



Holden Kidwell
Hahn & Crapo P.L.L.C.
L A W O F F I C E S

1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, Idaho 83405

Tel: (208) 523-0620
Fax: (208) 523-9518
www.holdenlegal.com

Email: rharris@holdenlegal.com

June 12, 2013

Gary Spackman
Director
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

RE: Formal Complaint and Request for Removal of Roger Totten as Watermaster for Water District No. 34 Pursuant to Idaho Code § 42-605(9).

Dear Director Spackman:

Our firm represents Jay and DeAnn Jensen. The Jensens are farmers in Water District No. 34, and possesses both surface and ground water rights that have recently been adjudicated in the Snake River Basin Adjudication. A summary of their water rights is enclosed with this letter.

On behalf of the Jensens, we submit that Roger Totten, the Watermaster for Water District No. 34, has failed to perform his duties as watermaster, the result of which has been lack of water delivery which the Jensens are entitled to by virtue of their water rights. Based upon our observation and collection of information, this is a preliminary list of how the watermaster is failing to meet his obligations:

1. The watermaster has failed to properly measure and account for both surface and ground water.
2. The watermaster is not recording the amount of water being diverted into each of the canal headings which divert off of the Big Lost River.
3. The watermaster is failing to distinguish between different water types, including available natural flow surface water supplies, storage water releases, and ground water diversions into various canals from ground water right holders, the result of which has deprived the Jensens of water.

4. The watermaster has failed to maintain a list of water users who are calling for water delivery.
5. The watermaster has failed to enforce the Department's regulations on the adequacy of water diversions and their associated measuring devices.
6. The watermaster has failed to limit water use to the authorized places of use of certain water users, even after having actual knowledge of these violations.
7. The watermaster has failed to continually adjust water deliveries to water users by priority as the different water type supplies change. For example, on Monday June 3rd, Mr. Jensen turned on one of his ground water wells that diverts into one of the local canals. Mr. Jensen ordered the delivery of other water the next day (June 4th). When nothing was delivered under either request, he once again ordered his water supplies on Thursday, June 6th. Despite these requests for water, the Jensens finally began receiving usable quantities of water on Sunday, June 9th, nearly a full week after his well was turned on.

All of the above actions are in violation of the Department of Water Resources Water Distribution Rules—Water District 34 found at IDAPA 37.03.12, the *Water District 34 Guidelines for Operation* prepared by IDWR (dated October 29, 2006), and other provisions of Idaho law. Further, we reserve the right to supplement this complaint with additional items as that information becomes known to us.

In 2006, Kent Foster of my firm submitted a request similar to this complaint for an investigation of the watermaster pursuant to Idaho Code § 42-605(9) citing similar concerns regarding water measurement and accounting in Water District No. 34. The result of that petition was the *Water District 34 Guidelines for Operation* prepared by IDWR (dated October 29, 2006). Only when the guidance was provided did Mr. Foster's clients withdraw their request for further action. Unfortunately, we now know the water users received only guidance, not compliance. The time has come for compliance.

We understand that under the provisions of Idaho Code § 42-605(9) you will commence an investigation, and may commence a hearing with the other water users of Water District No. 34 regarding these allegations. We look forward to hearing from you on the date and time of when you intend to commence your investigation, and when you intend to hold a hearing, if at all.

We recognize that Water District No. 34 has a long history of water disputes, and we are concerned that this complaint may be treated simply as another instance of a complaint being brought because of drought conditions, or that this is something that the water users in Water District No. 34 "just do." However, the problems associated with the current watermaster run

Director Gary Spackman
June 12, 2013
Page 3 of 3

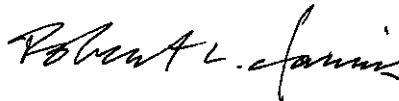
deep and are significant, even though the solutions to these problems are largely fundamental, and we merely request that the watermaster appropriately measure and account for water under the District's guidelines. We are convinced that most water users mainly crave confidence, not merely water. Without confidence in the watermaster, when supplies are tight, there will always be questions about whether users are being shorted for the benefit of others. However, with confidence in the watermaster, water users can plan for and address water shortages. What they have difficulty with is a system that is not operated appropriately. The water users can handle truth and reality—what they can't handle are surprises and inconsistency. We trust that the Director's involvement will help resolve these issues and result in a restored measure of confidence to Water District No. 34 water users.

We note that Water District No. 01, which maintains and delivers a complicated water supply from numerous sources that are tributary to the Snake River, is much more complicated than the Big Lost River and its few tributaries and its single reservoir. The situation in Water District No. 34 can simply no longer continue without a watermaster who will measure and account for water.

Our recommendation to replace Mr. Totten for the remainder of this year is Lyle Swank of Water District 01, who can collect information from on-the-ground deputy watermasters and input that information into IDWR's accounting regime that is being finalized by Nick Miller. Mr. Swank is eminently capable, given his long tenure with Water District 01, and because he is not a resident of the Big Lost River valley, this would eliminate any claim of sympathy or favoritism for any particular class of water users.

We appreciate your immediate attention to this matter. Should you have any questions regarding this complaint, please let us know. We look forward to hearing back from you on when your investigation will commence.

Best Regards,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

JAY AND DEANN JENSEN WATER RIGHTS

Owner	Type	Basin	Sequence	Suffix	Basis	Status	Priority Date	Div. Rate (cfs)	Source	Water Use
JENSEN, DEANN N; JENSEN, JAY	W/R	34	397		Decreed	Active	6/1/1888	2.4	BIG LOST RIVER	IRRIGATION
JENSEN, DE ANN N; JENSEN, JAY V	W/R	34	690	B	Decreed	Active	6/30/1883	1.73	BIG LOST RIVER	IRRIGATION
JENSEN, DE ANN N; JENSEN, JAY V; UNITED STATES OF AMERICA ACTING THROUGH	W/R	34	852	C	Decreed	Active	6/1/1894	3.2	BIG LOST RIVER	IRRIGATION
JENSEN, DE ANN N; JENSEN, JAY V	W/R	34	2357	B	Decreed	Active	3/31/1960	2	GROUND WATER	IRRIGATION
JENSEN, DE ANN N; JENSEN, JAY V; UNITED STATES OF AMERICA ACTING THROUGH	W/R	34	7055		Decreed	Active	12/20/1973	4.8	GROUND WATER	IRRIGATION
JENSEN, DE ANN N; JENSEN, JAY V; UNITED STATES OF AMERICA ACTING THROUGH	W/R	34	7116		Decreed	Active	6/22/1979		WASTE WATER	IRRIGATION FROM STORAGE, IRRIGATION STORAGE
JENSEN, JAY V	W/R	34	10842		Decreed	Active	2/15/1977	0.16	GROUND WATER	DOMESTIC, STOCKWATER
JENSEN, DE ANN N; JENSEN, JAY V	W/R	34	10923		Decreed	Active	4/12/1994	1.05	GROUND WATER	IRRIGATION