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DEPT. OF WATER RESOURCES

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*Attorneys for Petitioner Flying Heart
Ranch Owners Association, Inc.*

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF WATER DISTRICT
NO. 37 ASSESSMENTS ON NON-
CONSUMPTIVE WATER RIGHT NOS. 37-
7767, 37-11828, & 37-22876 IN THE NAME
OF FLYING HEART RANCH II
SUBDIVISION OWNERS ASSOCIATION

Docket No.: _____

**FLYING HEART RANCH OWNERS
ASSOCIATION, INC.'S PETITION
CONTESTING ASSESSMENTS AND
REQUEST FOR HEARING**

COMES NOW, the Petitioner FLYING HEART RANCH OWNERS ASSOCIATION, INC.'s ("Petitioner" or "Flying Heart"), by and through its undersigned counsel of record, Marten Law LLP, and pursuant to Idaho Code §§ 42-605A and 42-1701A(3), and the Department's Rules of Procedure (IDAPA 37.01.01 et seq.), and other applicable state law, hereby contests Water District No. 37's recent assessments and requests an administrative hearing before the Director. The initial bases for Flying Heart's petition and request is set forth below. Flying Heart further reserves the right to amend this petition as necessary.

PETITION

1. Petitioner is an non-profit corporation duly organized and operating pursuant to Title 30, Chapter 30, Idaho Code. Petitioner and the name listed on the water rights (Flying Heart Ranch II Subdivision Owners Association) are the same entity.
2. Petitioner owns three “non-consumptive” water rights for the benefit of its members, water right 37-7767, 37-11828, and water right 37-22876.
3. Petitioner’s water rights are located within Water District No. 37, a water district that distributes water to surface and groundwater rights within the Big Wood River and Little Wood River basins in the State of Idaho.
4. On July 9, 2024, the undersigned counsel sent a letter to the Water District’s watermaster, Sunny Healy, inquiring about the bases for the district’s assessment against these water rights in 2024 (**Ex. A**), and requesting an accounting of the “additional costs and expenses for watermaster services for data collection, water measurement, delivery of water, and record keeping directly attributable to the delivery” of Flying Heart’s water rights as required by Idaho Code § 42-605A(5).
See Ex. B.
5. Ms. Healy responded to Petitioner through an undated letter that was received by the undersigned counsel on December 2, 2024. *See Ex. C.*
6. Thereafter, undersigned counsel and Flying Heart’s president, Thomas Mistick, met with Ms. Healey to discuss the matter at the Water District’s office in Shoshone, Idaho on January 7, 2025.
7. Ms. Healey was unable to produce the requested accounting and did not have information concerning the differences in assessments for certain non-consumptive

water rights (i.e. hydropower) compared to others (i.e. like Flying Heart's recreation and aesthetics uses).

8. Water District No. 37 held its annual water users meeting on January 13, 2025. The District adopted its annual resolutions, setting the budget and assessments for 2025. *See Ex. D.* Resolution #6 states "all non-consumptive Hydro Power water users shall be charged at a rate of 2.0% of the total amount of water delivered through their system." *Id.* The resolutions do not provide for any other procedures or accounting for assessing other non-consumptive water rights. The resolutions do not indicate that the watermaster prepared "an assessment for the ensuing year for each water right used solely for nonconsumptive purposes" as required by I.C. § 42-605A(3).
9. Resolution #8 states that all other assessments "shall be based upon the total amount of annual water delivery, regardless of use or timing, as fixed by the approved budget."
10. On February 1, 2025, the Water District sent Invoice #2169 to Petitioner assessing "Surface Water" at "Diversion 29" in the amount of \$3,082.24. *See Ex. E.* This petition is filed within thirty (30) days after the billing was mailed to Petitioner. *See* I.C. § 42-605(5). The invoice further purportedly shows past amounts due related to the 2024 assessment.
11. It is Petitioner's understanding that the 2025 assessment covers non-consumptive water right nos. 37-7767, 37-11828, and water right 37-22876. The assessment does not include any details concerning the statutory accounting required by I.C. § 42-605A. The 2024 assessment did not include any details either, and the District did

not answer Petitioner's questions regarding that assessment last year.

12. The Petitioner is aggrieved by the Water District's assessments and contests the 2025 amount as provided by I.C. § 42-605A(5).
13. The Petitioner is aggrieved by the Water District's 2024 assessment as well, and contests it as an ultra vires district action that is void and not collectible under Idaho law. *See e.g. Chavez v. Canyon County, ex rel. its Duly Elected Bd. of County Com'rs*, 152 Idaho 297, 304, 271 P.3d 695, 702 (2012) (failing to follow statutory itemization of costs and fees results in a deficient and void notice of delinquency); *Jensen v. Boise-Kuna Irr. Dist.*, 75 Idaho 133, 139, 269 P.2d 755, 759 (1954) (political subdivision action in excess of express provisions of statute is ultra vires and void).

REQUEST FOR HEARING

Petitioner requests an administrative hearing before the Director pursuant to I.C. §§ 42-605A(5) and 42-1701A(3).

REQUESTS FOR RELIEF

Petitioner further petitions that:

1. The Director declare the Water District 37 watermaster's 2024 assessment against water right nos. 37-7767, 37-11828, and 37-22876 to be void, in error, and not in compliance with Idaho law;
2. The Director declare the Water District 37 watermaster's 2025 assessment against water right nos. 37-7767, 37-11828, and 37-22876 to be void, in error, and not in compliance with Idaho law;
3. The Director order the watermaster to prepare a full and complete accounting of "the

additional costs and expenses for watermaster services for data collection, water measurement, delivery of water, and record keeping directly attributable to delivery” of the above-referenced non-consumptive water rights in compliance with Idaho law and issue new assessments for 2024 and 2025 accordingly;

4. If necessary, the Director order the watermaster to credit Flying Heart for excessive assessments levied in 2024 and 2025 in compliance with I.C. §§ 42-605A(5) and 42-606;
5. For such other relief as the Director deems warranted.

DATED this 20th day of February, 2025.

MARTEN LAW LLP



Travis L. Thompson

*Attorneys for Petitioner Flying Heart Ranch
Owners Association*

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of February, 2025, I served a true and correct copy of the foregoing document on the following by the method indicated:

Director Mat Weaver Idaho Dept of Water Resources 322 E Front St Boise, ID 83720-0098 *** service by U.S. Mail and electronic mail mathew.weaver@idwr.idaho.gov garrick.baxter@idwr.idaho.gov file@idwr.idaho.gov	Sunny Healey, Watermaster Water District No. 37 107 West 1 st St. Shoshone, Idaho 83352 *** service by U.S. Mail and electronic mail watermanager@wd37.org	
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Travis L. Thompson

Exhibit A

Water District 37
107 West 1st St.
Shoshone, ID 83352

Invoice

Date	Invoice #
2/1/2024	1329

Bill To

FLYING HEART SUBDIVISION
PO BOX 2163
HAILEY, ID 83333

Due Date	Account #
4/1/2024	1316

Item	Diversion No.	Amount
SURFACE WATER	29	3,057.69
PAYMENT IS DUE BY APRIL 1ST, UNPAID ACCOUNTS WILL BE REFERRED TO A CREDIT REPORTING AGENCY ON MAY 1.		Payments/Credits \$0.00
Please visit our website at www.waterdistrict37.com . Email watermstr@wd37.org with any questions.		Customer Total Balance \$6,139.93

Exhibit B



MARTEN LAW

July 9, 2024

Via Email and First-Class Mail

Ms. Sunny Healey
Watermaster, Water District 37
107 W. First St.
Shoshone, Idaho 83352
healeysunny@hotmail.com
wd37info@wd37.org

RE: 2023 Assessment / Flying Heart Ranch Subdivision II HOA

Dear Ms. Healey:

We are writing on behalf of our client Flying Heart Ranch Subdivision II HOA ("Flying Heart"). We have questions concerning the assessment levied by Water District No. 37 ("District") against Flying Heart's non-consumptive water rights. As you may be aware, Flying Heart holds certain non-consumptive water rights (#37-7767, #37-11828, and #37-22876) diverted for aesthetic and recreation uses. The well that diverts the groundwater right (#37-22876) is metered and the information is readily available for digital download. I am not aware if the District actively distributes the two surface water rights that originate and flow through the subdivision. In all, it appears there would be minimal if any expense incurred by the District for purposes of distribution of Flying Heart's referenced water rights.

It is our understanding the District assessed Flying Heart \$2,185.54 (Acct. 1316, Diversion #29) for 2023 diversions, but the actual invoice lists \$3,000.00 as the total charge. Can you please provide information regarding the difference between the two amounts? It is our understanding the budget increased in 2024 but we do not have the details related to that increase.

Further, can you provide a detailed accounting of the "additional costs and expenses for watermaster services for data collection, water measurement, delivery of water, and record keeping directly attributable to the delivery" of Flying Heart's non-consumptive water rights (#37-7767, #37-11828, and #37-22876) as required by Idaho Code § 42-605A? Pursuant to state law the assessment for such non-consumptive water rights cannot "exceed an amount necessary to pay for watermaster services associated with the nonconsumptive right." I.C. § 42-605A(4). As mentioned above, it appears any District expense would be minimal.

Ms. Sunny Healey (WD 37)
July 9, 2024
Page - 2

Finally, Flying Heart is concerned about the continued increase in the assessment that has been made the last few years. Can you provide any details or explanation as to the flat increase that has been levied on nonconsumptive water rights in general, and whether there is any differentiation between hydropower water rights and other non-consumptive water rights like those held by Flying Heart (i.e. recreation, aesthetics, etc.)?

Thank you for your attention to this matter and please advise if you have any questions.

Sincerely,



Travis Thompson
Partner

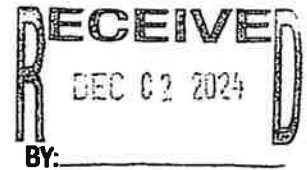
Direct: (208) 735-2227
Email: tthompson@martenlaw.com

cc: Thomas Mistick, c/o Flying Heart
Rob Whitney, IDWR

Exhibit C

WATER DISTRICT 37
107 WEST 1ST
SHOSHONE, ID 83352
208-886-2451

Flying Heart - scanned
& saved on



Travis L. Thompson
163 Second Ave. W.
Twin Falls, ID 83301

Travis,

Thank you for the opportunity to address your questions and concerns. Below are the responses to your letter that were previously sent via email. There are two additional comments after the question (Q) and answer (A) section.

Q: "It is our understanding the District assessed Flying Heart \$2,185.54 (Acct. 1316, Diversion #29) for 2023 diversions but the actual invoice lists \$3000.00 as the total charge. Can you please provide information regarding the difference between the two amounts?"

A: \$2,185.54 was the total from the 2023 Annual Report after the 2023 season. The 2024 Statement of \$3058.59 is based on the 5-year average use and 2024 Budget. The notable budget items that increased beyond general cost of things include -increased salary and addition of health insurance and benefits offered to traditionally seasonal employees, the Annual Audit cost, changes in cloud seeding cost and payment schedule, and additional monitoring and telemetry (Silver Creek gage at Ragsdale, 15 telemetry units).

Q: Can you provide a detailed accounting of "additional costs.... of non- consumptive water rights?"

A: We do not have detailed accounting of "the additional costs and expenses for watermaster services for data collection, water measurement, delivery of water, and record keeping directly attributable to the delivery" of Flying Heart's non-consumptive water rights. Generally, all groundwater meters are read 2-3 times per year and field readings and associated calculations for the year are not itemized by diversion. This is a year-round effort shared by multiple individuals incorporated into Water District duties and responsibilities.

Q: Can you provide or explain as to the flat increase that has been levied on non-consumptive rights in general, and whether there is any differentiation between hydropower water rights and other non-consumptive water rights like those held by Flying Heart (i.e. recreation, aesthetics, etc.)?

A1: If I understand this question correctly, the "flat increase" is the minimum charge set by Resolution 2. "for each individual who owns a water right, whose share of the total budget is less than the above (\$100) specified amount." We do not have details about explanations regarding previous rate increases other than a history of years the rate increased and amounts: 1990 \$20, 2000 \$40, 2014 \$50, 2016 \$60, 2019 \$80, 2020-2024 \$100.

A2: We do not have an answer specific to historical levies on non-consumptive rights or any explanation of "whether there is any differentiation between hydropower rights and other non-consumptive water rights." The hydropower assessment is based on resolution #7 "BE IT RESOLVED that in accordance with Idaho Code §42-605A, all non-consumptive Hydro Power water users shall be charged at a rate of 2.0% of the total amount of water delivered through their system."

Comments: A recalculation of the statement using yearly cfs from the HOA reports received via email May 15, 2023, and January 7, 2024, would result in an increase of approximately \$160.00. It "took a while for [the consultant] to dig out" of the 2022/2023 winter. The ground water pumping AF volume was incorrectly entered and without the surface water included for 2023. For these reasons, there will be no increase in the amount due for the 2024 statement.

The water users of Water District 37 meet annually to approve the budget and resolutions, make public comments, ask questions and voice concerns. For additional questions, concerns, or requests, I encourage you to attend the Annual Meeting.

Thank you,

Sunny

Exhibit D

WATER DISTRICT 37
APPROVED RESOLUTIONS 2025

1. BE IT RESOLVED that hereafter the annual meeting of Water District 37 shall be held on the second Monday of January of each year.
2. BE IT RESOLVED that for the year 2025, a charge of \$100 shall be assessed to each individual who owns a water right, whose share of the total budget is less than the above specified amount.
3. BE IT RESOLVED that the amounts payable by each ditch, Canal Company, or other water user, as shown by the approved budget, shall become due and payable by April 1st and said amount, if not paid, shall bear a penalty of 10% and interest from that date until paid, at the rate of 1% per month or at the discretion of the treasurer, that if a customer's account(s) has not been paid in full by April 1 of the year assessed, the delinquent account(s) will instead be referred to a credit reporting agency after April 30 of that year. At which time, the customer will not again be contacted by Water District 37 but instead will deal solely with the collection agency where a contingent rate and applicable fees will be applied to the unpaid assessment(s). This will warrant that all claims by the collector will be valid, legally enforceable and comply with all applicable laws.
4. BE IT RESOLVED that in accordance with Idaho Code §42-613(5) that no ditch, Canal Company, or other water user shall have the right to demand and receive water, and the Watermaster shall not deliver to such person or persons, until the amount due and payable from such users, as fixed by the budget, has been paid.
5. BE IT RESOLVED that the Watermaster of the district shall be in service for the full year, commencing on February 1st of each year and continue until the following January 31st, or until a successor has been duly qualified and elected.
6. BE IT RESOLVED that the Deputy Watermaster(s) of Water District 37, may remain in service for 12 months from the date of hire. The Watermaster may hire additional assistants as authorized in Idaho Code §42-609 in an emergency.
7. BE IT RESOLVED that in accordance with Idaho Code §42-605A, all non-consumptive Hydro Power water users shall be charged at a rate of 2.0% of the total amount of water delivered through their system.
8. BE IT RESOLVED the assessments, shall be based upon the total amount of annual water delivery, regardless of use or timing, as fixed by the approved budget. Hydro power will be assessed based on the total amount of water delivered through their system as referenced in Resolution #7.
9. BE IT RESOLVED that Sunny Healey shall be elected Watermaster of District 37 for the ensuing year beginning February 1, 2025, and ending January 31, 2026, and that she shall be authorized to hire a full-time staff.
10. BE IT RESOLVED that Brittany Gailey shall be elected Secretary-Treasurer, for District 37 for the ensuing year, beginning February 1, 2025, and ending January 31, 2026.
11. BE IT RESOLVED that the elected Treasurer of Water District 37 shall only disburse funds from water district accounts upon a voucher approved by the Watermaster. All district checks can be signed either by the Treasurer or Watermaster; but must be co-signed by individual(s) approved by the Advisory Board.
12. BE IT RESOLVED that the 2025 assessments shall be calculated over a five-year average, according to Idaho Code §42-612, paragraph 4 which reads as follows: 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.

12A. BE IT RESOLVED if a groundwater irrigation diversion does not have flow data for its delivery, the assessment will be estimated using the full water right and charged for 100 days of use and that rate will be used to calculate the five-year average. Additionally, all other groundwater diversions that do not have flow data will be charged based on type of water use using the full use portion over its full season of use (i.e. commercial snowmaking for 168 days, domestic and municipal for 365 days, etc.). These rates will be used to calculate the five-year average.

13. BE IT RESOLVED the Watermaster shall require lockable and controllable measuring devices to monitor the flows of water both from and back to the main source from which water has been diverted. She shall have the authority to investigate, enforce and act accordingly with the Code of the State of Idaho.

13A. BE IT RESOLVED that in order to ensure accurate data collection, but also control costs, groundwater diversions using meters will be recorded a minimum of three times per year. In addition, additional water use data collection may be needed per the terms of the Big Wood ground water management plan. Diversions that have been allowed power consumption coefficient and time clock variances will be measured and calibrated every three years and power usage will be calculated annually.

14. BE IT RESOLVED that in accordance with Idaho Code §42-605(13), the water users of Water District 37 authorize the Watermaster to coordinate with Idaho Power Company and the Idaho Water Resource Board to develop and enter into a multi-year contract where the Water District provides an annual contribution to the operation and maintenance costs for cloud seeding. Provided, payment for cloud seeding under such contract is subject to annual approval by Water District 37. The contract may begin with the 2023-2024 cloud seeding season with payment due in 2024.

15. BE IT RESOLVED the North Side Canal Company (NSCC) owns water rights to sources in the Malad River Basin and the Snake River Basin; and Water District 37 has assessed NSCC for total water diverted at various rates in the past, including assessing at the same rate for all district water users for the total amount of water diverted through NSCC's points of diversion regardless of the original source of the water; and NSCC is assessed for all of its Snake River water diverted at Milner Dam by Water District 01; and in the past, only non-consumptive water users could request and receive a reduced assessment rate as provide for in Idaho Code §42-605A; and in 2021, the Idaho Legislature amended I.C. §42-612 (4) to allow a water district to charge a fee instead of an assessment for water that is diverted by a right holder in one district, where that water is conveyed and rediverted from a waterway in a second water district. The water users of Water District 37 approve charging NSCC a fee instead of an assessment for water that is diverted from the Snake River and ultimately rediverted within Water District 37. As provided by the statute, the fee will be sufficient to pay for watermaster services including data collection, water measurement, conveyance of water and record keeping. The fee will be negotiated between NSCC and the Water District 37 advisory committee and ratified by the Water District members at the annual meeting. The Chair of the Water District 37 Advisory Committee is authorized to sign negotiated fee agreements. Water users that pay a fee and not an assessment will not be eligible to vote at the annual water district meeting as set forth in section §42-605, Idaho Code, unless the water delivery organization or water user holds other water rights that are assessed by the water district and voting is based upon water diverted pursuant to those assessed water rights.

Exhibit E

Water District 37
107 West 1st St.
Shoshone, ID 83352

Invoice

Date	Invoice #
2/1/2025	2169

Bill To

FLYING HEART SUBDIVISION
PO BOX 2163
HAILEY, ID 83333

Due Date	Account #
4/1/2025	1316

Item	Diversion No.	Amount
SURFACE WATER	29	3,082.24
PAYMENT IS DUE BY APRIL 1ST, UNPAID ACCOUNTS WILL BE REFERRED TO A CREDIT REPORTING AGENCY ON MAY 1.		Payments/Credits \$0.00
Please visit our website at www.waterdistrict37.com . Email watermslr@wd37.org with any questions.		Customer Total Balance \$6,139.93