



State of Idaho

DEPARTMENT OF WATER RESOURCES

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Governor

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May 19, 2006

KENT W FOSTER
HOLDEN KIDWELL HAHN & CRAPO
1000 RIVERWALK DR STE 200
IDAHO FALLS, ID 83402-3304

BOB DUKE
WATERMASTER
WATER DISTRICT NO. 34
PO BOX 53
MACKAY, ID 83251-0053

Re: IDWR Recommendations for Operation of Water District No. 34, Big Lost River

Mr. Foster and Mr. Duke,

The purpose of this letter is to provide recommendations to Water District 34 ("WD34") that IDWR feels will address issues and complaints that have arisen in the district and provide a means for preventing or resolving similar disputes in the future. As discussed in the meeting with the WD34 Advisory Committee and other water users on May 4, 2006, the list of recommendations in this letter is an attempt to resolve many of the issues raised in Mr. Foster's March 17, 2006 letter that called for a hearing and removal of the Watermaster.

Some of the signatories of the March 17th letter have indicated to IDWR that their motive for signing the March 17th letter was to improve water distribution in WD34 and resolve disputes, rather than a specific interest in removing the current Watermaster. As such, the signatories of the March 17th letter should view the recommendations in this letter as an approach to addressing many of the issues of concern. After reviewing these recommendations, IDWR asks that the signatories of the March 17th letter provide a response indicating whether or not they feel the recommendations, when implemented, will address their concerns and whether they wish to maintain the request for a hearing to remove the Watermaster. Please note, however, that, as indicated during the May 4th meeting, the Director's decision to hold a hearing on the removal of the Watermaster will not be based entirely on the signatories desire for or against such a hearing. That being said, IDWR asks that the signatories of the March 17th letter, members of the WD34 Advisory Committee, WD34 staff, and other concerned water users consider implementing these recommendations to improve the administration of water in WD34.

Although this letter is written as part of a response to the March 17th request to remove the Watermaster, water users in WD34 have engaged in frequent correspondence with IDWR concerning water delivery and administration issues and concerns for several years. It is apparent from the issues raised in the March 17th letter, discussions during the May 4th meeting, and from past correspondence with IDWR, that disputes, complaints, and concerns in WD34 arise from several general sources:

- Lack of knowledge regarding rules for water delivery in WD34. – The rules governing distribution of water in WD34 are complex and it appears that knowledge of the rules and interpretation of the rules – both by the Watermaster and water users – is often inaccurate or incomplete.
- Lack of knowledge of how WD34 operates: The day to day operations of WD34 including how water is called for, how priority dates are determined, who physically regulates the water, and the inter-relationship between WD34 and the Big Lost River Irrigation District (BLRID), what records are kept and what measurements are made are often either unknown or misunderstood by water users. Additionally, the annual procedures such as how assessments are calculated, voting rights established, and how changes in ownership occur are not clearly understood, and in some cases, not clearly defined. A clear understanding of how the district presently operates would improve the ability of water users to interpret WD34 records appropriately, identify problems, and allow users and the Advisory Committee to verify whether or not the district is operating consistent with Idaho law, WD34 rules, and adopted resolutions. Improved knowledge of operations may provide an opportunity to make the procedures more streamlined, consistent, and equitable to the satisfaction of the users.
- Measurement and record keeping issues: After water has been delivered, the only tool available to resolve disputes are records that document measurements of water delivered, and which water rights that water was intended to fill. It appears that records kept by WD34 are often either misunderstood or have not been sufficiently detailed to resolve disputes and answer questions. Additionally, record keeping and reporting errors have been made that, coupled with the other issues in the district, have contributed to existing frustration and have fueled mistrust.
- Mistrust. In any water district, the Watermaster and his deputies and assistants must be trustworthy and be trusted by the water users. Ultimately, any delivery the Watermaster makes can be challenged by simply asserting that his records do not accurately reflect his actions. It appears that some water users in WD34 do not trust the Watermaster to deliver water objectively and in a manner consistent with the rules and Idaho law. This lack of trust has resulted in the water users demanding a high level of oversight in the form of detailed accounting, measurement and record keeping. The demand for the high level of oversight has not been satisfied given the complexities of administration in WD34, the level of detail currently provided in WD34 records and the level of water management provided for by existing WD34 staff. When the Watermaster has not provided the level of service required, some users have become frustrated and continue to lose confidence and trust in the Watermaster.

The following recommendations are an attempt to address the broad issues listed above, with the belief that these issues are at the root of the vast majority of specific issues raised by water users. Recognize that identification of the above issues and the formulation of the recommendations are not intended as a judgment regarding the performance of the current or past watermaster. Such a judgment is not within the scope of this letter. Rather, this letter is an attempt to put practices in place that will improve water delivery and reduce disputes. These recommendations reflect information gathered by IDWR during its recent investigation, experience with past user correspondence, and recommendations submitted by water users during and following the May 4th meeting.

Recommendations for WD34 Staff and the Watermaster

1. WD34 staff should be cross-trained and knowledgeable of the duties and practices of other staff. This is particularly important for the Watermaster and the District Secretary. Such cross training will provide for continuity if either person leaves the district, and will help in quality control of reporting since multiple people will be equipped to identify reporting and data entry errors. Specifically, the Watermaster should be knowledgeable of how annual budgets, assessments, and watermaster reports are compiled and should thoroughly review such reports and produce them in a timely fashion. Note that a resolution was passed at the 2006 meeting that the proposed budget and watermaster report be submitted 30 days in advance of the annual meeting, consistent with Idaho Code.
2. The Watermaster should increase the level of oversight and review of the work of his staff. This should include more thorough review of records, and reports. IDWR also recommends that the Watermaster begin a regular routine of periodically crosschecking measurements made by BLRID and watermaster assistants. Routine crosschecking may help identify problems early on, rather than at the end of the season.
3. It is in the best interest of everyone that the Watermaster keeps records of sufficient detail such that users can be readily shown that the quantity of water sent down a canal is consistent with the water rights being called for, and that any discrepancy that exists (such as due to flooding, recharge, etc.) can be explained as either a lawful diversion, or an uncontrolled flood flow. Although the diversion rate should never exceed that allowed by water rights in priority (including water rights for recharge purposes), uncontrolled flood flows have occurred and must be documented as such in the future. WD34 currently reports total daily canal diversions to IDWR on an approximately weekly basis. The Watermaster should maintain records of sufficient detail such that IDWR, or a water user, can be shown what fraction of the total canal heading is recharge, storage, natural flow and any uncontrolled flow due to flooding. Daily records should also be kept of what priority date is in effect above the reservoir, below the reservoir, and on Antelope Creek so that the irrigation delivery fraction of the canal heading can be compared to the water rights list. Note that Antelope Creek is administered on the same priority as the Big Lost River, unless a futile call determination has been made. Ultimately, IDWR's Big Lost Water Rights Accounting (BLWRA) program may serve this purpose, but the Watermaster should be able to provide this information on demand in order to resolve disputes and inform water users.
4. Keep daily records of priority dates and priority date calculations for the Big Lost River (both above and below the reservoir) and Antelope Creek. Such records should note the latest priority date that can be filled based on the natural flow, and the latest date delivered, based on the demand for water.
5. The Watermaster must deliver water only as prescribed by the applicable laws and rules. To the extent that the rules are not clear, or his interpretation is challenged by users, he must seek guidance from IDWR. Examples of the basis for this recommendation include implementation of General Provision 3G, rotation of water rights on BLRID canals, and delivery of junior rights above Chilly Bridge when the river sinks at that location. The last example amounts to a futile call by the Watermaster. Such a determination must be made as prescribed by the WD34 rules and with the approval of the Director.

6. The Watermaster and WD34 staff should consider whether the recommendations in this letter will require additional staff, equipment, training, or other costs and be prepared to discuss the economic implications of these recommendations with users, the Advisory Committee, and BLRID.
7. WD34 should review the listed diversions on the IDWR internet data entry application and provide IDWR with any new exchange wells, note any abandoned diversions, and provide updated diversion names where changes of ownership have occurred and the existing name is no longer meaningful to water users.
8. The Watermaster should review the IDWR BLWRA reports weekly and notify IDWR when there is a discrepancy between the Watermaster's records and the output of the accounting program. This cross-checking and feedback will help identify improvements to be made to the BLWRA program and will ultimately result in the watermaster being able to use the accounting as a tool to aid in delivery decisions.

Recommendations for the WD34 Advisory Committee

1. Begin taking a more active role in the District. Although the WD34 Advisory Committee has become more active in the last few years, WD34 can benefit from ongoing input from the Advisory Committee. Schedule regular meetings monthly, or more frequently, as appropriate to address ongoing issues. Users have requested that these meetings be advertised and open to the public. Users have requested also that the location of the Advisory Committee meetings be rotated between Arco and Mackay.
2. Develop a policy on voting issues. The Advisory Committee should develop written policies stating exactly how voting shares should be calculated, what credentials should be provided in order to vote, who can vote in place of another, how voting should occur for water rights held by multiple people or business entities and form a plan for implementing the policy. Such a policy should address how historical usage is handled when property transactions occur and should detail voting during the transition to a new assessment basis, as discussed in #5 below. A number of the recommendations submitted by users following the May 4th meeting referred to specific aspects of such a plan. IDWR recommends that the Advisory Committee should develop the specific policy and the users should adopt it by resolution at each annual meeting. The policy should be consistent with guidance offered by Phillip J. Rassier, Deputy Attorney General, in a November 20, 1992 letter to Kent Foster and a January 15, 2001 memorandum from Mr. Rassier to Allen Merrit of IDWR. Both documents are attached for reference. IDWR will answer questions and provide guidance to the Advisory Committee, and offers to review the voting policy and provide suggestions, if necessary.
3. Given the recommendations in this letter and the level of service expected, the Advisory Committee should evaluate whether additional funding is necessary for additional personnel and/or capital improvements such as additional measuring devices or equipment.
4. IDWR recommends the WD34 Advisory Committee discuss the need for, and possibly develop, a plan to hire an employee that will randomly and independently verify canal heading measurements. Such a plan will have to address the conflicting goals that the individual be objective and independent of the Watermaster, yet be deputized by the Watermaster in order to have the authority to access canal headings on private property. Alternatively, or in addition to this, IDWR may conduct some independent verification of measurements.

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 alternate system for voting and budgeting that is not based on 5-year averages. At the May 4th meeting a concept was discussed whereby averaging would be phased back in over the next 5 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 4th 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. Note also, that development of this plan may provide an opportunity for WD34 to alter their budgeting and assessments so that debits and credits are no longer necessary. The decision to abandon debits and credits is entirely up to WD34, but IDWR feels that elimination of debits and credits can simplify assessment procedures.
6. The relationship between WD34 and BLRID is fairly complex and appears to be poorly understood by water users in WD34. The role of BLRID employees in delivering natural flow water and in providing measurement data to the Watermaster has been viewed by some users as a situation where BLRID can usurp the authority of the Watermaster and deliver natural flow water according to its own interests. While employees of BLRID receive some payment from WD34 and are considered deputized assistant watermasters, it is apparent from comments made at the May 4th meeting and comments submitted subsequent to that meeting, that many users do not trust the employees of BLRID to operate in the interests of the water district rather than the irrigation district. Some users have expressed a desire that the situation be changed such that the ditch riders for BLRID do not work for WD34 and that WD34 operates separate from, rather than with, BLRID. However, given the information obtained to date, the current situation appears acceptable to the Department and that the sharing of employees provides an economic benefit to the water users as a whole. However, the Department recognizes that the users ultimately must decide if the situation can or should be improved, and that the users should make an informed decision. As such, the Department recommends that the Advisory committee hold a meeting that is open to the public in which the Watermaster and representatives of BLRID present to the Advisory Committee and water users, the role of BLRID personnel in delivery of natural flow decree water and the role of the Watermaster in delivery of the same. Following such a presentation, the WD34 Advisory Committee and water users may choose to develop a more acceptable plan for division of WD34 and BLRID duties.

Recommendations for the Watermaster, Water Users, and the WD34 Advisory Committee

1. Many of the applicable rules and laws governing distribution of water in WD34 have been summarized and interpreted by IDWR in the document entitled "*Water District 34 Guidelines for Operation*". This document is provided on the IDWR website and is intended to provide guidance to the Watermaster and water users on the administration of

water in WD34. IDWR recommends that concerned water users, the Watermaster, and the WD34 Advisory Committee become familiar with that document and recommends that the document serve as a common reference when questions or disputes arise. If the Watermaster, the Advisory Committee, or water users find that the document does not provide adequate guidance on an issue, or is unclear, conflicting, or incomplete, IDWR should be contacted by either the WD34 Advisory Committee or the Watermaster and IDWR will update the document to address the concern.

2. IDWR recommends that water users become familiar with the IDWR website. In addition to the "*Water District 34 Guidelines for Operation*", IDWR's website contains additional information that may be of interest to users, such as stream gaging information, IDWR water rights accounting output, WD34 reports, and general information about water rights administration.
3. Bob Duke was appointed Watermaster based on the election held at the 2006 WD34 Annual Meeting. He should continue as the Watermaster unless the Director determines a hearing for his removal is warranted and issues a decision stating otherwise. The validity of the 2006 Watermaster election was questioned by the signatories of the March 17th letter. A review of the issues surrounding the election revealed inconsistencies in how voting shares were calculated, and that votes may have been cast by representatives, rather than water right owners. Other recommendations in this letter are aimed at preventing such issues in the future, but do not address the 2006 election. Given that the policies for voting by representatives have not been developed, and that the 5-year average usage has been called into question, it is not reasonable to attempt to determine the outcome of the election in the absence of the identified problems. Also, for the same reasons, it is unlikely that a valid second election could be held at a special meeting called by the water users. Idaho Code 42-605(8) authorizes the Director of IDWR to appoint a watermaster in the event a watermaster is not elected in the manner provided in Idaho Code 42-605(4) and 42-605(7). However, unless the Director holds a hearing and determines otherwise, Bob Duke is the elected 2006 watermaster for WD34. To the extent that there is concern that the votes should be recounted, IDWR encourages users to initiate the process of conducting a recount of the cast votes, which are on file at the WD34 office.
4. IDWR requires users to maintain functional headgates and measuring devices at each diversion from the river or creek. Exceptions may be provided by the WD34 Rules for some floodplain locations above Mackay Reservoir.
5. The recommendations provided by users following the May 4th meeting included recommending specific locations and frequency of measurements. As Director Dreher noted in the May 4th meeting, water users and the Advisory Committee must determine a level of service and fund the district appropriately to achieve that level of service. IDWR recommends that users and the Advisory Committee establish a measurement schedule that meets the needs of the district and for which the district is willing to adequately fund.

IDWR Will Perform the Following:

1. Provide an updated listing of currently active water rights and permits and sort the list by priority and point of diversion. This list will be provided to the Watermaster, and members of the WD34 Advisory Committee. Copies of the list will be available to water users at the WD34 office. Additionally, this information will be available from our Internet site as described in #2.

2. IDWR will investigate the feasibility of developing an Internet page to make water delivery information available to the public in a more convenient format. IDWR recognizes the desire by users to have delivery data available on a near real-time basis. In concept, the page would be updated daily or every few days, would include the list of water rights by diversion, show stream gage data, canal heading data, the priority dates in effect, etc. Although some of this information is already available from the IDWR website, a WD34-specific page may be more effective. Recognize that this level of service may require additional clerical staff for WD34 and may require a long time (years) for development. At a minimum, the updated water rights list will be posted on the IDWR website.
3. IDWR will review the Big Lost River Water Rights Accounting Program and, to the extent necessary, make the accounting more accurate and usable, make changes to bring it up to date, and incorporate some of the complexities of WD34. Note that this may take quite some time and will not likely be accomplished this season. The practice of rotation into storage provides a particular challenge from an accounting standpoint, and IDWR will have to work with WD34 and BLRID to understand exactly how the practice is implemented for accurate accounting and to ensure such practice is consistent with Idaho law, WD34 Rules, and the General Provisions decreed in the SRBA.
4. IDWR is conducting a watermaster workshop this summer and will invite the WD34 watermaster, his assistants and deputies, and will provide any additional, specialized training with respect to WD34.
5. IDWR will conduct random verification of reported diversion measurements this season as necessary.
6. IDWR will review policies and procedures developed by WD34 staff and the WD34 Advisory Committee regarding voting and budgeting and will suggest changes, if necessary, to ensure the voting and budgeting will be conducted in accordance with the law and in an appropriate manner.
7. IDWR will work with WD34 staff to revise record keeping and reporting and attempt to increase transparency, and provide for increased quality control. This includes ensuring that the records of WD34 are sufficient to provide a confident accounting of water deliveries.

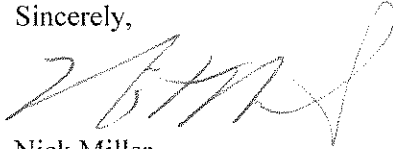
The recommendations above are intended to increase the transparency of WD34 operations, provide information and accountability through improved record keeping, provide the opportunity to clarify and provide guidance on the complexities of water administration in WD34, and to establish policies and practices that are consistent, legal, and protective of the interests of the water users and WD34.

Implementation of many of these recommendations may take some time and may require that they be adopted by resolution. IDWR will immediately begin working with WD34 to institute some of the recommendations in this letter, such as those regarding reporting and record keeping, clarifying procedures in the *"Water District 34 Guidelines for Operation"*, and the distribution of an updated water rights list.

Mr. Kent Foster and Mr. Bob Duke
May 19, 2006
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Please call if you have questions.

Sincerely,



Nick Miller
Water Distribution Section

Enclosures:

November 20, 1992 letter from Phillip J. Rassier, Deputy Attorney General, to Kent Foster (3 pages).
January 15, 2001 memorandum from Phillip J. Rassier, Deputy Attorney General to Allen Merritt of IDWR. RE: Water District Elections under I.C. § 42-605. (1 page).

cc: IDWR Eastern Region, Idaho Falls
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Lin Hintze – PO Box 125, Mackay, ID, 83251
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Big Lost River Irrigation District, 101 S Main Ave Mackay, ID 83251

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MEMORANDUM

TO: Allen Merritt, Southern Regional Manager, IDWR
FROM: Phillip J. Rassier, Deputy A.G., IDWR *PJR*
RE: Water District Elections under I.C. § 42-605
DATE: January 15, 2001

You have requested guidance on the issue of whether a person, through a power of attorney, may be allowed to vote at a water district election on behalf of another person. Section 42-605, Idaho Code, provides in relevant part:

(4) Voting shall be by majority vote of the water users present at the meeting unless one (1) or more water users requests voting using the procedure which follows in this subsection. In such case the meeting chairman shall appoint a credentials committee to determine the number of votes each water user present is authorized to cast. If requested, each person present, owning or having the use for the ensuing season of any water right in the stream or water supply comprising such water district . . . 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

In previous correspondence, I have related IDWR's position to be that "a proxy vote should not be allowed in water district elections in the absence of the owner of a water right, except that in the absence of the owner a right may be voted by another person present who has the use of the right for the ensuing irrigation season such as a contract purchaser, tenant, renter or lessor." *See* Letter to Kent W. Foster, dated November 20, 1992.

Your question in essence asks whether the requirement of the statute that a water user be present at the meeting in order to vote may be avoided if the document authorizing a person to vote for another not present at the meeting is characterized as a "power of attorney" as opposed to a "proxy." The answer is that, for purposes of authorizing a person to vote at a water district election, a power of attorney should be treated, in most cases, the same as a proxy. A "power of attorney" is defined as "a legal instrument authorizing one to act as the attorney or agent of the grantor." The term "proxy" is similarly defined as "authority or power to act for another; a power of attorney authorizing a specified person to vote corporate stock." *See Webster's New Collegiate Dictionary* (1977 ed.). Therefore, a power of attorney authorizing another person to cast a vote in one's place is really just another term for a proxy.

There is a circumstance in which a power of attorney would entitle a person to vote for another. That is where the power of attorney extends to the person seeking to vote full authority over the use of the water right for the ensuing irrigation season. Such a power of attorney should be acknowledged before a notary public and filed for record with the county recorder before being accepted as authorization to vote at a water district election.

The guidance provided in this memorandum is based solely upon IDWR's interpretation of the statutory provision and is not an opinion of the Office of the Attorney General.



State of Idaho
DEPARTMENT OF WATER RESOURCES

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CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

November 20, 1992

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
West One Bank
P.O. Box 50130
Idaho Falls, ID 83405

Dear Kent:

This letter responds to your request of October 27, 1992 asking for my thoughts and comments or reference to prior decision or opinion on several questions relating to voting in water districts under I.C. § 42-605 and § 42-605A. My response to your questions is based solely upon IDWR's interpretation of these statutory provisions and should not be construed to represent an expression of the views of the Office of the Attorney General unless reference is made to a prior Attorney General opinion.

Question 1: How, pending the ultimate court decree in the Snake River Basin Adjudication Proceeding, is it determined, for voting purposes under § 42-605 (and § 42-605A), whether a particular claimed right is sufficiently valid? What criteria is a credentials committee to use?

Response: The list of water rights entitled to be voted under I.C. § 42-605 and § 42-605A is comprised of and limited to those water rights which have previously been "adjudicated or decreed by the court" or are "represented by valid permit or license issued by the department of water resources." I.C. § 42-605.

Question 2: Idaho Code § 42-605(4) speaks of voting by "water users present," "each person present," and "a person present." Section 42-605A(6) has similar language, "each person present," and "a person present." We wonder if this means present either in person or by proxy? In other words, can someone such as a contract purchaser or a tenant, vote, if duly authorized by a written proxy or power of attorney from the owner? Since the language discusses "owning or having the use for the ensuing season" it seems like a contract purchaser or tenant might have been anticipated in the statutory language. It appears clear that a corporation can designate someone on its behalf to cast a vote (§ 42-605(7)).

Response: The Department in the past has advised that a proxy vote should not be allowed in water district elections in the absence of the owner of a water right, except that in the absence of the owner a right may be voted by another person present who has the use of the right for the ensuing irrigation season such as a contract purchaser, tenant, renter or lessor. The Department concurs with your reading of I.C. § 42-605(7) which authorizes a water delivery organization to designate someone to cast a vote on its behalf.

The Department's interpretation rejecting the use of proxies under § 42-605(4) as described above is supported by a comparison of the language in the statute with the language in I.C. § 42-2401(3) which specifically provides for the use of proxies in irrigation or canal company elections for the election of directors and to transact any other business of the corporation. I.C. § 42-2401(3) authorizes those "stockholders who are represented in person or by proxy" to vote at the regular annual meetings of the corporation.

Question 3: If not by written proxy or power of attorney, how does one satisfactorily demonstrate he has "the use for the ensuing season" of a particular right? Is a copy of the sale contract or lease agreement adequate?

Response: A contract, lease agreement or similar written document is considered adequate to demonstrate that a person is entitled to the use of a water right for the ensuing season.

Question 4: What specific documents does a credentials committee consult to determine the list of the rights entitled to vote? For instance, assuming the district officials desire to have a list of valid rights prepared before the annual meeting so that when the people come it is possible to check any claims of "having the use for the ensuing season" against the list of valid rights, how would the Department suggest they go about such preparations?

Response: Idaho Code § 42-606 requires watermasters to make an annual report to the Department prior to the expiration of the watermasters's appointment for the current year. This report is to show the total amount of water delivered by the watermaster during the year, the amount delivered to each water user, the total expense of delivery and the apportionment of expenses among users and all debits and credits to be carried over to the following year. The watermaster report together with a list of the water rights in the district should provide the credentials committee with the information necessary to determine the list of

Kent W. Foster
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November 20, 1992

rights entitled to vote. The Department will made available an updated list of the water rights in the district prior to the annual water district meeting if requested.

Question 5: And, under either § 42-605 or § 42-605A, if the right has not previously been assessed, how does the district go about determining the "dollar amount and any fraction thereof which the right would have been assessed had it existed and been reasonably used when water was available under the priority of the right during the previous season"?

Response: The method of determining the vote to which a right not previously assessed is entitled requires a good faith estimate of the amount of water which would have been delivered under the right had it been used during the previous season. The process for making this estimate requires a review of the water delivery records of the district to determine the number of days that the right would have been allowed to divert water during the previous season given the available water supply and the priority date of the right in question.

Once an estimate of the amount of water that would have been delivered is made it is necessary to multiply this number times the dollar amount per unit of water delivered used to determine water user assessments in the district. The total dollar amount that would have been assessed had the right been delivered in the previous season equals the number of votes that the owner of the right is entitled to cast for that right.

I hope that these responses to your questions are adequate for your needs. Please let me know if I may provide further assistance.

Sincerely,



PHILLIP J. RASSIER
Deputy Attorney General
Department of Water Resources

cc: Skip Jones - Eastern Region