



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

December 7, 2017

RE: Water District Insurance and Legal Entities

Dear Water District:

The Idaho Department of Water Resources (IDWR) asked that I answer some recent questions regarding water districts and insurance. The answers to these questions apply to all water districts. The basic question is: are the insurance needs of water districts covered through IDWR and if so, must the water districts go through IDWR to obtain their insurance? In short, both answers are yes, water districts must go through IDWR to obtain their insurance.

The questions regarding water districts and insurance can be answered by looking at the nature of water districts and how they relate to the State of Idaho. It is IDWR's duty to direct and control the distribution of water from all natural water sources within Idaho. Idaho Code § 42-602. Water districts, through watermasters and under the supervision of IDWR, are responsible for the distribution of water among appropriators. Idaho Code § 42-602. IDWR creates water districts pursuant to Idaho Code § 42-604, and once created, water districts are instrumentalities of the State for the purposes of distributing water among appropriators. As a result, water districts are considered an extension of IDWR.

Insurance

All instrumentalities of the State fall under the purview of the Idaho Risk Management Program (Risk Management), the State's property and casualty insurance agency. Risk Management determines the type and extent of insurance needs and procures coverage "of all kinds, other than life and disability insurances, as to risks and property of all offices, departments, divisions, boards, commissions, institutions, agencies and operations of the government of the state of Idaho." Idaho Code § 67-5773. With some exceptions, such as workers compensation, any insurance a water district needs must be obtained through IDWR. Attached to this letter is more detailed information from IDWR outlining types and limits of available insurance coverage.

The State of Idaho has limitations on the amount agencies, and therefore instrumentalities of the State, can be held liable pursuant to the Tort Claims Act. Some water districts currently have various insurance coverage plans through other insurance agencies. Maintenance of insurance coverage by a water district separate from Risk Management may create a liability beyond what is statutorily provided. In light of the above, water districts must discontinue any insurance coverage they may have with other insurance agencies, except for workers compensation. After you provide IDWR with the information requested in the accompanying document, IDWR will obtain insurance for your district. Once the district receives confirmation from IDWR, the district may then discontinue any coverage it has with other insurance agencies.

Legal Entity

While researching the insurance issue, it also came to my attention there is some confusion about what type of legal entity a water district is, especially when dealing with the IRS. The IRS requires that all employers have an employer identification number (EIN). Water districts need an EIN separate from IDWR. Generally, in order to obtain an EIN from the IRS, an organization must be registered with the Secretary of State as some type of business entity, such as a limited liability corporation or a non-profit organization. Because water districts are instrumentalities of the State they qualify as a government organization with the IRS. As a government organization water districts do not need to be registered as a business entity with the Secretary of State.

Some water districts have created business entities in order to apply for an EIN. Being registered as a business entity means a water district is liable beyond the limits of what is allowed for State entities. As an instrumentality of the State, a water district has many of the legal protections of a State entity. Water districts organized as a business entity should immediately take steps to dissolve those entities and obtain different EINs. Please visit the IRS website for instructions on obtaining an EIN as a government organization.

Please contact Steve Visosky (steven.visosky@idwr.idaho.gov or 208-287-4933) with IDWR if you need assistance on any of these matters.

Sincerely,



Meghan Carter
Deputy Attorney General