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DEPARTMENT OF
WATER RESOURCES

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

July 23, 2013

Mr. Gary Spackman
Director, Idaho Department
of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Watermaster and Regular Assistant Compensation

Dear Director Spackman:

This letter responds to your inquiry concerning the meaning and application of Idaho Code § 42-605(3) as amended by 2013 Idaho Laws Chapter 327. The subsection, as effective on July 1, 2013, provides:

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. Notwithstanding any personnel classification assigned to the watermaster and assistants pursuant to the provisions of chapter 53, title 67, Idaho Code, 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.

The amendment separated the subsection into two sentences and added the clause “[n]otwithstanding any personnel classification assigned to the watermaster and assistants pursuant to the provisions of chapter 53, title 67, Idaho Code” to the beginning of the second sentence.

You ask three questions:

Does Idaho Code § 42-605, as amended by S1155, authorize a water district, at its annual meeting, to set the salaries of an elected watermaster and his assistants, who have been designated as classified state employees, without regard and independent of the Idaho Compensation Plan contained [sic] Idaho Code § 67-5309B?

If the answer to the above question is yes, can a watermaster and his assistants who are state employees and whose salaries are independently determined by the water district rather than by the Idaho Compensation Plan continue participating in all the benefits and protections afforded to state employees under the state employment system?

If the answer to the above question is no, what benefits and protections are unavailable to the state employee who is a watermaster or watermaster's assistant?

We conclude that the unambiguous text of subsection (3) controls and that the answers to the first two questions are "yes" with respect to those individuals who are Department employees and devote a portion of their work hours to watermaster or watermaster assistant duties and that, therefore, the third need not be addressed. We also answer your questions with regard to watermasters and watermaster assistants who serve solely in those capacities and whom the Department of Water Resources ("Department") does not employ. As to those individuals, the answer to the first question is "yes" and to the second "no." They are entitled to no "benefits and protections" under the Idaho Personnel System Act.

I. Statutory and Factual Background

Section 42-604, Idaho Code, authorizes the Department's Director to divide the State into water districts for "each public stream and tributaries[] or independent source of water supply" and, in some circumstances, to create more than one district for a public stream, tributary or independent source of water supply. The Director also "may create, revise the boundaries of, or abolish a water district or combine two (2) or more districts . . . if such action is required in order to properly administer uses of the water resource." *See also In re Idaho Dep't of Water Resources Amended Final Order Creating Water Dist. No. 170*, 148 Idaho 200, 212, 220 P.3d 318, 330 (2009) (Director implicitly authorized to establish sub-districts within water district). Once created, a water district is "an instrumentality of the state of Idaho for the purpose of performing the essential governmental function of distribution of water among appropriators under the laws of the state of Idaho." Idaho Code § 42-604.

Section 42-605 specifies various procedural requirements for the conduct of the annual water district meeting, which include under subsection (3) the election of a watermaster, determination of whether employment of "regular assistants"—*i.e.*, assistant watermasters—is warranted, and "fix[ing] the compensation to be paid to them during the time actually engaged in the performance of their duties." *See also* Idaho Code § 42-609 (watermaster's authority to employ assistants other than those authorized at the annual district meeting "in case of emergency"). Once elected, the watermaster must be appointed by the Director and, upon appointment, the watermaster's sole "dut[y]" for the district is overseeing the distribution of water within its boundaries in accordance with Idaho Code § 42-607. Idaho Code § 42-605(10); *see also id.* § 42-608(2) and (3) (parameters for watermaster's commencing and ceasing performance of duties); *id.* § 42-615 (watermaster responsible for preparing proposed district budget). The watermaster's term of appointment ends at the next annual meeting or until a

successor is elected. *Id.* § 42-608(1). In connection with performance of that principal duty, a district's water users may authorize the watermaster to acquire or dispose of property, equipment and facilities "as necessary for the proper distribution of water" and to maintain custody over the acquired assets. *Id.* § 42-605(12).

Section 42-605 contains other provisions related to the watermaster position. They include subscribing to an oath to perform faithfully the watermaster office's duties and filing the subscribed oath with the Department. Idaho Code § 42-605(10). The watermaster then becomes covered by the surety bond acquired by the Administrator of the Division of Insurance, Department of Administration, pursuant to Idaho Code §§ 59-803. *Id.* § 42-605(10). Watermasters may be removed from their position by the Director after complaint by a district water right holder or user and a hearing "whenever such watermaster fails to perform the watermaster's duty." *Id.* § 42-605(9). The Director also may appoint a successor watermaster for the unexpired term of a watermaster when the latter is removed from office for cause, "resigns, dies or is physically unable to perform his duties." *Id.* § 42-605(9) and (10). As these provisions reflect, individuals performing watermaster duties, as well as the persons assisting them, are state employees notwithstanding their election by a water district's water users and the district's authority to fix their compensation for periods during which those duties are carried out. *See Marty v. State*, 117 Idaho 133, 140, 786 P.2d 524, 531 (1989) (water district, district chairman and watermaster are entitled to sovereign immunity under Idaho Code § 42-1717 as agents of Department).

Water districts adopt their budgets at the annual meeting. Idaho Code § 42-612. The budgets must cover "the estimated expenses of delivering the water of the district for the ensuing year" including the "compensation of the watermaster and the watermaster assistants." *Id.* § 42-612(1). They must "show the aggregate amount to be collected from all the water users in the district, and the amount to be paid by each ditch, canal company, irrigation district or other water user." *Id.* § 42-612(3). Under the presumptive method, county assessors collect the assessed amounts through notices sent by county auditors to the affected water users, with all remitted amounts deposited in a special fund. *Id.* § 42-613; *see also id.* § 42-617 (districts authorized to set alternative payment dates and to prohibit distribution of water to non-compliant users). Districts, however, may authorize watermasters "to collect his compensation and that of his assistants, and other expenses of delivering the water of said district to the users thereof, directly from the water users, canal companies, and irrigation districts." *Id.* § 42-618. They also may appoint a water district treasurer or, where the budget is no greater than \$7500, designate the watermaster to collect the assessments if a board of county commissioners concludes that payment to the county treasurer is an undue burden. *Id.* § 42-619.

Approximately 120 water districts and sub-districts exist in Idaho. *See* http://www.idwr.idaho.gov/WaterManagement/WaterDistricts/PDF/WD_DESCRIPTIONS.pdf (last visited Jul. 4, 2013) (identifying districts and sub-districts). Most, but not all, have individuals performing watermaster and watermaster assistant duties. *See* <http://www.idwr.idaho.gov/ExternalReports/wdcontactsrpt.pdf> (last visited Jul. 4, 2013) (identifying watermasters). Our understanding is that currently, with the exception of

14 individuals, the districts are solely responsible for the watermasters' and their assistants' compensation. The water districts pay a portion of compensation for the 14 exceptions based upon an allocation of time devoted to district, or watermaster, duties and time devoted to non-district, or departmental, tasks. The exceptions occupy classifications published by the Division of Human Resources (*see* <https://labor.idaho.gov/dhr/ats/statejobs/ClassificationData.aspx>) (last visited Jul. 4, 2013)) and the attendant compensation schedule (*see* <http://dhr.idaho.gov/PDF%20documents/Compensation/FY2013payschedule.pdf>) (last visited Jul. 4, 2013)) to implement Idaho Code § 67-5309B. These individuals were compensated in accordance with the compensation level and that the Department has been reimbursed by the affected water district for the period of time devoted to performing watermaster or watermaster assistant duties. One of these individuals—the watermaster for Water District 01—provides services to the district through a signed memorandum of understanding that allocates two-thirds of his time to watermaster duties and is terminable at will.

II. Application of Idaho Code § 42-605(3)

The statutory construction principles governing resolution of your questions are settled. “The interpretation of a statute ‘must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole.’” *Verska v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011). Absent any ambiguity, “‘this Court does not construe [the statute], but simply follows the law as written.’” *Id.* Neither a court nor the Attorney General has authority to depart from a law’s otherwise plain terms because to do so would invade the Legislature’s prerogative to establish public policy. *See, e.g., Herndon v. West*, 87 Idaho 335, 339, 393 P.2d 35, 37 (1964) (“We must follow the law as written. If it is socially or economically unsound, the power to correct it is legislative, not judicial.”). To the extent that two or more statutes may apply to the same subject matter, they “‘must be construed together to give effect to legislative intent.’” *Johnson v. McPhee*, 147 Idaho 455, 461, 210 P.3d 563, 569 (2009). In determining such intent, “‘the specific statute will control over the more general statute.’” *First Fed. Sav. Bank v. Riedesel Eng'g, Inc.*, 154 Idaho 626, ___, 301 P.3d 632, 638 (2012).

Section 42-605(3) is unambiguous. It authorizes water districts to elect watermasters at their annual meetings and to invest discretion in the watermaster as to the selection and employment of assistants. It further authorizes—indeed requires—the districts to fix the “compensation” to be paid these individuals for “the time actually engaged in the performance of their duties.” The 2013 amendment adding the clause “[n]otwithstanding any personnel classification assigned to the watermaster and assistants pursuant to the provisions of chapter 53, title 67, Idaho Code” is consistent with the unamended provision and served chiefly to reinforce the statute’s plain meaning in this regard.

The answer to your first question is therefore “yes.” That answer comes with two qualifications. The first is that water districts’ compensation fixing power is limited to the affected individuals’ employment as “watermasters” or “regular assistants”—a limitation

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reflected not only in the detailed statutory treatment of the “watermaster” duties, which establish the position as unique and not subject to modification by districts, the Director or the Administrator of the Division of Human Resources, but also in subsection (3)’s concluding phrase “during the time actually engaged in the performance of their duties.” The second is that the Director has the discretion to condition providing Department employees to a district for watermaster or watermaster assistant purposes on payment of compensation equal to that assigned to the particular employee under the § 67-5909B salary schedule. The water district has the corresponding discretion to decline that condition and to employ a watermaster and to authorize selection of regular assistants for district employment at whatever compensation level it chooses. As to the signed memorandum of understanding between the Department and Water District 01, a declination would require the memorandum’s termination. It additionally warrants noting that the provision of Department employees to perform watermaster or watermaster assistant duties must be accompanied by an agreement consistent with the requirements of Idaho Code §§ 67-2326 to -2333.

As discussed above, a large number of water districts have watermasters and, presumably, assistant watermasters whose compensation they determine and entirely pay. There are exceptions to this general practice with respect to the watermaster in one district and assistant watermasters in six districts who are employed by the Department but whose compensation is contributed in part by the district. The exceptions perform duties for both Department and the contributing district. Compensation for the departmental functions falls outside the scope of the districts’ compensation fixing authority in subsection (3). The individuals therefore must be, and have been, assigned position classifications in accordance with the Division of Human Resources’ list with reference to their departmental responsibilities and are paid consistently with the Division’s compensation schedule for the time apportioned to the performance of those responsibilities.

The answer to your second question is “yes” to the extent that it refers to the individuals employed by the Department. The Legislature’s express reference to the position classification and related compensation provision in § 67-5309B has relevance only to those individuals who possess “classified employee” status under the Personnel System Act. Here, those individuals consist of the 14 employed by the Department employment but who also perform watermaster or assistant watermaster duties. *See* Idaho Code § 67-5302(5) (definition of “classified officer or employee” as “any person appointed to or holding a position in a department”); *id.* § 67-5302(9) (definition of “department” as “any department, agency, institution or office of the state of Idaho”).

The analysis above answers your third question. Those individuals employed by the Department are classified employees under the Personnel System Act and, as such, enjoy its benefits and protections. Although perhaps unnecessary, it may be helpful to explain why the same conclusion is not true for watermasters and watermaster assistants employed by a water district.

First, the fact that water districts function as a state “instrumentality” does not warrant an opposite conclusion. They carry out their statutory purpose as a distinct juridical entity, not as a sub-division of the Department notwithstanding the Director’s extensive role in their creation and operation. Representative of their independent status is the districts’ self-funding of their activities and the related water user assessment process in which neither the Department nor any other state agency plays a role. Water districts thus are not “departments” under the Personnel System Act in Title 67, Chapter 53; *i.e.*, they do not constitute an Executive Branch “department” or “agency” (*see* Idaho Code § 67-2402), an “institution,” or an “office” of the State. *Second*, the districts are subject to specific directives with regard to the employment of watermasters and watermaster assistants that are incompatible with those positions’ incorporation into the state personnel system. So, for example, watermasters are elected, not appointed through merit selection as contemplated under Idaho Code § 67-5301; serve for a limited term; have their compensation determined outside the state compensation plan’s constraints; and are subject to termination under a unique statutory process and not Idaho Code §§ 67-5315 to -5318. Watermaster assistants similarly have their compensation set by the districts; are subject to appointment at the watermaster’s discretion; have an employment term no longer than the period covered by the annual meeting’s authorization; and are subject to termination at will by the watermaster. The absence of any classification for “watermaster” or “watermaster assistant” promulgated under § 67-5309B additionally evidences the Personnel System Act’s non-applicability because the Division of Human Resources’ Administrator presumably would have developed an appropriate classification for watermasters and watermaster assistants if they were deemed subject to the Act.

I hope that this letter adequately responds to your inquiry. Please contact me with any further questions concerning this matter.

Sincerely,



CLAY R. SMITH
Deputy Attorney General