

PARK FOREST WATER DISTRICT

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March 15, 2018

A letter to all Park Forest residents

Re: March 2018 New Falcon Herald - Steve Jacobs' Letter to the Editor

Dear Fellow Residents,

First, the District Board apologizes for this somewhat lengthy letter and hopes you appreciate just how important it is.

Today the District became aware of a letter to the editor of the New Falcon Herald by Dr. Steve Jacobs, a candidate for the District Board in the upcoming May election. Because Dr. Jacobs makes what the Board believes are intentionally misleading and slanderous statements about the District's water quality, its operations, its violating the law, and its alleged legal obligation to supply water for ponds located on Dr. Jacobs' properties, the Board felt compelled to respond.

Dr. Jacobs' litigation against the District

Dr. Jacobs and Cathy Lane, through their corporate and partnership entities known as Casas Limited Partnership Number 4 and IQ Investors, LLC, have again sued the District in El Paso County District Court (Case No. 2017CV32161, Division 5), this time attempting to force the District into supplying water at no cost to them for ponds located on their properties. Unfortunately, because of the pending litigation the District cannot discuss the case details here and respond to each allegation made by Dr. Jacobs (e.g., breach of contract, refusal to provide service). However, the District wants to provide you as much detail as possible about the context in which Dr. Jacobs has filed, yet again, what the District considers to be frivolous claims against the District and again cause the District to incur substantial legal expenses, and to describe for you the sequence of events leading up to Dr. Jacobs' pending lawsuits based on the District's understanding.

As some of you may know, Dr. Jacobs properties were included into the District in 2013. Per development plans submitted on behalf of Dr. Jacobs to the El Paso County Planning Department, he intends to develop a 18-lot residential subdivision. Although he has not received approval for the subdivision from El Paso County, he is marketing lots on the properties as if they are approved as legally subdivided lots. As an aside, Dr. Jacobs sued El Paso County and others, including the District, in 2016 concerning the dead end on Kurie Road that abuts Dr. Jacobs' properties (Case No. 2016CV30376, El Paso County District Court, Division 2). Though the District managed to have the claims in that case dismissed against it, the District incurred significant legal fees defending against what it believed were totally frivolous claims.

There are 3 ponds on Dr. Jacobs properties, two of which are considered "on channel" on Cottonwood Creek. According to the State Engineer for the State of Colorado, the water contained in these ponds was not stored legally after Dr. Jacobs drained one or more of them in 2013 to repair and/or reconstruct them in late 2014 or early 2015. The ponds' reconstruction and/or repairs were done at Dr. Jacobs' own initiative, not at the District's request nor based on representations made by the District to Dr. Jacobs as he has alleged

in his lawsuits. The ponds were refilled after the reconstruction and/or repairs were completed; but because Dr. Jacobs does not have any legal right to store water in the ponds, a “call” against the ponds was made by a downstream owner of water rights on Cottonwood Creek which caused the local water commissioner to investigate. After a field inspection, the water commissioner told Dr. Jacobs something he already knew: He had to drain the ponds until he obtained a legal water supply for them. At one point in the summer of 2014, the District thought it had worked out an agreement with Dr. Jacobs’ then-attorney to sell water to Dr. Jacobs that would allow him to keep water in the ponds; however, Dr. Jacobs submitted a check to the District, “under protest”, for less than the agreement amount. The District later returned the check and sent a demand letter to Dr. Jacobs to sign the water agreement and pay the full amount due; Dr. Jacobs never responded. Nonetheless, he represented to the local water commissioner that he had reached an agreement with the District so he could continue to store water illegally.

About two years later, the Division Engineer for Water Division 2, State of Colorado, issued an order to Dr. Jacobs in December 2016 directing him to either drain the ponds or “legalize” the storage through purchasing water; Dr. Jacobs did neither, and State and Division Engineers eventually sued him and his entities in the Water Court for Water Division 2 (Case No. 2017CW3038) to enforce the order to drain the ponds. Earlier this year Dr. Jacobs sued the District in the State’s Water Court enforcement case, alleging the same types of claims he made against the District in the El Paso County case.

It was only AFTER the State sued Dr. Jacobs that he began spreading what the District considers to be intentionally misleading information within our community (and beyond) that the District had a legal obligation under the inclusion agreement for his properties to supply water to his ponds, for free, for fire protection purposes. The District strongly believes the facts support its position and it is vigorously defending against Dr. Jacobs’ claims in pending court actions. The District understands that the presence of the ponds has no effect on the ISO rating for homeowner insurance purposes within our community.

The District wants to make it clear to everyone in our community, and beyond: The District has NEVER refused to provide water for Dr. Jacobs’ ponds, for fire protection or otherwise, he just needs to pay for the District water he wants to store. It is as simple as that.

District water quality

Concerning the District’s water quality, many of you are probably aware the ground water supply used by the District has a naturally high content of iron and manganese. Although the District treats the water before it goes into the water distribution system, these elements can cause water discoloration when they build up within the water main and service lines. The District tries to send out regular reminders to the residents to occasionally flush their service lines, at least once a month, by running each faucet within the house between 30-60 seconds and to drain the hot water heater at least once a year. The District also provides advance notice to potentially affected residents every time the District conducts a hydrant flush so that the residents can prepare for any discolored water that shows up through the house plumbing.

The District conducts water quality sampling on a regular schedule to ensure that the treated water quality meets the requirements of the State of Colorado Water Quality Control Division for drinking water. Each year, if the water quality meets the State drinking water standards the District posts a “consumer confidence” report on the District’s website to provide public notice per the State regulations. The most recent consumer confidence report is posted on the District’s website. According to a test conducted on a water sample taken by Dr. Jacobs in February inside the house located on his properties on Kurie Road, the District’s water supply meets the State drinking water standards.

District finances

Each year, the District goes through a budget process to determine the projected costs for water service and the revenue required to meet those costs. It provides public notice of all hearings on the budget and invites public comment on what is proposed. For some years before 2016 the water rates set for the District were too low to cover annual costs, and for a time the District had a negative cash flow; with the adoption of new rates in 2016, the District has met revenue projections and covered all administrative and operational costs. The District Board is very sensitive to not adopting water rates that are higher than necessary to cover District operations; we pay the same water rates as all of you, and the Board does its very best to operate the District in an economic, cost-effective manner.

Because Dr. Jacobs has decided to engage in protracted litigation by suing the District on what the District believes are frivolous grounds, the District turn has been forced to spend substantial legal fees in the past couple of years to defend against the claims which in turn draws valuable revenue away from paying for the District's operation costs. The District believes it is disingenuous at best for Dr. Jacobs to cite litigation fees as a basis for potential water rate increases when he is the one causing the District to incur legal fees in the first place.

The District Board thanks you for your patience and understanding during this very challenging time and invites you to contact the District directly with any questions regarding its operations.

Park Forest Water District Board

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