


MEMORANDUM

To: Water Districts
From: Meghan Carter, Deputy Attorney General 
Date: October 27, 2020
Subject: Virtual Meetings, Social Distancing, and Idaho Open Meetings Law

I have been asked to provide guidance to water districts on how to comply with Idaho Open Meetings Law while practicing social distancing and using virtual meetings. Idaho Open Meetings Law is codified in Idaho Code, Title 74, Chapter 2. The purpose of the legislation is to ensure public policy is made in public and not in secret.

Open Meetings Law Applies to Water Districts and Advisory Committees

According to the Idaho Open Meetings Law, “all meetings of a governing body of a public agency shall be open to the public and all persons shall be permitted to attend any meeting.” Idaho Code §74-203(1). A governing body “consists of two (2) or more members, with the authority to make decisions for or recommendations to a public agency regarding any matter.” Idaho Code §74-202(5). One definition of a public agency is “any subagency of a public agency created by or pursuant to statute.” Idaho Code §74-202(4)(d).

Water districts are instrumentalities of the state. Idaho Code §42-604. Since water districts are instrumentalities of the state and they are created pursuant to statute, they fit the definition of a public agency. Any meeting of a water district fits the definition of governing body because the members of the district have authority to make decisions at the meetings. In addition, a water district advisory committee fits the definition of governing body since advisory committees are authorized by statute to make recommendations to their water districts. Therefore, both water district and advisory committee meetings must follow the Idaho Open Meetings Law.

Required Notice & Agendas

Annual Meetings

The Director of the Idaho Department of Water Resources (IDWR) is required to mail notice to all water right holders that are assessed or proposed to be assessed by a water district unless the water district voted to provide notice via newspaper. Idaho Code §42-605(2). Twenty-one days’ prior to the meeting, the Director must mail the meeting notice and post it on the IDWR website. *Id.* If notice is published in a newspaper, the notice “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.” *Id.* Notice of the meeting shall include the time, date, location, and purpose of the meeting. *Id.*

In addition to the meeting notice, water districts must post an agenda. Idaho Code §74-204(4). Agendas should be posted in a prominent place at the principal office of the [water district] or, if no such office exists, at the building where the meeting is to be held.” Idaho Code §74-204(1). In addition, the notice and agenda must be posted online if the water district maintains an online presence through a website or social media platform. *Id.* Any agenda item that requires a vote shall be identified as an “action item.” Idaho Code §74-204(4). A simple way to handle many items that require a vote is to add an asterisk after each voting item and define the asterisk at the bottom of the agenda.

Advisory Committee Meetings

Title 42, Chapter 6 does not provide notice requirements for advisory committee meetings, therefore the more general Open Meetings Law requirements apply. Notice must be posted no less than five calendar days from a meeting and an agenda must be posted at least 48 hours prior to the meeting. Idaho Code §74-204(1). Notices and agendas shall be posted in a prominent location at the principal office of the water district “or, if no such office exists, at the building where the meeting is to be held.” *Id.* In addition, the notice and agenda must be posted online if the water district maintains an online presence through a website or social media platform. *Id.* Any agenda item that requires a vote shall be identified as an “action item.” Idaho Code §74-204(4).

Hosting Virtual Meetings

Idaho Open Meetings Law allows for public meetings to be conducted virtually using telephone or video conferencing. Idaho Code §74-203(5). To ensure the public may attend in person, “at least one (1) member of the governing body, or the director of the public agency, or the chief administrative officer of the public agency” must be physically present at the designated meeting location. *Id.* As long as any voting member of the water district or the watermaster is present at the meeting location, the water district will comply with the law. The meeting location and how to access the meeting via telecommunications must be included on the meeting notice. If the number of in-person attendees needs to be limited or all in-person attendees must wear a mask, those restrictions should also be included on the meeting notice.

When conducting a virtual meeting water districts and advisory committees should be aware that all members and the public must be able to hear the meeting. *Id.* If technical difficulties occur, on the water district’s end, that would prevent anyone from hearing the meeting for more than a few minutes, I advise stopping the meeting and rescheduling. This practice will ensure compliance with Idaho Open Meetings Law.

Social Distancing

Considering the global pandemic, water districts should be aware of local restrictions on gatherings when determining the physical location of the annual meeting. Check with your county and regional health district for any restrictions such as maximum size of a gathering, mask requirements, or spacing requirements. Any restrictions could affect a water district’s ability to host a meeting in its planned location. Water districts must decide on a meeting location that meets the local restrictions before the meeting notice is posted.

Voting

Some water districts have presented concerns about knowing who is voting and who they are voting for. One option to address this concern is performing a roll call at the beginning of the meeting to determine who is present at the meeting and who they represent. For votes where it matters who is voting, such as alternative voting described in Idaho Code §42-605(4), repeat the roll call. Another option is only doing a roll call if a nay vote is cast and the nay voters then request a roll call vote be made. Robert’s Rules of Order are not statutorily mandated, so the water district may modify meeting procedures to accommodate the logistics of the meeting. An example of such a modification is to count the nay votes, and not necessarily the aye votes.

If a water district has any questions or concerns please reach out to IDWR for further guidance.