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RECEIVED  
OCT 30 2006  
DEPARTMENT OF  
WATER RESOURCES

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October 26, 2006

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

COPY

RE: Water User Meeting Scheduled for November 1, 2006.

Dear Mr. Spackman:

We are again writing on behalf of the individuals named in our letter of March 17, 2006, and are sending copies to all whose names are included at the bottom of this letter to try to be specific regarding our expectations for the November 1 meeting of water users of Water District No. 34.

In our first letter we expressed that the major concerns of our clients were primarily that required records had been kept either inaccurately or not at all by the Watermaster for the previous four (4) years. This problem made it impossible for either the assessments levied or the District elections held to be proper or valid. We asked for the Director to perform the investigation provided by Subparagraph (9) of the Idaho Code, Section 42-605, and, if necessary, to hold the hearing contemplated by that section and remove the Watermaster.

We certainly appreciated your prompt response and assignment, on March 30, 2006, of Mr. Nick Miller to be the IDWR contact person during the investigation. We understand that a meeting was held in Boise on May 4, 2006, to discuss information gathered during the Department's initial review of Water District records and to receive input from the Advisory Committee and other concerned water users. On behalf of our clients, we also provided written input to Mr. Miller by letter of May 10, 2006.

In connection with his assignment, Mr. Miller wrote a letter, dated May 19, 2006, in which he expressed his opinion of the cause of the disagreements among water users in the Basin, and in which he listed a number of recommendations for (1) WD34 Staff and the Watermaster, (2) the WD34 Advisory Committee, and (3) the Watermaster, water users and the WD34 Advisory Committee. His letter concluded with a list of actions IDWR would perform. While our clients

disagreed with portions of Mr. Miller's characterization of the underlying causes of the disagreements among water users in the Basin, his letter certainly contained very valuable information and insights and represented to us significant progress in the accomplishment of the objectives of our clients.

In reviewing Mr. Miller's letter, we agreed with the conclusions expressed in paragraph 5 at page 5, under the heading "Recommendations for the WD34 Advisory Committee", that:

5. IDWR recognizes that WD34 has resolved to alter existing assessment policies and adopt a consistent policy of assessing all users based on the diversion from the natural resource. This approach will provide consistency, equitable voting representation, and will simplify accounting and record keeping. However, voting shares and budgeting are based on historical 5-year averages. Until a 5-year history is developed under the new procedure, WD34 must develop an alternative system for voting and budgeting that is not based on 5-year averages. At the May 4<sup>th</sup> meeting a concept was discussed whereby averaging would be phased back in over the next five years. Under such a plan, at the 2007 WD34 annual meeting, all users would be assessed and would vote based on their 2006 usage, and at the 2008 WD34 meeting, voting and assessments would be based on an average of the 2006 and 2007 usage. A full 5-year average would be in effect at the 2011 annual meeting, when users would have a full 5-year usage history. This approach is allowed for budget calculations under Idaho Code 42-612(3), and can be adopted by resolution for voting. While this plan was discussed briefly at the May 4<sup>th</sup> meeting, WD34 staff and the advisory committee should develop this plan with respect to budget calculations and with respect to voting, as these two issues are interrelated. . . .

That statement comes to the heart of the most problematic result of the non-existence of adequate and accurate water measurement records: that neither correct nor valid assessments can be levied, nor can valid elections be held. The "Memorandum" prepared by Mr. Miller, pursuant to your direction, dated May, 2006, contains the details obtained by Mr. Miller in his investigation of WD34 procedures and records regarding assessments and voting, and appears to explain the conclusions and recommendations contained in his May 19 letter.

Because of the invitation contained in paragraph 2 of Mr. Miller's May 19 letter, our clients caused us to prepare a response, on their behalf, which we did by letter dated June 13, 2006. Consequently, we again attempted to express in our June 13 letter that the primary objective of our clients has never been the removal of Bob Duke as Watermaster, but rather the keeping of sufficient

records of verifiable accuracy so assessments could be levied and elections held as contemplated by the statute. We also attempted to describe in that letter reasons why our clients were concerned about whether appropriate records would even be available for the 2006 water year. Then, pursuant to your written request of June 20, 2006, we re-iterated in a letter of June 26, 2006, that our primary objective was not the removal of Bob Duke as Watermaster. We even consented to the delay of a hearing for that purpose, but indicated our clients had no confidence the Watermaster was making necessary efforts in 2006 to remedy the gathering and keeping of the records essential to the preparation of correct assessments and hence valid elections. We suggested a meeting for the purpose of having the Watermaster report his efforts to comply with the statutory requirements.

We also express appreciation to the Department for preparing and sending to the Watermaster the correct list of water rights, for preparation of the **"Water District 34 Guidelines for Operation"** and the June 30 "Additional Instructions to the Watermaster of WD34 - Big Lost River". And, it was gratifying to our clients for the Department to be so responsive to our input regarding the guidelines and instructions. Now, we are looking forward to the meeting scheduled for November 1. Our clients are still very concerned about the effectiveness of the Watermaster and his staff during the 2006 water season in gathering and recording sufficient and accurate data to assure the coming assessments and election will be as required by the statute. Undoubtedly it will be important in that meeting for Mr. Miller or appropriate Department personnel to report to the water users on Department efforts since the March 17 request for an investigation to analyze and improve the work of the Watermaster and his staff. It seems to us it would be appropriate to report on the Department's specific efforts to train and instruct them, but particularly it would be reassuring and add to the confidence level of the water users if the Department could also report on random verifications of measurement procedures and data.

We think it would also be appropriate for the Advisory Committee to report and explain its revised policy on assessments and voting issues and the securing of a qualified consultant to randomly and independently verify data collection procedures and accuracy by the Watermaster and his staff.

But, our clients need to be able to determine from the information to be presented by the Watermaster and his staff whether we need to go forward with the hearing to remove the Watermaster. Therefore, the main event we expect to occur at the November 1 meeting is the verbal and written report of the Watermaster. We need to see not only summaries of the data collected during the 2006 water season, but also the raw data from field records or log books, of diversions at all points, the designation of such diversions as natural flow, storage, rotation credit, recharge, mitigation water, or excess water supplies declared by the Director to be "additional flows". We need to see the daily records of the priority date above the reservoir, below the reservoir and on Antelope Creek, including whether the river was connected or disconnected, together with futile call

determinations. We also need to see how such raw data was entered into the spreadsheets for assessment and voting purposes.

The meeting and the decision that must be made by our clients could be greatly expedited if the Watermaster were to provide copies of this information to us in advance of the meeting. At the very least, it would be essential for him to bring several copies to the meeting because we will need to be able to examine and analyze it to determine for ourselves whether all of the measurements required to be made were in fact made, and whether the data is sufficiently accurate to make the required assessments.

Without the specific information from the Watermaster and our clients' determination that it satisfactorily complies with the requirements of the law, we do not see how it will be possible to avoid a formal hearing. Perhaps the Department already has sufficient information to make a judgment on this issue, but we do not. We envision this upcoming meeting as our opportunity to learn what has been done during this past irrigation season by the Watermaster and to ask him questions to help us determine whether the serious problems that have persisted for so long are being, or can be, resolved.

We re-iterate our appreciation for the efforts and responsiveness of the Department, especially Mr. Miller. We truly hope the Watermaster and his staff have been able to correct the deficiencies so that there can be confidence in the assessments to be levied and hence in the validity of the coming election.

We again thank you for your kind attention to this matter.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kent W. Foster", written in a cursive style.

Kent W. Foster

Gary Spackman  
Idaho Department of Water Resources  
October 26, 2006  
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c:	David R. Tuthill, Jr., P.E. Water Management	Bob Waddoups
	Division Administrator	Eric Aikele
	Tim Luke	Young Harvey Walker
	Nick Miller	Seth Beal
	Eastern Region	Keith Waddoups
	Bob Duke, Watermaster	Darrell McDonald
	Loy Pehrson	Mitchell Sorensen
	Lin Hintze	Charlie Huggins
	Logan Williams	Richard Reynolds
	Keith Hill	Dean Anderson
	Preston Bell	Joel Anderson
	Alvin Crawford	Kent Harwood
	Jay Jensen	Big Lost River Irrigation Dist.