



State of Idaho

DEPARTMENT OF WATER RESOURCES

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JAMES E. RISCH
Governor

KARL J. DREHER
Director

August 11, 2006

WD34 Water Users
Signatories of July 12, 2006 Letter

RE: July 12, 2006 letter commenting on the watermaster removal request

WD34 Water Users:

This letter responds to your letter of July 12, 2006 commenting on the request to remove the watermaster and IDWR's response to that request. While the letter comments on several specific aspects of the request and investigative findings subsequent to that request, the general sentiment was expressed in the eighth and tenth paragraphs of the letter: "We have a duly elected watermaster. We need him to do his job, let him do his job and help him do his job... Correct what is wrong and follow the rules... ...have the hearing now, or dismiss it.". IDWR's response to the request to remove the Watermaster is consistent with this sentiment.

IDWR's response to the removal request was to perform an investigation in preparation for a removal hearing as required by Idaho Code 42-605(9). Unless the petition for removal is withdrawn, the Director is required under 42-605(9) to hold a removal hearing. However, IDWR elected first to present the results of this investigation to water users in a meeting held in Boise on May 4, 2006 and provide an opportunity to resolve the dispute without a hearing, if those calling for the removal were willing to withdraw their request. In response, Kent Foster, in his June 13, 2006 letter to IDWR on this matter wrote, "We have previously expressed that our main objective is not removal of Bob Duke as watermaster; rather, it is that the duties of the Water District 34 watermaster be strictly, diligently and thoroughly performed in accordance with the statutes and applicable rules. ...there should definitely be a hearing...". In subsequent correspondence he consented to delay the hearing in favor of providing additional instruction to the Watermaster.

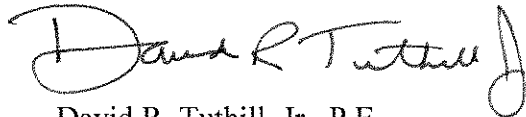
IDWR has since provided, and continues to provide, additional instruction to the Watermaster, and has performed additional oversight. The intent is to allow Mr. Duke to continue to perform his duties as Watermaster of WD34, while ensuring that he is doing so in accordance with the law. This appears to be consistent with the stated intent of those represented by Kent Foster, as well as the desire of the signatories of the July 12, 2006 letter.

As mentioned earlier in this letter, IDWR cannot simply dismiss the removal request. Unless the request is withdrawn, Idaho Code 42-605(9) requires that the Director of IDWR hold a hearing. IDWR appreciates your desire to have this matter brought to a close. However, if a hearing were held now, Mr. Duke would either 1) not be removed or 2) he would be removed and a replacement appointed for the remainder of the unexpired term. Either outcome provides no clear benefit given that the irrigation season is well underway. His removal and replacement may cause unnecessary disruption to irrigation deliveries and end of year reporting. Likewise, if the hearing does not remove Mr. Duke, there is no clear benefit from having that hearing now; IDWR would continue to provide oversight and guidance. Mr. Duke understands that he should continue to perform his duties as the elected Watermaster and IDWR will continue to work with him to ensure the water district runs smoothly.

IDWR plans to meet with water users following the end of the irrigation season to discuss progress that has been made this year. Following that meeting, IDWR and the users requesting removal will discuss the need for a removal hearing. If the hearing is not held prior to the 2007 WD34 Annual Meeting (the end of the Watermaster's elected term) IDWR will consider the request expired.

If you have any questions, please feel free to contact IDWR.

Sincerely,



David R. Tuthill, Jr., P.E.
Water Management Division Administrator

Enclosure:

Letter of July 12, 2006 from WD 34 Users to Nick Miller, IDWR

cc:

Signatories of the attached July 12, 2006 letter.
IDWR Eastern Region, Idaho Falls
Kent W. Foster – Holden, Kidwell, Hahn & Crapo, 1000 Riverwalk Dr. Ste. 200, Idaho Falls, ID 83402
Bob Duke – Watermaster, Water District 34, PO Box 53, Mackay, ID 83251
Loy Pehrson – Rt 1 Box 48, Darlington, ID 83255
Lin Hintze – PO Box 125, Mackay, ID, 83251
Logan Williams – HC 86 Box 4160, Mackay, ID 83251
Kieth Hill – Mackay, ID 83251
Preston Bell – RT 1 Box 58, Darlington, ID 83231
Alvin Crawford – 3943 W Antelope Rd, Moore, ID 83255
Jay Jensen – 3165 W 3300 N, Moore, ID 83255

Bob Waddoups – 3474 W 2850 N, Moore, ID 83255
Eric Aikele – 3477 W 2700 N, Moore, ID 83255
Young Harvey Walker – Rt 1 Box 200, Arco, ID 83213
Seth Beal – 2827 N 3375 W, Moore, ID 83255
Kieth Waddoups – Rt 1 Box 62A, Moore, ID 83255
Darrell McDonald – PO Box 102, Arco, ID 83213-0102
Mitchell Sorenson – 3871 W 2500 N, Moore, ID 83255
Charlie Huggins – Rt 1 Box 216, Arco, ID 83213
Richard Reynolds – 2800 N 3233 W, Arco, ID 83213
Dean Anderson – Rt 1 Box 40, Moore, ID 83255
Joel Anderson – Rt 1 Box 49, Moore, ID 83255
Kent Harwood – PO Box 463, Moore, ID 83255
Big Lost River Irrigation District, 101 S Main Ave Mackay, ID 83251

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July 12-2006

Nick Miller
Water Distribution Section
Idaho Dept. of Water Resources

DEPARTMENT OF
WATER RESOURCES

Dear Mr. Miller,

We, the undersigned, are water users in Water District 34. We write this letter in response to letters written by Mr. Kent W. Foster on March 17, June 12 & June 26, 2006 requesting a "hearing to remove the watermaster" or "Not" and the response of I.D.W.R. to those requests.

We understand that I.D.W.R. legally has to comply with such requests and that I.D.W.R. spent time in W.D. 34 investigating the allegations of the first letter. After the investigative airing in Boise when no serious allegations of fraud, mismanagement or failure to perform statutory duties were forthcoming, we assumed the call for a hearing would be dropped. Yet, it still lingers like the Arco winter fog, threatening to block the sun farther & farther up the valley.

Why should there be a "delay" in the hearing to remove the water master? Do the vocal minority "leaders" asking for the hearing, and now the delay, hope some act of malfeasance will be illuminated so they then can act with a self-righteous "You see, we knew it!" Where, when, and what are the specific accountings of wrong doing by the watermaster? What statutory obligations has he failed to address? The accusing letters are full of general accusations and innuendo, nothing concrete or factual. How can I.D.W.R. allow this slanderous process to continue?

We have no doubt that water user information should be available and more detailed records may be needed. But did not the watermaster account to I.D.W.R. for the water used in the District as required of him? If I.D.W.R. wants him to be more specific and thorough with the accounting of water used then present him with a program that will accomplish more accurate accounting. Do we need a hearing for that?

As to the records provided to the credentials committee at the last annual meeting, they were of the same type and accounting that has always been provided before annual meetings. There may have been an error in figuring the dollar amounts, but the error in dollar amounts was proportional for everyone. Ranch managers voted, representing water rights they used just as in the past. Anyone else was not allowed to vote another's right by proxy. The legality of this practice has been raised and needs to be clarified, but was the election now "fatally flawed." Hardly. The hand votes were as decisive as the dollar assessment votes against major changes in the way that the vocal minority "leaders" wanted the District to be run. If national elections were as decisive as these elections, even democrats would not have anything to complain about. (Why is it always the same ones making the complaints?)

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There is no conspiracy or "extreme favoritism" between lower valley and upper valley in the way water is distributed. The efforts of Bob Duke (and Bob Schaffer of B.L.R.I.D.) have been to distribute the water by right appropriation. There are even people below the Blaine Diversion that will say such. If the water right is on, a fair attempt will be made to deliver that water. In the summer of 2001, before Bob Duke, all the water in the valley was run in various ditches through the mid valley in an attempt to deliver the Jensen's 1883 water rights. In 2003, all the water was run for several days down the river in an attempt for that same right to be delivered. A futile call was made both in 01 & 03, as in 2002. This was not a result of worsening of watermaster oversight or accounting, there was not enough water and I.D.W.R. made the call. This was not favoritism but following the law.

There has been "mistrust" in this valley for the last century. Would an appointed "independent" observer nominated by the vocal minority "leaders" change this? We do not think so and see no need. Where again are the facts to support the need for one? The rest of District 34 water users will not be willing to waste their money on one. An observer would not stop the need of some to write a letter to I.D.W.R. accusing users above the Dam with using straw bales to divert water they had no right to use, but straw bales were never found. Accusation by rumor. -Like this spring when the head of the recharge committee called the watermaster, and board of directors of B.L.R.I.D. (all, but one, signers of the "leaders" letters) called the manager, wanting to know why water was in the Chilly canal. The water in the Chilly canal was frozen solid and covered with snow. A mistaken rumor confusing the canal with the Chilly slough. Last year signers of the vocal minority "leaders" letter were taken above the reservoir and shown headings and takeouts, etc. It didn't change the "mistrust" of illegal water takings above the Dam. (By the way, we have never been able to figure out how the vocal minority "leaders" have time to tend to everybody else's business.)

We have a duly elected watermaster. We need him to do his job, let him do his job and help him do his job. The overwhelming majority of votes at the last annual meeting for the watermaster was a display of support for the watermaster. We see no need for major changes. Correct what is wrong and follow the rules. We need to keep the 5-year average for voting based on section 42-605 of the Idaho Code. Just because budget considerations can be based on one (1) year averages does not override Idaho Code 42-605, where the water user shall be "entitled to a number of votes equal to the average annual dollar amount and any fraction thereof assessed for that person's qualifying water right for the previous five (5) years or such user number of years the right has been assessed." Changing some water rights' place of assessment (river canal heading, instead of field canal heading) does not change the right to a 5-year average. Also, we want to know how was the watermaster able to read river headings this high water year above the reservoir & on Antelope when they were all flooded?

We feel that Bob Duke, the watermaster, should report such accounting of

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water usage, as I.D.W.R. requires. We feel I.D.W.R. should provide the office with whatever is needed in order to accomplish as much transparency of usage and record keeping as is deemed necessary by I.D.W.R. and the water users. If he needs more help in doing so, we should provide him with the staff to do so. (All ditch riders reports should go directly to the watermaster, not passing through the B.L.R.I.D. first.)

Again, have the hearing on the watermaster now, or dismiss it. The asking for delays is unseemly and cowardly. Again, no frivolous accusations of wrongdoing without facts. The campaign of harassment of Bob Duke by the vocal minority "leaders" suggests a tactic of watermaster removal by intimidation, since the minority was not able to vote him out. We strongly suggest that I.D.W.R. has given them more credibility than they deserve.

Respectfully yours,

W.D. 34 Water Users.

P.S.

You may wish to know, we the water users in the valley, do not pretend to know all the law, rules, regulations and management of the water in the valley, but we try hard to understand most of it with our limited learning and time. Does I.D.W.R. give graduate courses in W.D. 34 regulation and management? If more of us took up this knowledge then we all could write I.D.W.R. demanding more hearings and meetings of accountability more often, all getting more learned and keeping I.D.W.R. spending more time, energy and money in the valley so we all can find more water to use. Also, whom in the upper valley is being favored? Everyone?

Signatures regarding letter to Mr. Nick Miller attached:

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July 12-2006

SIGNATURES REGARDING LETTER TO MR. NICK MILLER

NAME: ADDRESS PHONE #

~~Ray Hingston~~ 3675N 3650W Moore ID 83255 588-3752

~~Al R. Hingston~~ 3776 W 3700 Moore ID 83255 588-2957

Mike R. Hingston 3776 W 3700 Moore ID 83255 588-2957

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Jim Rhison Box 16A Darlington ID 83255-588-3101

Bo Clark 3886 W 3700 N Moore Id 83255-588-2705

Steve Strickland 3545 W 3700 N Moore Id 208-588-3759

~~Don~~ 4133 Hwy 93 N Leslie Id 208-588-3093

Dana Wilson 4133 Hwy 93 N Leslie 208-588-3093

Pat Powers B.L.D.I.d. director. 4548 Bar Rd. Mackay Id 588-2654

Don P. Poyner 41221 W Hwy 93 Mackay, Id 588-2257

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SIGNATURES REGARDING LETTER TO MR. NICK MILLER

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Shirley Crawford	3384 W 3800 Moore, ID	588-3326
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June Williams	3590 N 3580 W Moore	588-2237
Brett Williams	Box 21 Moore Id	588-3317
Judy Williams	Box 21 Moore Id	588-3317
Keith D. Ferri	Darlington Id	588-245
Ally-Jill	Darlington Id	588-3383
Eleanor Fullmer	Darlington, ID	588-3383
Ray Pehrson	Darlington Id	588-2532
Randy Pehrson	Darlington ID	588-2532
John Pehrson	Mackay ID	251-6935
Doreen J. Rosenkrantz	Mackay, ID	588-2551
Lee R. Hill	Mackay ID	588-2513
Douglas Rowden	Mackay ID	588-2551
Bryan Kaeper	Idaho	588-2241
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David Keete 4608 Antelope Rd 554-2911

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Beth Waddoups 4253 Antelope Rd 554-3813

Christy King 4331 Antelope Rd 554-2221

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Anna Waddoups 4253 Antelope Rd 554-3813

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Holly Seifried 4399 Houston Rd Mackay 588-3330

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MM Mark Hentze 4372 W Houston Rd, Mackay, ID 83251 (208) 588-2270

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Janet P. Mulick	5536 Chilly Rd	208 588-3023
Logan Mulick	5536 Chilly Rd	208-588-3023
Shane Rosenkrance	3532 Rattray Park Rd	588-3086
Mimi Rosenkrance	" " "	" "
Don P. E.	5366 Fish Hatchery Rd.	588-3072
Julie Johnson	" " "	" " "
Don P. E.	Mackay, ID	208/588/3036
Judy Lord	4260 N. 4th St Mackay	588-3036
John Power	211 No Main St Mackay	588-3251/588-3352

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SIGNATURES REGARDING LETTER TO MR. NICK MILLER

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Steve Smith	5789 W 5000 N Mackay ID	83251 208-874-2538
Wendy Jones	HL63 BOX 1552 CHALLIS ID	
Dee Dee Donahue	5448 Fish Hatchery Rd. Mackay, Idaho	83251
Ray W. Lyle	5425 Hwy 93 Mackay Id.	83251
Cliff Rock	5411 Old Chilly Rd. Mackay Id.	83251
Steve John	4947 N 5480 W Mackay Id.	83251
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Paul Warner	P.O. Box 148	588-3937

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