

MEMORANDUM FOR  
SQUAW CREEK DITCH CO.  
SWEET, IDAHO

February 3, 2014

1. **Issue:** What, if anything, can the directors of the Squaw Creek Ditch Co (hereafter “Ditch Co”) do about a variety of issues with water users concerning laterals, maintenance, assessments, access, and delinquencies?
2. **History:** On July 20, 1998 Watermaster Eric Herr appointed Hank Berntsen as the manager of the Sweet Lateral (hereafter “lateral manager”) of the Ditch Co. The order, which has long-since expired, was based on Title 42 of the Idaho Code: Irrigation and Drainage – Water Rights and Reclamation.<sup>1</sup>
3. **Appointment of Lateral Manager:** Upon request of two or more users of a lateral, Idaho Code allows lateral managers, on a seasonal basis, to be appointed in one of three ways: (1) by majority vote of the users of the lateral before April 1<sup>st</sup> each year, (2) by the watermaster, or (3) by the directors of Squaw Creek Ditch Co (Sections 42-907, 42-909, Idaho Code).
4. **Rights and Duties of Parties.** The lateral manager and users have the following rights and duties, more fully set forth in the Idaho Code:
  - a) *Users* shall: (i) at their own expense keep their laterals and ditches in good condition for carrying and distributing the water, (ii) not encroach or restrict the ditch rider or lateral manager’s right of way in performance of his/her duties. Encroachments of any kind the materially interfere with these duties shall be removed at the consumer’s expense (Section 42-1209, Idaho Code).

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<sup>1</sup> For an excellent compilation of the relevant statutes, see “Idaho Statutes: Pertaining to Canals and Laterals (May 2013)” published by the Idaho Department of Water Resources, available at [https://www.idwr.idaho.gov/WaterManagement/waterDistricts/PDF/Canals\\_Laterals\\_Statutes.pdf](https://www.idwr.idaho.gov/WaterManagement/waterDistricts/PDF/Canals_Laterals_Statutes.pdf)

- b) *Lateral Managers* shall: (i) verify the Ditch Co is delivering, and users are receiving, their properly apportioned water, (ii) require users, at their own expense, to maintain the laterals in good condition, and if necessary, install controllable and measurable diversions works for diversion of all water from a lateral, or (iii) if necessary, require measuring weirs, headgates, and checks to be installed for distributing the water among the users (Sections 42—907, 42-910, Idaho Code).
- c) *Reimbursement*: In the event the lateral manager finds it necessary to do said work in paragraphs 4(a) or (b), he shall require reimbursement for labor, material or money necessary for said maintenance, depending on the type of work, either in full from a particular user, or as pro-rata contributions from all users of the lateral (Sections 42—907, 42-910, Idaho Code).
5. **Default and Collection**. Users who have not paid their maintenance or assessment will be considered in “default”<sup>2</sup> and are not entitled to demand or receive water from the laterals. However, the Ditch Co can order water for the user if the user gives adequate “security”<sup>3</sup> for the payment of such assessment against him (Section 42-1305, Idaho Code). Further, the Ditch Co or the lateral manager may sue and collect said maintenance or assessment in any court of competent jurisdiction, and in addition to all costs, the court shall allow attorney's fees incurred in that behalf (Section 42-910, Idaho Code).
6. **Conclusion**. The Squaw Creek Ditch Company and the water users have the authority under Idaho Code to appoint one or more lateral managers to assist the Ditch Co in dealing with, and resolving, current and foreseeable issues in the delivery of water to users in the district.

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<sup>2</sup> Idaho Code does not specify when a user is in default;; the board can set a reasonable amount of time, e.g., by the next annual board meeting.

<sup>3</sup> Security is not defined, so the board can consider mutually agreeable options.