Update district files with corrected recommendations from the IDWR and SRBA
- Assist the districts in developing their GIS capabilities
- Assist the districts in rewriting district decree books using IDWR direction
- Assist the districts in identifying additional diversions that may require improved enforcement
- Assist the districts in compiling a contact list for all diversions
- Assist the districts in developing formal requests of the IDWR for enforcement direction on questionable water rights

Activities not allowed for district personnel would include the following:

- Interpreting decrees and recommending enforcement guidelines to the Watermaster
- Being party to any objection in the SRBA while representing Water Districts 37 & 37M

When considering hiring additional personnel, the districts have considered hiring an independent consultant versus hiring additional district employees. Hiring an independent consultant instead of a full time employee would offer at least three advantages:

- 1.) The districts would avoid paying employer income tax, health insurance benefits, and retirement benefits.
- 2.) The districts would not be obligated to employ the individuals(s) after research is complete.
- 3.) Finding an employee in the Blaine County area with knowledge of the local watershed as well as the professional, technical and communication skills required to fill this position while also willing to work for a typical water district salary would be extremely difficult.

Concerns have been voiced as to the vague language of Resolution #14 as written and adopted at the 2008 annual meeting. It is the hope of Water Districts 37 & 37M that this document helps remove some of those concerns.