

January 31, 2008

Nick Purdy
Picabo Livestock Co., Inc
PO Box 688
Picabo, ID 83348

Re: Your Correspondence Received January 25, 2008 Concerning "Irregularities" at the January 14, 2008 Water District 37 & 37M Annual Meeting

Dear Mr. Purdy,

I am in receipt of the letter addressed to me at the Idaho Department of Water Resources (Department) regarding the above referenced topic. Your correspondence raises two questions that I will address in the order presented in your letter.

1. Notice of Proposed Water District Resolutions

Section 42-605((2), Idaho Code states in pertinent part as follows:

The director shall, at least twenty-one (21) days prior to the meeting date, send notification by regular mail to all persons, companies, or corporations known by the director to hold rights to the use of the waters of the such district, which right has been adjudicated by the court or is represented by valid permit or license issued by the Department of Water Resources, of the time, date, location and purpose of the annual meeting.

The notice that was sent to the users by the Director included the time, date, location and purpose of the meeting. The Director is not required by law to send notice of any proposed meeting resolutions. Such a requirement would be both burdensome and unreasonable to the Department. Moreover, any right holder can propose a new resolution, or an amendment to a resolution at the annual meeting.

2. Legality of Adopted Resolution No. 14.

You have specifically asked whether the retention of an independent contractor to "research water right records and provide mapping information to the Water Districts" is a legal expense pursuant to Section 42-612, Idaho Code. Section 42-612(1) and (2) states in pertinent part as follows:

(1) At any annual meeting the water users must adopt a budget covering the estimated expenses of delivering the water of the district for the ensuing year, and by resolution determine that the budget shall be collected. The compensation of the watermaster and

the watermaster's assistants and any other expenses of delivering the water of the of the district to the users thereof, including the costs of the advisory committee in implementing resolutions adopted by the water users of the district for activities other than the payment of salary and operating expenses of the watermaster and assistants, shall be paid in the manner hereinafter, in this section, provided.

(2) To the extent possible, funding for advisory committee expenses associated with implementing resolutions adopted by the water users for other than the payment of the salary and operating expenses of the watermaster and assistants shall come from funds available pursuant to section 42-613A, Idaho Code.

The reference to Section 42-613A in 42-612(2) pertains to the rental of stored water in the district under a special account pursuant to the provisions of Section 42-1765. Water Districts 37 and 37M do not yet have any account fees related to the rental of stored water, nor has the Idaho Water Resource Board yet approved any rental pool procedures for these districts. Although Section 42-612(2) does not necessarily limit a water district to use only the proceeds of rental water for expenses other than payment of the salary and operating expenses of the watermaster and assistants, the Department nonetheless is of the opinion that all district expenditures must be related to the delivery of water within the districts.

The Department concurs with your evaluation that Resolution No. 14 adopted at the Water District 37/37M annual meeting is vague. The questions that you raise in page 2 of your letter are both "logical" and reasonable. The Department would also like further information as to how the expenditure of up to \$90,000 would be used. We note that the resolution discusses concerns regarding "water spreading" and the need "to have water usage properly cataloged and mapped." The Department is currently working with the watermaster and taking steps to address unauthorized uses in the districts, and it has already cataloged and mapped water rights in Basin 37 for the Snake River Basin Adjudication. We caution the districts against the expenditure of any funds that are not directly related to the delivery of water in the districts. We would also remind the districts that per Idaho Code, the Director of the Department is specifically delegated the responsibility to provide direction and guidance to watermasters. As such, the watermaster must rely on the water rights officially on record with the Department, including all maps or map data, as well as any written guidance from the Director or Department staff that directly report to the Director. It would not be appropriate for the watermaster, for example, to rely on the interpretation of water rights by an independent consultant and/or data that did not originate from either the Department or the SRBA Court.

Due to our own concern regarding Resolution 14, I took the liberty of discussing this matter further with watermaster Kevin Lakey. I understand that the Advisory Committee will be meeting to further discuss the details of the proposed expenditure, as well as the amount that may be collected. The Department strongly urges the districts to provide specific details as to how the additional funds will be used and what work will be completed before sending any assessments for the additional funds. We have made this recommendation to Kevin and have asked him to advise the Department of further details concerning this matter.

I also understood from Kevin that he will likely be forwarding to the Department a request for guidance regarding the delivery of various water rights, as well as a request for water right and mapping data in a format that may be useful to the district. The Department is obligated to provide the direction sought by the watermaster and provide the necessary data in which to deliver water. In providing such direction, the Department may find it necessary to conduct its own field and office research. Any expenses related to such investigation however will be borne by the Department. To the extent that the watermaster wants to develop additional computer programs or resources to organize, store, or format the data that is beyond the level of resources or assistance available from the Department, then it is certainly appropriate for the districts to expend their own funds toward such objectives.

I hope that this response addresses your questions and concerns satisfactorily. Please call me directly at 208-287-4959 if you have additional questions or need any further assistance.

Regards,

Tim Luke
Manager, Water Distribution Section

Cc: Allen Merritt, IDWR Southern Region Manager
Kevin Lakey, WD37 & WD37M Watermaster