

TO THOSE WATER RIGHT OWNERS THAT ATTENDED THE JANUARY 28TH
WATER DISTRICT 72-A ANNUAL MEETING

Since the District Annual Meeting on January 28th I have been approached by numerous people in attendance (and others who could not attend but heard about the events of the meeting) who questioned why I never challenged the accusations and inaccurate statements that were made. Frankly in retrospect I feel I neglected my responsibilities in allowing my personal feelings to overrule my better judgment. My initial reaction was if the larger water users present did not have enough "intestinal fortitude" to stand up for their own best interests then why should I? Again in retrospect that made me appear no more interested in the better good of the District than I felt others demonstrated. For that I apologize as I **DO** care about what is in the best interest of the District and I should have emphasized and stood up for those convictions. For that reason I offer the following to at least set the record straight.

In blunt reality a few of the smallest water users in both District drainages joined by other minimal users with agendas that had nothing to do with the best interests of the District were allowed to browbeat and mislead everyone in attendance. I will be specific and, as best I can, in the order of occurrence.

Initially it was suggested the meeting was being held in violation of Statute in that officers were to be elected at the beginning of the meeting rather than the end as the Agenda outlined. The following District Resolution was passed by unanimous vote of all water right owners in attendance in our March 6, 2007, Annual Meeting. Copies of this (and all other Resolutions) were provided to all water right owners of record prior to that meeting and approval of same was confirmed in the Minutes of that meeting supplied to all water right owners of record prior to this year's meeting.

"RESOLUTION OF OFFICER'S ELECTION

Until changed by subsequent Resolution or otherwise altered by majority vote of the water right owners in their Annual Meeting or special meeting called for such purpose, it is herewith resolved that District Officers shall be elected at the end of each Annual Meeting allowing incumbents to conduct the entire meeting and Agenda business prior to any potential change(s)."

The issue pertaining to access to private lands was brought up, specifically any restriction applicable to the Watermaster or Ditch Rider. While all were lead to believe access required prior property owner approval this is **not** the case. Both IDWR and the Watermaster (or Ditch Rider) have authority under Idaho Statute to make reasonable entry upon any lands in the state for the purpose of distributing water, adjusting head gates or controlling works, making investigations and surveys or for other purposes necessary to carry out any of their duties imposed by law [Section 42-1701(5) Idaho Code]. While it was our practice this past irrigation season to make reasonable effort to contact land owners before making such entry, this was a courtesy being extended whenever possible and practical. It is **not** required by law; in fact as stipulated in this Statute, to the contrary.

It was then suggested that the undersigned had removed a wing dam from a diversion of a water right owner **in violation of Statute**. To the best of my recollection this occurred when we had reduced our deliveries of May 1, 1879, priorities, the most senior rights on Challis Creek, to something significantly less than 100%. We were understandably doing the best we could to deliver whatever minimal flows were available to those with the 1879 senior right. It should be noted the diversion in question is a very old, antiquated wooden and badly dilapidated head gate that leaks profusely. This leakage was being exacerbated by the wing dam in question putting added hydraulic forces on the wooden head gate. Not only was it proper **but the obligation** of the Watermaster to minimize, if possible stop, this leakage to allow passage of the instream flow to the senior water right holders downstream with the legal right to utilize these flows. That is why the rock and canvas wing dam was removed and the canvas and rock placed in front of the leaking head gate. The head gate tampering Statute to which reference was made (Section 18-4309 Idaho Code) is clearly **not** applicable to IDWR employees, most definitely not a Watermaster (or Ditch Rider).

With regard to the issue relating to stock water that was subsequently brought up by the same water right owner it was erroneously stated the stock water portion of the water right in question should have been delivered. This precise issue with regard to this specific water right had been brought to the attention of Mr. Tim Luke, IDWR Section Manager, Water Distribution at the time it occurred. In his email reply of July 13, 2007, Mr. Luke stated, *"Your position or thinking is correct. If the right is cut by priority, then all uses under the right are cut. There is no perpetual delivery or diversion for stock whether it is diverted or even for instream stock water (I noted a comment in the right that there is some instream stock watering)."*

Now, with regard to this water right owner and their particular "agenda"; a diversion located on this individuals property serving four (4) other downstream water right owners (but not the property owner) was being totally submerged and, as a result, overflowed as a result of multiple beaver dams above and below this diversion. Upon approaching the property owner about their removal, access and approval was denied. After utilizing the applicable Statute (Section 36-1107 Idaho Code) and personally bringing Idaho Fish & Game as well as a representative of IDWR to the site to view the situation, **all** agreed by Statute these dams were subject to removal. Rather than risk high water washing out the entire diversion in the spring I again approached the property owner about the necessity for removal at the end of last season. Following even more adamant refusal and what I felt was a potential personal threat I sought assistance from the Custer County Sheriff for protection during enforced removal. Ironically when I arrived with the Sheriff we learned approval had been given to the contractor on site to remove three (3) dams when only two (2) had been our intent and so requested. Go figure!

In the extensive discussion that took place regarding The Alternate Voting Method it was stated this voting method only applied to the Watermaster's election. This too is totally false. The Alternate Voting Method as explained in the Watermaster Handbook, the District's designated By-Laws, states in part, *"the alternate voting method identified in Section 42-605(4) Idaho Code be used when considering one or more matters at the meeting."* In short if this voting method is requested by one or more water right owners in attendance it prevails on any matter voted on in the course of that meeting.

In my opinion this incorrect explanation as most of the argument voiced against the alternate voting method was posed by others again with obvious “agendas” other than the best interests of the District. One individual in this category is involved in a contested water right controversy soon to be put to a Hearing before IDWR and/or Civil Court with the undersigned as the Protestant. It does not concern the District nor is it a Watermaster issue. While this matter should be left to applicable law to decide some feel trying to “play it out in the public arena with misleading information” is to their advantage. Again, we feel this should be left to the proper authorities and/or court to decide. We respectfully request that everyone else does the same.

The person who mulishly spewed the most vitriol at this meeting did so, in my opinion, simply for revenge again with literally no regard for the better good of the District. While her initial discontent could be traced back to the District charging for **all** water used, specifically high water and the limitation of same to applicable high water rights, something this individual obdurately opposed, a more recent event in all likelihood reignited this discontent.

On or about August 3rd the undersigned was contacted by this water right owner stating that they had made the “trek” to West Fork Basin Lakes, a source to which they hold a storage water right, and they had released “significant flow” through that head gate which they, in turn, wanted released at their diversion. As is standard practice in such instances I requested the Ditch Rider also make the hike to West Fork Basin Lakes to set and lock the head gate, measure and record the flow. He did so on August 5th taking appropriate photographs of the state of affairs. As a result of that onsite inspection a letter was issued the following day which stated in part:

“As you are aware Mark Lupher went to West Fork Basin Lakes yesterday to set and lock both (names and water right numbers deleted) at the requested flow rate. Unfortunately he discovered the level of the lower lake to be only 0.38 feet above the bottom of the discharge pipe. At that point in time this depth allowed a maximum of only 0.125 cfs (or 6.25 Miners Inches) through the “V” Notch Weir. Given the volume remaining and a realistic factor for evaporation it was obvious even this minimal flow will be gone in two or three days at best. In any case it is further obvious for this season there is just no volume there to be released.

It was also apparent that no head gate or other means of lockable flow control was installed. In addition what was there is obviously too high in elevation to be effective. While the “V” Notch Weir is adequate, it is rather apparent that substantial rework to the complete discharge structure will be necessary before any storage volume from this lake can even be contained much less subsequently controlled, measured and utilized.”

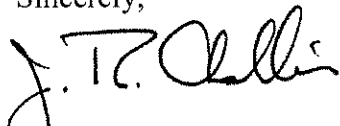
Though unappreciated by these water right owners facts are facts and diversion requirements are as dictated by Statute.

Another individual questioned (rather testily) why she had not received an announcement about the Annual Meeting or the attachments therewith. She was told there was no record with the District of any water right in her name. For the record there still is no such recorded right indicated on the IDWR website. Perhaps before making any presumption as to the incompetence of District officers one might pursue obtaining a water right before attending a meeting to which she has no legal or justified right to participate.

Lastly there was a blatant allegation made that our personal diversion of water was obviously excessive because, as this individual stated, "They are located at the head of the creek so how could we be allowed more water than them?" Though we obviously take exception to and find such an accusation patently offensive, when considered in context it unquestionably exposes someone with little, if any, understanding of Idaho water law. Their 1879 water right provides them 0.17cfs (8½ Miners Inches) which must be transported more than a quarter mile down their lateral ditch across Forest Service property to their property. Our 1879 water right is 1.88cfs (94 Miners Inches) which is conveyed in large part via enclosed pipe. Needless to say at the 60% volume of 1879 water eventually realized last season their 5 Miners Inches (60% of their 8½ Miners Inches) provided literally no realistic use whatsoever. Our 56½ Miners Inches (60% of our 94 Miners Inches) utilized sparingly did, in fact, keep our pastures green and will likely do so in the future. One should really know what they are talking about before making statements for which there is no sound or factual basis.

Again, in light of the numerous untrue and/or misleading statements that went unchallenged I do apologize for my lack of immediate rebuttal. Be that as it may it is my hope we will all move forward keeping in mind the fact the Wild and Scenic Rivers Agreement mandates IDWR to meet specific criteria with which our District already complied and, in virtually all cases, exceeded. Not to maintain our envied position "ahead of the curve" would be counterproductive, at the very least.

Sincerely,



J.R. Challis