



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

Phone: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

Via Facsimile

January 19, 2010

Bill White
Catherine Creek Water District 57B
18138 Oreana Loop Rd.
Oreana, ID 83650
Facsimile No. (208) 834-2505

Re Catherine Creek Water District 57B – meeting attendance, quorum

Dear Mr. White:

This letter is in response to our conversations in the past couple of weeks regarding attendance at the annual water district meetings and the need for a quorum when voting on resolutions. It seems the attendance at the annual Water District 57B meeting is scant and I understand your frustration. However, the users are provided notice of the meeting each year as required by law and if the administration of the District is important to them, it is their responsibility to attend.

I refer you to Idaho Code §42-605 - District Meetings :

42-605.DISTRICT MEETINGS -- WATERMASTER AND ASSISTANTS -- ELECTION -- REMOVAL -- OATH AND BOND -- ADVISORY COMMITTEE. (1) There shall be held on the first Monday in March in each year, and, except as provided in subsection (2) of this section, commencing at two o'clock P.M., a meeting of all persons owning or having the use of a water right, in the waters of the stream or water supply comprising such district, which right has been adjudicated or decreed by the court or is represented by valid permit or license issued by the department of water resources.

(2) Such meeting shall be held at some place within the water district, or at some nearby location convenient to a majority of those entitled to vote thereat, which place shall be designated by the director of the department of water resources. 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 such district, which right has been adjudicated or decreed 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. At any annual meeting the water users may vote to waive the requirement for notice by mail and provide for notice to be given for future meetings by publication of the time, date, location and purpose of the meeting in a newspaper or newspapers in general circulation in the district. Published notice shall be made once per week for two (2) consecutive weeks with the second notice appearing at least fourteen (14) and not more than thirty (30) days prior to the meeting. In water districts whose area includes land in more than four (4) counties the annual meeting shall commence at ten o'clock A.M. instead of two o'clock P.M.: provided, that the water users of any water district may, by resolution adopted at an annual meeting or at a special meeting properly called for that purpose, change the

time of day when the meeting shall commence or change the date for annual meetings in subsequent years to any day except Saturday and Sunday between the second Monday of January and the third Monday in March or change both the time and the date, in which case the director of the department of water resources shall send notification at least twenty-one (21) days prior to said meeting date. At an annual meeting the water users may adopt resolutions to assure or improve the distribution of the waters of the district within state law, and may provide that such resolutions shall continue from year to year.

(3) At the meeting of the water users of a district there shall be elected a watermaster for such water district, who may be authorized to employ such other regular assistants as the water users shall deem necessary, and who, upon appointment by the director of the department of water resources, shall be responsible for distribution of water within said water district, and the water users shall, prior to the election of such watermaster and approval of the employment of assistants, fix the compensation to be paid them during the time actually engaged in the performance of their duties.

(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, which right has been adjudicated or decreed by the court or is represented by valid permit or license issued by the department of water resources, 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 lesser number of years as the right has been assessed. If a right has not previously been assessed, a person present, owning or having the use of the right for the ensuing season shall be entitled to a number of votes equal to 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.

(5) At such meeting the water users shall choose a meeting chairman and meeting secretary and shall determine the manner and method of electing the watermaster. The water users shall, at the annual meeting, provide for the water district treasurer functions in accordance with section 42-619, Idaho Code. Within five (5) days after such meeting the meeting chairman and meeting secretary shall forward a certified copy of the minutes of such meeting to the department of water resources. The meeting chairman, or the meeting secretary, if the meeting chairman is not present, from the immediately preceding annual meeting shall call the meeting to order and preside over the election of officers for the meeting.

(6) At such meeting the water users may choose an advisory committee to be composed of members selected as may be determined at the meeting, which committee shall serve as advisors to the director and the watermaster in matters pertaining to the distribution of water within the district. The advisory committee may be authorized to carry out policies as set forth in resolutions duly adopted by the water users at the annual meeting or at a special meeting. The advisory committee may also serve as the local committee to facilitate the rental of stored water if appointed by the water resource board for such purpose under the provisions of section 42-1765, Idaho Code.

(7) A corporation or a water delivery organization, including, but not limited to a corporation, a water company, an irrigation district, an irrigation company or a canal company, shall be considered a person for the purpose of this section and shall cast its vote by someone to be designated by the corporation.

(8) Should said meeting not be held, or should said watermaster not be elected or the watermaster's compensation not be fixed as above provided, then the director of the department of water resources is authorized to appoint a watermaster and fix the watermaster's compensation.

(9) The director of the department of water resources may remove any watermaster whenever such watermaster fails to perform the watermaster's duty, upon complaint in that respect being made to the director in writing, by one (1) person owning or having the right to the use of a water right in such district, which right has been adjudicated or decreed by the court or is represented by valid permit or license issued by the department of water resources provided, that upon investigation the director, after a hearing with the other water users of said district, which shall be held in the district or at some location convenient to the water users of the district, finds such charge to be true, and the director may appoint a successor for the unexpired term.

January 19, 2010

Bill White

Page 3

(10) Before entering upon the duties of the watermaster's office, said watermaster shall take and subscribe an oath before some officer authorized by the laws of the state to administer oaths, to faithfully perform the duties of the watermaster's office, as provided in section 42-607, Idaho Code, and shall file that oath with the department of water resources. Upon appointment by the director of the department of water resources, the actions taken by a watermaster in fulfillment of the duties of his office are covered by the state group surety bond as provided by sections 59-801 through 59-804, Idaho Code.

(11) The director shall call a special meeting of the water users of a district upon receipt of a written request for such meeting from a majority of the members of the advisory committee for a district, a written request from water users representing thirty percent (30%) or more of the votes cast at the last regular annual meeting, a written request from the watermaster or on the director's own motion if the director determines a meeting is necessary to address matters that cannot be delayed until the next regular annual meeting. Notice of the time, place and purpose of the special meeting shall be given by the director in the manner provided in subsection (2) of this section, provided however, that a special meeting notice shall be sent at least fourteen (14) days prior to the meeting date.

(12) The water users may, by resolution, authorize the watermaster to acquire, hold and dispose of such real and personal property, equipment and facilities in the name of the water district as necessary for the proper distribution of water and shall provide that all such real and personal property shall remain in the custody of the watermaster and the watermaster's successor.

I included this Code section in its entirety for your distribution to water users, if needed. Note that paragraph 4 states that voting on District matters is done by the attendees. So, any resolution past at the meeting is valid, even if only 3 users attend, and the remaining users are required by law to abide by the decisions made at the meeting. No quorum of water users is needed.

I send you this letter by mail, too. If you have additional questions, please call me or John Westra at 208.334.2190.

Sincerely,

A handwritten signature in black ink, appearing to read "Vicky Music", written over a horizontal line.

Vicky Music
Sr. Water Resource Agent



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

Phone: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

Via Facsimile

January 7, 2010

Bill White
Catherine Creek Water District 57B
18138 Oreana Loop Rd.
Oreana, ID 83650
Facsimile No. (208) 834-2505

Re Catherine Creek Water District 57B – ditch access issues

Dear Mr. White:

This letter is in response to your telephone call to me today regarding ditch maintenance and ditch access issues. Specifically, you indicated that property owners had planted trees within approximately 2' of the ditch bank, which does not allow the Water District to clear the ditch with a backhoe or other equipment, and had constructed fences that did not allow the Water District access to the ditch for maintenance. You inquired about statutes regulating access to the ditch.

I refer you to Idaho Code §42-1102. Owners of Land – Right to Right-of-Way.

When any such owners or claimants to land have not sufficient length of frontage on a stream to afford the requisite fall for a ditch, canal or other conduit on their own premises for the proper irrigation thereof, or where the land proposed to be irrigated is back from the banks of such stream, and convenient facilities otherwise for the watering of said lands cannot be had, such owners or claimants are entitled to a right-of-way through the lands of others, for the purposes of irrigation. The right-of-way shall include, but is not limited to, the right to enter the land across which the right-of-way extends, for the purposes of cleaning, maintaining and repairing the ditch, canal or conduit, and to occupy such width of the land along the banks of the ditch, canal or conduit as is necessary to properly do the work of cleaning, maintaining and repairing the ditch, canal or conduit with personnel and with such equipment as is commonly used, or is reasonably adapted, to that work. The right-of-way also includes the right to deposit on the banks of the ditch or canal the debris and other matter necessarily required to be taken from the ditch or canal to properly clean and maintain it, but no greater width of land along the banks of the canal or ditch than is absolutely necessary for such deposits shall be occupied by the removed debris or other matter. Provided, that in the making, constructing, keeping up and maintenance of such ditch, canal or conduit, through the lands of others, the person, company or corporation, proceeding under this section, and those succeeding to the interests of such person, company or corporation, must keep such ditch, canal or other conduit in good repair, and are liable to the owners or

January 7, 2010

Bill White

Page 2

claimants of the lands crossed by such work or aqueduct for all damages occasioned by the overflow thereof, or resulting from any neglect or accident (unless the same be unavoidable) to such ditch or aqueduct.

The existence of a visible ditch, canal or conduit shall constitute notice to the owner, or any subsequent purchaser, of the underlying servient estate, that the owner of the ditch, canal or conduit has the right-of-way and incidental rights confirmed or granted by this section. (emphasis added).

Rights-of-way provided by this section are essential for the operations of the ditches, canals and conduits. No person or entity shall cause or permit any encroachments onto the right-of-way, including public or private roads, utilities, fences, gates, pipelines, structures, or other construction or placement of objects, without the written permission of the owner of the right-of-way, in order to ensure that any such encroachments will not unreasonably or materially interfere with the use and enjoyment of the right-of-way. Encroachments of any kind placed in such right-of-way without express written permission of the owner of the right-of-way shall be removed at the expense of the person or entity causing or permitting such encroachment, upon the request of the owner of the right-of-way, in the event that any such encroachments unreasonably or materially interfere with the use and enjoyment of the right-of-way. Nothing in this section shall in any way affect the exercise of the right of eminent domain for the public purposes set forth in section 7-701, Idaho Code.

This section shall apply to ditches, canals or other conduits existing on the effective date of this act, as well as to ditches, canals or other conduits constructed after such effective date.

This Code section states that the presence of the ditch is notice to a landowner or potential land purchaser that the ditch owner has the right-of-way to access the ditch for maintenance. If the presence of fences and trees impedes this right-of-way, they must be moved. IDWR does not have enforcement power. This is a matter for the civil court.

As I stated today, the Water District can pass a resolution providing for a specific width along the ditch bank, for example, 10' to 20', to allow for a backhoe or other equipment necessary to maintain the ditch. Property owners must abide by the resolution and it is retroactive. I have enclosed a copy of the 3/3/2008 minutes of Water District 65-D. Item no. 10 is the resolution they passed regarding a right-of-way.

I will send you a few copies of the booklet entitled, "Idaho Statutes Pertaining to Canals & Laterals" for your reference and to distribute to landowners when this situation arises. A copy of the booklet can also be obtained from the Department website www.idwr.idaho.gov. From the homepage menu, select Water Management then Water Districts and the booklet will be under Resources & Publications. If you have questions, please call me at 208.334.2190.

Sincerely,



Vicky Music
Sr. Water Resource Agent

Enclosure: 3/3/2008 Minutes of WD 65-D

RECEIVED

MAR 11 2008

WATER RESOURCES
WESTERN REGION

The Annual Meeting of Dist. 65-D was held on March 3, 2008 at 10 a.m. at the Donnelly Bible Church.

Users present - Joe Eld, Teri Garrand, Paul Kleint, Craig Collins, Jerry Lockhart, Tom Shaw, Bill Willey, Lyle Points, George & Linda Duncan.

1. The minutes of 2007 were read and approved.
2. Treasures report was \$1263.59 in the checking account. Outstanding bills: Michele Anchustegui-\$20; John Carey-\$830.80; Ed Freeburg-\$10; John McCallum-\$30; Myron McCumber-\$10; Mack Miller-\$10; Ballard Smith-\$42.
3. Lyle moved and Joe seconded to have next years meeting on the 1st Monday of March at 10 a.m. at the Donnelly Bible Church. Passed.
4. Lyle moved and Teri seconded to continue 65D's membership in the Idaho Water Users Association at \$50. Passed.
5. Lyle moved and Joe seconded to continue the same advisory board - George Duncan, Mack Miller, and Jerry Lockhart. Passed.
6. Lyle moved and Bill seconded to continue with George Duncan - Chairman, \$100; Linda Duncan - Sec.-Treas., \$200 plus \$50 for office supplies. Passed.
7. Bill moved and Joe seconded that the following resolution be continued. "Resolved, that no ditch, canal Co. or other water user shall have the right to demand and receive water and the Watermaster shall not deliver water to such user, until the amount due and payable from such user, as set by the budget, has been paid." Passed.
8. Lyle moved and Bill seconded to adopt the budget of \$4772.29 and hire Jerry Greenland as Watermaster - \$45 per day. Passed.
9. Joe moved and Lyle seconded to continue the resolution: "Resolved, that no water will be delivered to party or parties that the Watermaster deems responsible for the maintenance of a weir and or measuring device until the weir and or measuring device is repaired/replaced to the Watermaster's satisfaction." Passed.
10. Lyle moved and Joe seconded to continue the resolution: "Resolved, that new developments leave an easement for companies and districts to be able to clean and maintain the ditch and to have access for the ditch rider: accessible, unlocked gates a minimum of 12' and as in accordance by Idaho Code Ch. 11 - Rights of Way." Passed.
11. Joe moved and Lyle seconded that the meeting be adjourned. Passed.

Linda B. Duncan

Linda B. Duncan
Secretary