

Water District Operations Manual

Appendices



Photo courtesy of Rob Whitney

IDWR

Appendices

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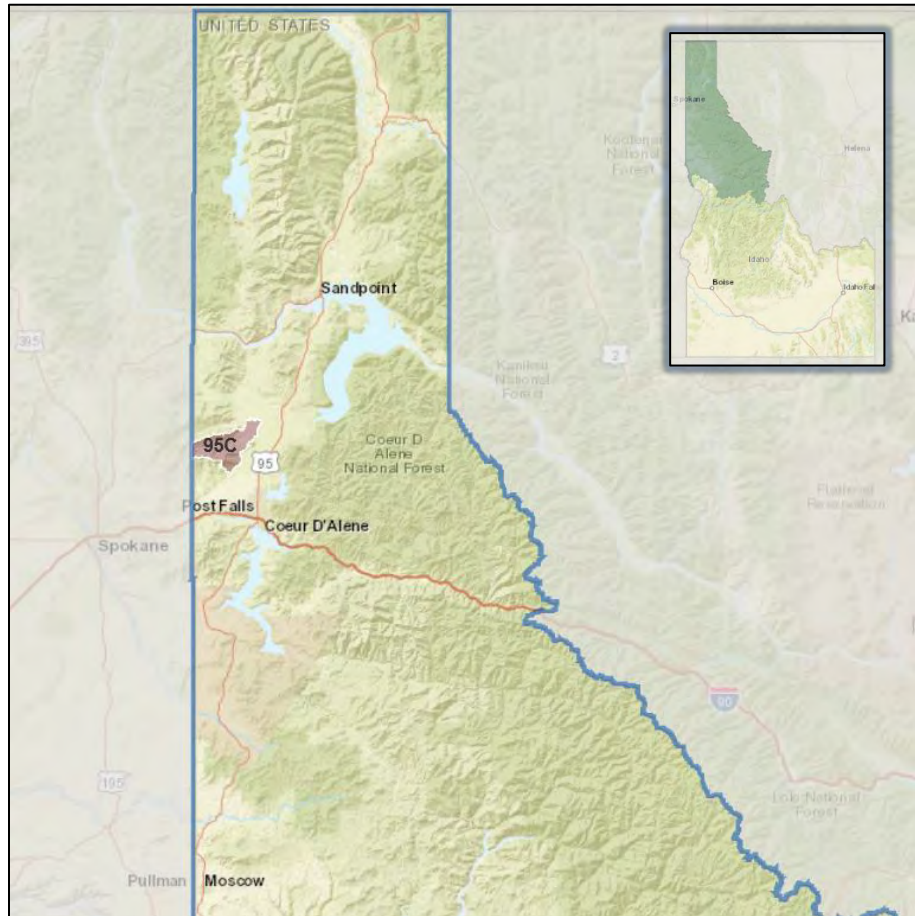
Appendix A

Water District Maps by IDWR Region

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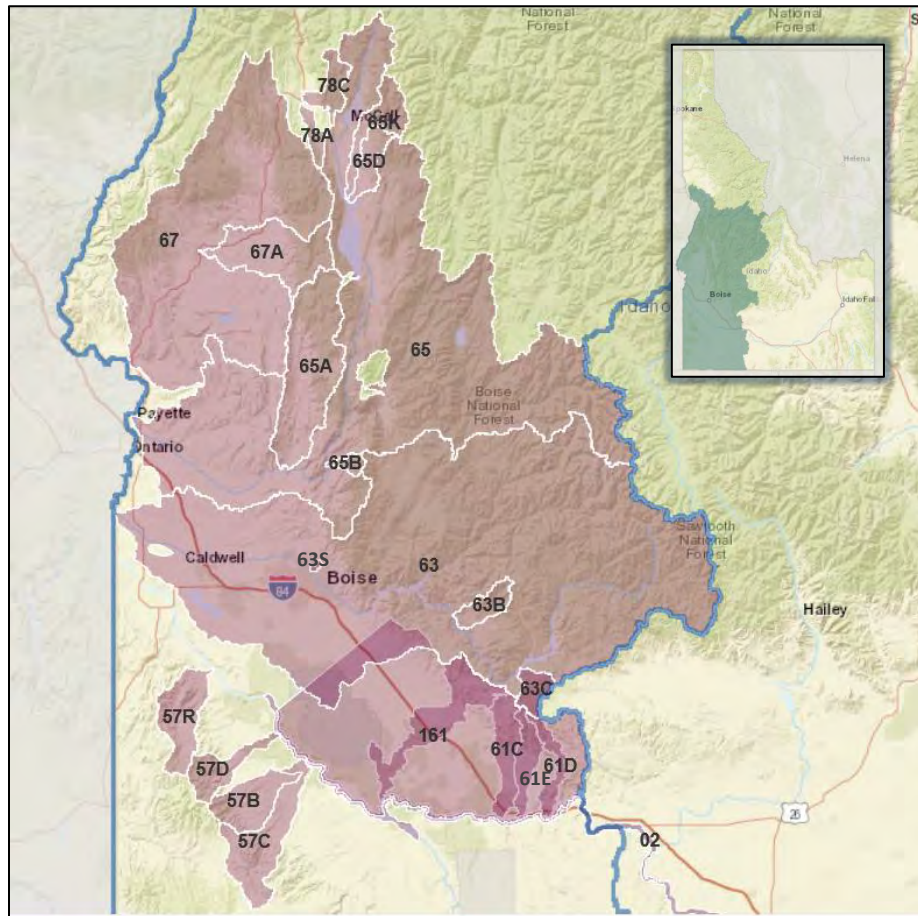
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Northern Region



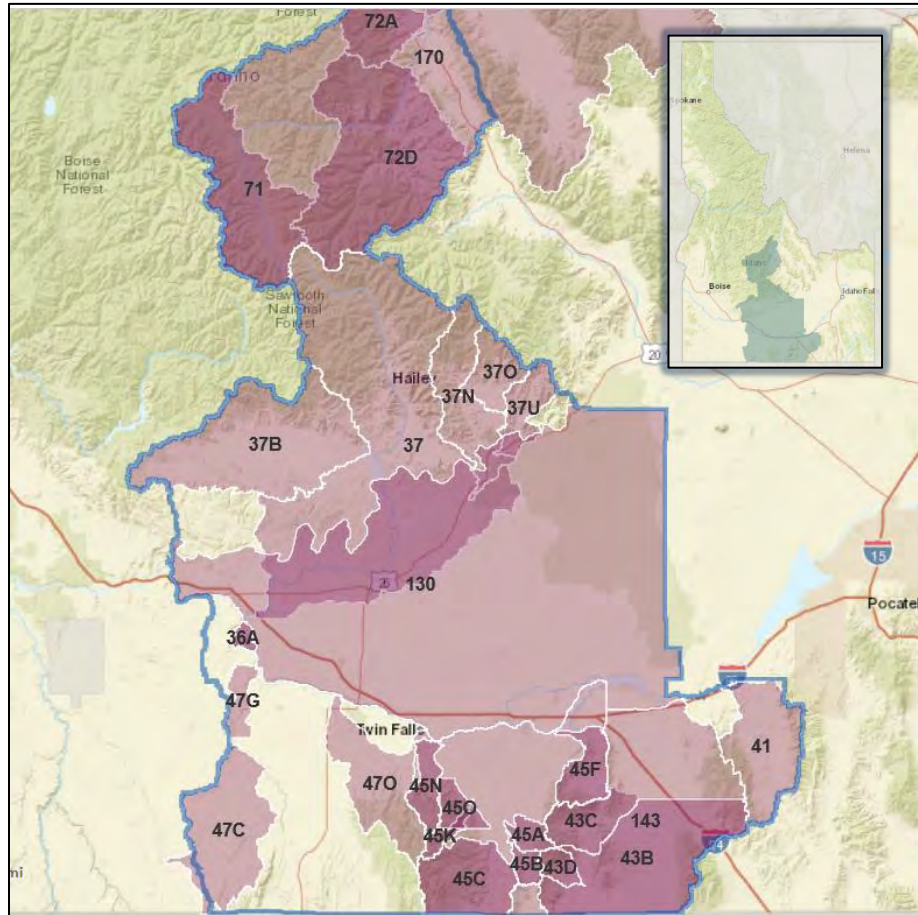
WD No.	Water District Name
95C	Twin Lakes

Western Region



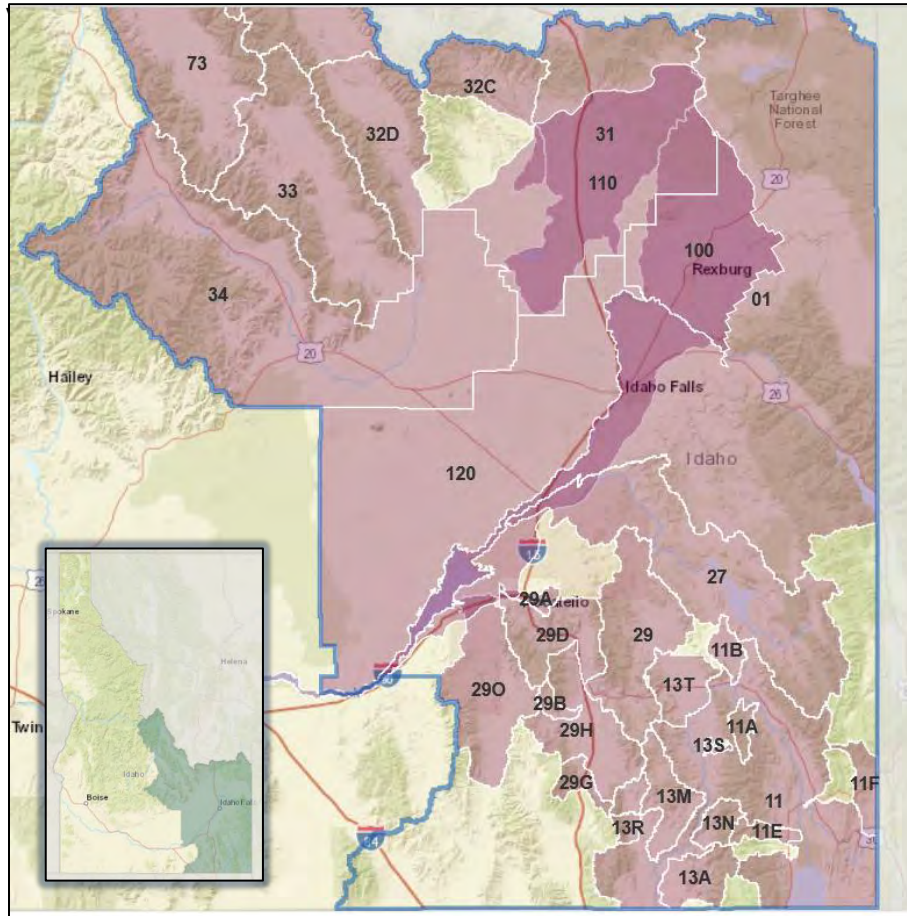
WD No.	Water District Name
02	Snake River: Milner Dam to Murphy Gage
57B	Catherine Creek
57C	Castle Creek
57D	Sinker Creek
57R	Reynolds Creek and Tributaries
61A	Canyon Creek
61C	Bennett Creek
61D	Little Canyon Creek
61E	Cold Springs Creek
63	Boise River
63B	Smith Creek
63C	Little Camas Creek Basin
63S	Stewart Gulch
65	Payette River and Tributaries
65A	Squaw Creek
65B	Porter Creek and Tributaries
65D	Boulder Creek
65K	Lake Fork Creek
67	Weiser River
67A	Little Weiser River
78A	Big Creek
78C	Goose Creek
140	Oakley Valley Area
161	Mountain Home Area

Southern Region



WD No.	Water District Name
36A	Billingsley Creek
37	Big Wood River
37B	Camas Drainage
37N	Upper Little Wood River
37O	Muldoon Creek
37U	Fish Creek
41	Rock Creek
43B	Upper Raft River
43C	Cassia Creek
43D	Almo Creek
45A	Basin Creek
45B	Birch Creek
45F	Marsh Creek
45K	Big Cottonwood Creek
45N	Dry Creek
45O	Golden Valley
47C	Cedar, Devil, House, Deadwood
47G	Salmon Falls Creek
47O	Rock Creek
71	Stanley Area Sub-District
72A	Challis and Garden Creeks
72D	Clayton Area
72F	Morgan Creek
130	Thousand Springs Area
140	Oakley Valley Area
143	Raft River Basin
170	Upper Salmon River Basin

Eastern Region



WD No.	Water District Name
01	Upper Snake River
11	Bear River
11A	Eight Mile and Bailey Creeks
11B	Soda Creek
11E	Paris Creek
11F	Thomas Fork
13A	Cub River
13M	Cottonwood, Battle and Stockton Creeks
13N	Mink Creek
13Q	Middle Fork Trout Creek
13R	Oxford Creek
13S	Whiskey Creek
13T	Bancroft-Lund
27	Blackfoot River
29	Portneuf River
29A	Pocatello Creek
29B	Garden Creek
29D	Lower Portneuf River
29G	Birch Creek
29O	Bannock Creek Drainage
31	Mud Lake and Tributaries
32C	Medicine Lodge Creek
32D	Birch Creek
33	Little Lost River
34	Big Lost River

Eastern Region water district list continued on next page

Eastern Region water district list (cont.)

WD No.	Water District Name
73	Pahsimeroi River
74	Lemhi River
74A	Geertsen Creek
74B	Kirtley Creek
74C	Bohannon Creek
74F	Pratt Creek
74G	Sandy Creek
74J	Withington Creek
74M	Agency Creek
74Q	Mill Creek
74U	Andrews Slough Ditch
74W	Texas, Hawley, Timber, Junction, Bull, Jake and Canyon Creeks
74Z	Big Eight Mile and Lee Creeks
75A	Jesse Creek, Billy Creek and Gorley Creek
75B	Williams Creek
75C	Runsten-Minzer Ditch
75D	Carmen Creek
75E	Wallace Creek
100	St. Anthony-Rexburg Area
110	Mud Lake Area
120	American Falls Area

Appendix B

Miscellaneous Guidance for Water Districts & Watermasters

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Appendix B1

Employment and Compensation

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

April 6, 2010

Senator Steve Bair
947 W. 200 S.
Blackfoot, Idaho 83221

Senator Jeff C. Siddoway
1764 E. 1200 N.
Terreton, Idaho 83450

Dear Senator Bair and Senator Siddoway:

You have requested legal guidance from the Office of the Attorney General regarding potential conflicts of interest issues that may arise if a person who is on the board of directors of the Big Lost River Irrigation District ("BLRID") also serves simultaneously as the watermaster for Water District No. 34 ("WD34"). The BLRID is located in Butte and Custer counties and within WD34, and is one of the largest water users in WD34, if not the largest.

QUESTIONS PRESENTED

Your inquiry encompasses two analytically distinct but related questions:

1. May a member of the board of directors of the Big Lost River Irrigation District simultaneously serve as the watermaster for Water District No. 34?
2. If a member of the board of directors of the Big Lost River Irrigation District simultaneously serves as the watermaster for Water District No. 34, how should potential conflicts of interest be addressed?

CONCLUSIONS

1. Yes, a person may simultaneously serve on the BLRID board and as watermaster for Water District 34, but only with the approval of the Director of the Department of Water Resources. Idaho law does not explicitly bar the same person from simultaneously serving as a

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watermaster and as an irrigation district director. The Ethics in Government Act only requires the watermaster to disclose potential conflicts of interest, and the Idaho Code's requirements that officers devote their full time to their official duties and not accept pecuniary benefits from persons subject to their regulatory or administrative authority do not appear to bar watermasters from serving on the board of an irrigation district and being compensated for such service. Moreover, the common law doctrine of incompatible offices also does not apply because the position of director of the BLRID is a private position rather than a public office. The Department of Water Resources' employee conflict of interest policy, however, applies to the watermaster and precludes the watermaster from also being a director of the BLRID absent the consent of the Director.

2. If a member of the board of directors of the BLRID simultaneously serves as the watermaster for Water District No. 34, the person must disclose to the Director, as required by the Ethics in Government Act, any actual or potential conflicts of interest that arise as a result of simultaneously serving as a director of the BLRID. Provided the watermaster makes such required disclosures, the watermaster need not be recused and may continue to perform the functions and duties of the watermaster's office. Pursuant to his broad authority to supervise and instruct the watermaster, however, the Director may appoint the board member to the position of watermaster subject to specific instructions for addressing any actual or potential conflict of interest, or may take direct control of the watermaster's water distribution duties in the event of an actual conflict of interest after appointment.

ANALYSIS

I. May A Member Of The Board Of Directors Of The Big Lost River Irrigation District Simultaneously Serve As The Watermaster For Water District No. 34?

No provision of the Idaho Code and no reported decision of the Idaho Supreme Court or the Idaho Court of Appeals address the question of whether the same person may simultaneously serve as a watermaster¹ and as a director of an irrigation district located in the same water district. In the absence of such controlling authority, your question is appropriately analyzed under applicable provisions of the Idaho Code, the common law doctrine of incompatible offices, and the Department of Water Resources' policy relating to conflicts of interest.

¹ The term "watermaster" as used herein refers only to a watermaster elected and appointed to distribute water in a water district pursuant to chapter 6, title 42 of the Idaho Code.

A. The Idaho Ethics In Government Act Of 1990.

The Ethics in Government Act of 1990 ("Ethics in Government Act"), Idaho Code §§ 59-701 – 59-705, is intended to, among other things, assure the impartiality of public officials, inform citizens of potential conflicts of interest between an official's public trust and private concerns, prevent public office from being used for personal gain, prevent special interests from unduly influencing governmental actions, and assure that governmental functions and policies reflect the public interest. Idaho Code § 59-702.

Under the Ethics in Government Act, actual or potential conflicts of interest must be disclosed, but they do not require recusal or removal from office. Provided an official's potential conflicts of interest are properly disclosed as provided in the act, Idaho Code §§ 59-704(1)-(5), the official may still fulfill his or her duties:

A public official shall not take any official action or make a formal decision or formal recommendation concerning any matter where he has a conflict of interest and has failed to disclose such conflict as provided in this section. Disclosure of a conflict does not affect an elected public official's authority to be counted for purposes of determining a quorum and to debate and to vote on the matter, unless the public official requests to be excused from debate and voting at his or her discretion.

Idaho Code § 59-704. Thus, the Ethics in Government Act does not bar the same person from simultaneously serving as watermaster for WD34 and as a director of the BLRID.

B. Idaho Code § 59-511: Officers To Devote Entire Time To Duties.

Idaho Code section 59-511 provides, in relevant part: "Each executive and administrative officer shall devote his entire time to the duties of his office and shall hold no other office or position of profit." Idaho Code § 59-511. This statute would bar the watermaster for WD34 from simultaneously serving as a director of the BLRID if a watermaster is an "executive or administrative officer," and if a BLRID directorship is an "office or position of profit." *Id.*

While neither section 59-511 nor any other provision of chapter 5 of title 59 defines these statutory terms, the chapter's focus on the state treasury and legislative appropriations suggests that a watermaster is not an "officer" for purposes of the statute. Chapter 5 of title 59 addresses "Salaries of Officers" and is concerned with officers whose salaries are paid out of "the state treasury" pursuant to legislative appropriations. Idaho Code §§ 59-501, 59-503, 59-508. The Legislature has specifically provided that watermasters' salaries are not paid out of the state

treasury or pursuant to legislative appropriations, but rather are paid by the water districts, and are charged against the lands of the water users in the water district. Idaho Code §§ 42-610, 42-612, 42-613, 42-618. Thus, the statutory structure of which Idaho Code section 59-511 is a part, and the purposes it serves, suggest that a watermaster is not an "executive or administrative officer" for purposes of the statute. See *Xerox Corp. v. Ada County Assessor*, 101 Idaho 138, 141, 609 P.2d 1129, 1132 (1980) (holding that statutes that are in pari materia "must be construed to effect a common purpose").²

This conclusion is supported by the fact that in the absence of a resolution by the water users of a water district authorizing the watermaster to work throughout the year, a watermaster works—and is paid—only during the irrigation season. Idaho Code § 42-608. Moreover, in smaller water districts, the watermaster position is often a part-time position. Thus, if Idaho Code section 59-511 applies to watermasters, it would bar a person who serves as watermaster during part of the year from obtaining employment during the remainder of the year, and would also bar a part-time watermaster from holding another job.³ This would impose an economic hardship on watermasters and discourage qualified persons from seeking the position. It is unlikely the Legislature intended such a result.

C. Idaho Code § 18-1356.

Idaho Code section 18-1356 provides that the public servants of an "agency exercising regulatory functions" may not "accept or agree to accept any pecuniary benefit from a person known to be subject to such regulation." Idaho Code § 18-1356(1). The statute further provides that public servants having "administrative authority" may not "accept or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such public servant." Idaho Code § 18-1356(3).

² No reported decision of the Idaho Supreme Court or the Idaho Court of Appeals has held that Idaho Code section 59-511 applies to watermasters, and this office is not aware of any such holding by any Idaho court. It should be noted, however, that the Idaho Supreme Court has referred to a watermaster as an "administrative officer" in some other contexts. *Big Wood Canal Co. v. Chapman*, 45 Idaho 380, 390, 263 P. 45, 48 (1927); *Nampa & Meridian Irr. Dist. v. Barclay*, 56 Idaho 13, 20, 47 P.2d 916, 919 (1935); *Mays v. District Court of Sixth Judicial Dist. in and for Butte County*, 34 Idaho 200, 206, 200 P. 115, 116 (1921).

³ Further, the office of director of the BLRID might not constitute an "office or position of profit" for purposes of Idaho Code section 59-511. The only payments to directors authorized by the BLRID's bylaws are reimbursements for expenses, and "a minimum sum" for each day spent attending board meetings or while engaging in official business. *Big Lost River Irrigation District By-Laws And Policies 2004* at 8 (Article III § 6). Reimbursements for expenses probably would not be deemed "profit," and even the "minimum sum" might not constitute a "profit." Attending board meetings or engaging in BLRID business, for example, could result in a loss of income the director otherwise would have received in pursuing his or her occupation. Thus, a court might conclude that the "minimum sum" a director receives is not "profit" but simply mitigation for such a loss.

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The Department exercises the "regulatory function" of distributing water to the water users in WD34, and the watermaster is subject to the Director's control, direction and supervision in such matters. Idaho Code §§ 42-602, 42-607, 42-613A. Further, the BLRID is "subject to such regulation," and the BLRID's payments to directors could qualify as a "pecuniary benefit." Idaho Code § 18-1356(1). Thus, Idaho Code section 18-1356(1) could be interpreted as barring the WD34 watermaster from serving simultaneously as a BLRID director. For similar reasons, Idaho Code section 18-1356(3) also could be interpreted as establishing the same bar.⁴

Such an interpretation is unlikely, however, because Idaho Code section 18-1356 is a criminal statute addressing "bribery and corruption," and includes an exception that probably would apply to the question at hand. Under this exception, the prohibitions of Idaho Code section 18-1356(1) and (3) do not apply to "fees" or "any other benefit" to which the recipient "is otherwise legally entitled." Idaho Code § 42-1836(5)(a). The "minimum sum" and expense reimbursements the BLRID pays to its directors probably constitute a "fee" or "other benefit" to which the directors are "legally entitled" under the BLRID's bylaws and title 43 of the Idaho Code, which governs irrigation districts. Thus, Idaho Code section 18-1356 would not bar the WD34 watermaster from simultaneously serving as a BLRID director.

D. The Common Law Doctrine Of Incompatible Offices.

The common law doctrine of incompatible offices applies in determining whether there is an inherent conflict of duties between two public offices.⁵ See generally 63C Am. Jur. 2d *Public Officers and Employees* § 58 (discussing the "nature and determination of incompatibility"). Under the incompatible offices doctrine, the same person may not simultaneously hold two public offices that are inherently incompatible. *Stolberg v. Caldwell*, 402 A.2d 763, 773 (Conn. 1978).

The threshold inquiry for purposes of an incompatibility analysis is whether both of the offices in question are governmental or public offices, because the incompatibility doctrine only applies to incompatible public offices. See *Coyne v. State ex rel. Thomas*, 595 P.2d 970, 973 (Wyo. 1979) ("Incompatibility of office or position requires the involvement of two governmental offices or positions"); 63C Am. Jur. 2d *Public Officers and Employees* § 60

⁴ The WD34 watermaster's statutory authority to distribute water to the water users in WD34 probably would constitute "administrative authority," and the BLRID would be "interested" in any "matter" of water distribution pertaining to its water rights that came before the watermaster. Idaho Code § 18-1356(3).

⁵ A common law inquiry is appropriate because the Idaho Code provides that the common law provides the rule of decision "in all cases not provided for in these compiled laws." Idaho Code § 73-116; see also Attorney General Opinion 91-7 (Aug. 5, 1991), at 9-10 & n.9 (discussing application of the common law doctrine of incompatibility to the offices of watermaster and water district treasurer).

(similar); Lawrence G. Wasden, *Idaho Ethics in Government Manual* (Idaho Office of the Attorney General) (Aug. 2008) at 20 (“one person holding two public offices”); Bill Lockyer, *Conflicts of Interest* (Office of the Attorney General, California Dept. of Justice), at 114 (2004) (“the doctrine concerns a conflict between potentially overlapping public duties. . . . To fall within the common law doctrine of incompatible offices, two elements must be present. First, the official in question must hold two public offices simultaneously.”) (citation omitted).⁶

Any potential incompatibility between a public office and a private office is addressed under a traditional conflict of interest analysis. The incompatible offices doctrine is not the same as a traditional conflict of interest analysis, and the two should not be confused or be viewed as interchangeable. See Lockyer, *Conflicts of Interest* at 114 (distinguishing “the doctrine of incompatibility of offices on the one hand and the conflict-of-interest notion of incompatible activities on the other”); *Coyne*, 595 P.2d at 973 (explaining that “incompatibility of office or position is not the same as conflict of interest”); *Detroit Area Agency on Aging v. Office of Services to the Aging*, 534 N.W.2d 229, 233 (Mich. Ct. App. 1995) (distinguishing “incompatibility” and “conflict of interest”).

For purposes of your inquiry, it is assumed that the office of watermaster for WD34 is a “public office” under an incompatibility analysis. Determining whether the office of director of the BLRID is a “public office” requires a brief review of applicable Idaho law.

The BLRID is an irrigation district established pursuant to title 43 of the Idaho Code. Under Idaho law, an irrigation district “is a public corporation having such incidental municipal powers as are necessary to its internal management and the proper conduct of its business.” *Barker v. Wagner*, 96 Idaho 214, 217, 526 P.2d 174, 177 (1974) (citation omitted). The “primary purpose” of an irrigation district is to acquire and operate an irrigation system “as a business enterprise for the benefit of land owners within the [irrigation] district.” *Id*; see also *Brizendine v. Nampa Meridian Irrigation Dist.*, 97 Idaho 580, 587, 548 P.2d 80, 87 (1976) (“an irrigation district’s primary purpose is the acquisition and operation of an irrigation system as a business enterprise for the benefit of its shareholders.”). Thus, an irrigation district holds title to water rights and other property in trust for the benefit of its shareholders. Idaho Code § 43-316; *Nelson v. Big Lost River Irrigation Dist.*, 148 Idaho 157, 158 n.1, 219 P.3d 804, 805 n.1 (2009).

In short, irrigation districts are structured and intended to create private rather than public benefits. The Idaho Supreme Court’s decision in *Brizendine* is instructive on this point. In *Brizendine*, the Court explained that the Idaho Tort Claims Act does not protect irrigation districts because unlike a “municipal or public corporation,” the primary purpose of irrigation districts is not to promote “the welfare of the general public” or “the public good,” but rather to

⁶ This document may be viewed at the following URL: <http://ag.ca.gov/publications/coi.pdf>.

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acquire and operate "an irrigation system as a business enterprise for the benefit of its shareholders." *Brizendine*, 97 Idaho at 587, 548 P.2d at 87.

Consistent with the private purposes and benefits of an irrigation district, its directors are elected by its shareholders, not the general public. Idaho Code § 43-201. Further, the directors owe a fiduciary duty and a duty of loyalty to the irrigation district and its shareholders, Idaho Code § 43-204B, not to the general public. Thus, it is unlikely that the office of director of an irrigation district is a "public office" for purposes of an incompatibility analysis under Idaho law. The doctrine of incompatible offices therefore would not bar the same person from simultaneously serving as WD34 watermaster and as a director of the BLRID.

It is important to note that this conclusion does not mean that the duties of the WD34 watermaster and those of a director of the BLRID are "compatible" or would never conflict. As previously discussed, the incompatible offices doctrine cannot be substituted for a traditional conflict of interest analysis. Further, the Department's conflict of interest policy provides that Department employees may not simultaneously hold a private office that is not compatible with their public office functions. The next section discusses the application of these policies to your inquiry.

E. The Department's Employee Policy On Conflicts Of Interests.

The Rules of the Division of Human Resources and Personnel Commission ("Personnel Rules") require all "appointing authorities" to establish the policies and standards "necessary to prevent conflicts of interest." IDAPA 15.04.01.024. The Director is subject to this obligation because he is statutorily authorized to appoint the watermasters for water districts. Idaho Code § 42-605(3); *see also* IDAPA 15.04.01.010.06; Idaho Code § 67-5302(3) (defining "appointing authority"). The Department has adopted a written "Employee Conduct" policy that addresses conflict of interest issues.⁷

The Department's policy expressly recognizes that "a high standard of conduct, honesty and impartiality, by Department employees is essential to insure the proper performance of business and strengthen public faith and confidence in the integrity of the Department and its employees."⁸ "Employees are expected to act impartially in performing official duties and not

⁷ The Department's "Employee Conduct" policy is part of a larger policy document that is maintained on the Department's intranet. A copy of the "Employee Conduct" policy is attached hereto.

⁸ Attachment at 1 ("Personal Conduct"). The Personnel Rules also recognize that "a high standard of honesty, ethics, impartiality, and conduct by state employees is essential to ensure proper performance of state business and strengthen the faith and confidence of the people of Idaho in the integrity of state government and state employees." IDAPA 15.04.01.024.

give preferential treatment to any outside organization or individual.”⁹ The policy seeks to avoid not only actual conflicts of interest but also any potential for the appearance of impropriety.¹⁰

The Department’s policy also provides that outside activities “must be compatible with the role of the employee as a public employee. The [outside] employment must not conflict with the best interest of the Department or the proper performance of the employee’s responsibilities.”¹¹ Thus, Department employees “shall not accept or serve in any policy-making position or office of an organization, board or commission in which an opportunity for conflict of interest might arise between the activity and department employment, except upon written approval of the Director.”¹² This prohibition applies to the WD34 watermaster if he or she is considered a Department “employee” for purposes of a conflict of interest analysis in matters of water distribution. See Letter from David G. High, Assistant Attorney General, to Martel L. Miller, Deputy Director, Department of Administration (Apr. 12, 1977), at 2 (concluding that a watermaster is an employee of the Department for purposes of the Idaho Tort Claims Act).¹³

While a watermaster is elected by the water users of a district and paid by the water district, the watermaster must also be appointed by the Director. Idaho Code §§ 42-605(3), (10). The Director has “direction and control” over the distribution of water in a water district, Idaho Code § 42-602, and as previously discussed, the watermaster is subject to the Director’s supervisory authority in such matters. Idaho Code §§ 42-602, 42-613A. The watermaster must take an oath to “faithfully perform” his water distribution duties as defined by Idaho law and file it with the Department. Idaho Code § 42-605(10).

Further, the Idaho Supreme Court has held that a watermaster is not an “employee” or “agent” of the water users for purposes of distributing water in a water district. *Jones v. Big Lost River Irr. Dist.*, 93 Idaho 227, 229, 459 P.2d 1009, 1011 (1969). Rather, in this capacity the watermaster is “responsible to” and “works for” the Department. *Id.*; see also *Marty v. State*, 117 Idaho 133, 140, 786 P.2d 524, 531 (1989) (stating that the watermaster was an agent of the Department); *Nettleton v. Higginson*, 98 Idaho 87, 93, 558 P.2d 1048, 1054 (1977) (referring to the watermaster as “the state’s agent”); *R.T. Nahas Co. v. Hulet*, 114 Idaho 23, 27, 752 P.2d 625, 629 (Ct. App. 1988) (same). Accordingly, for purposes of a conflict of interest

⁹ Attachment at 4 (“Gratuities”).

¹⁰ See Attachment at 2-3 (“which might have the appearance of impropriety”); *id.* at 3 (“appearance of impropriety . . . reasonable perceptions . . . avoid the appearance of impropriety”).

¹¹ Attachment at 2 (“Outside Activities”).

¹² Attachment at 2 (“Outside Activities”).

¹³ “A watermaster is a public administrative officer who performs functions both for the Department of Water Resources and for his water district. He is elected by and paid by water users in the water district. Thus, for some purposes he could be considered an employee of the water district.” *Id.* at 1.

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analysis in matters of water distribution, the WD34 watermaster is appropriately viewed as an "employee" of the Department.

This conclusion finds support in the nature and purpose of water districts under Idaho law. A water district is not a private entity but rather 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. Water districts are an essential part of the "framework of evenhanded oversight" for administering water rights under Idaho law, and the Department of Water Resources' "principal tool" for carrying out its legislative mandate to distribute water in accordance with the prior appropriation doctrine. *In re Idaho Dept. of Water Resources Amended Final Order Creating Water Dist. No. 170*, 148 Idaho 200, 211-12, 220 P.3d 318, 329-30 (2009). It would be inconsistent with the nature and purposes of a water district to conclude that watermasters should not be subject to conflict of interest policies requiring that their official water distribution duties be performed impartially, without giving preferential treatment, and without creating the appearance of impropriety.¹⁴

As previously discussed, the Department's conflict of interest policy bars employees from accepting or serving "in any policy-making position or office of an organization, board or commission in which an opportunity for conflict of interest might arise between the activity and department employment, except upon written approval of the Director."¹⁵ A chair on the BLRID's board of directors plainly constitutes "a policy-making position or office" of a "board." Thus, the question becomes whether an "opportunity" for a conflict of interest "might arise" if the WD34 watermaster simultaneously serves on the BLRID board of directors.

An opportunity for a conflict of interest might arise if the watermaster serves as a BLRID director. For instance, the WD34 watermaster plays an important role in administering the "Rotation Credit" system, under which certain surface water rights in WD34 can be "rotated" for storage water credits in Mackay Reservoir. IDAPA 37.03.12.040.02. The BLRID owns Mackay Reservoir, and the "Rotation Credit" system is subject to the BLRID's approval and consent. IDAPA 37.03.12.040.02.b; see also *Order of Partial Decree for General Provisions in Administrative Basin 34 (In re SRBA, Subcase No. 91-00005-34)* (May 8, 2001), at Exhibit A ("Water rights from the Big Lost River diverted below Mackay Dam and Reservoir may be rotated into storage with the consent of the Big Lost River Irrigation District . . ."). Further, while a watermaster is a "ministerial officer" and may distribute water "only in compliance with applicable decrees," *Almo Water Co. v. Darrington*, 95 Idaho 16, 21, 501 P.2d 700, 705 (1972), the everyday work of a watermaster in discharging this duty necessarily involves the exercise of discretion in making certain determinations, such as whether a water user is actually receiving

¹⁴ See generally Attachment at 2-4.

¹⁵ Attachment at 2 ("Outside Activities").

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the decreed quantity, or whether a water delivery call would be futile because water would not reach the senior appropriators in a sufficient quantity for it to be applied to beneficial use.¹⁶ *Gilbert v. Smith*, 97 Idaho 735, 739, 552 P.2d 1220, 1224 (1976). It is important that there be no actual conflict of interest, or even an opportunity for the appearance of impropriety, in the exercise of this discretion.

Thus, the conflict of interest provisions of the Department's "Employee Conduct" policy generally would bar the same person from simultaneously serving as the WD34 watermaster and as a director of the BLRID. The Department's policy has an important exception, however: it does not apply "upon written authorization of the Director."¹⁷ The Department's policy does not provide the standards for exercising this authority, but presumably the Director may take relevant considerations into account in making an exception to the basic prohibition against simultaneously serving as WD34 watermaster and on the BLRID's board of directors.

In sum, nothing in the Idaho Code, reported Idaho decisions, or the common law doctrine of incompatible offices would bar the same person from simultaneously serving as the WD34 watermaster and as a BLRID director. In contrast, the Department's conflict of interest policies would apply to bar such a situation, unless the Director made an exception to the general policy in a written authorization or decision. Under the Department's policies, the question of whether to allow the same person to simultaneously serve as the WD34 watermaster and as a director of the BLRID is committed to the sound discretion of the Director.

II. If A Member Of The Board Of Directors Of The Big Lost River Irrigation District Simultaneously Serves As The Watermaster For Water District No. 34, How Should Potential Conflicts Of Interest Be Addressed?

The Ethics in Government Act explicitly requires a public official to disclose potential or actual conflicts of interest, and defines the required process and means of disclosure. Idaho Code § 59-704. Provided the required disclosures are made, the public official need not recuse himself or herself: the official may still participate in the proceedings and take any action authorized by law. *Id.*¹⁸

¹⁶ This is not intended to be an exhaustive list of the instances in which a watermaster's duty might require the exercise of discretion.

¹⁷ Attachment at 2 ("Outside Activities").

¹⁸ The act provides that an "elected legislative public official" must also take any action required by the rules of the body of which he/she is a member after disclosing a conflict of interest. Idaho Code § 59-704(1). Such rules might conceivably require recusal, but the act itself does not, and in any event a watermaster is not a "legislative public official."

These provisions require the WD34 watermaster to disclose actual or potential conflicts of interest to the Director. Provided the watermaster discloses actual or potential conflicts of interest to the Director, the watermaster need not recuse himself or herself and may continue performing the duties of the watermaster's office.¹⁹

While the Ethics in Government Act does not require recusal of the watermaster if there is a potential or actual conflict of interest, the Director has authority to give the watermaster specific instructions in such a situation, and even to take direct control of the watermaster's functions to avoid or resolve a conflict of interest. While the watermaster performs the distribution of water in a water district, it is the Director who has "direction and control" over such matters. Idaho Code § 42-602. The Director also has supervisory authority over watermasters in the distribution of water. See *id.* ("Director of the Department of Water Resources To Supervise Water Distribution Within Water Districts") (section title); *id.* § 42-613A (referring to "the supervisory responsibilities of the director of the department of water resources over the activity of watermasters delivering water within water districts").

Thus, should an actual or potential conflict of interest arise as a result of the WD34 watermaster also serving as a director of the BLRID, the Director could address the situation by issuing specific instructions to the watermaster. Alternatively, the Director could remove the watermaster from the conflict situation and take direct control of water distribution.

The Director might also consider providing instructions to the watermaster before conflicts arise. Such proactive instructions could help avoid or resolve conflict situations more quickly and efficiently than by responding only after they have already developed. The Director could issue such instructions pursuant to his supervisory authority, and such instructions could take any one of several forms. For instance, the Director could issue such instructions as part of his written approval under the Department's "Employee Conduct" policy, or as part of his formal appointment of the watermaster. The instructions could also be issued in a separate letter or order to the watermaster.

In sum, the only requirement Idaho law establishes with regard to actual or potential conflicts that arise as a result of the same person simultaneously serving as the WD34 watermaster and as a director of the BLRID is that the watermaster properly disclose such conflicts as set forth in Idaho Code § 59-704. Beyond this, if the Director in his discretion

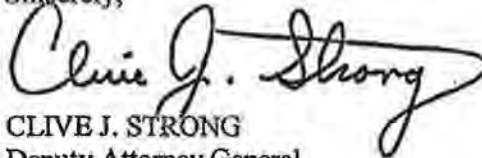
¹⁹ The official has the option of seeking legal counsel to determine whether an actual or potential conflict of interest exists. Idaho Code § 59-704. Should the legal advice be that there is an actual conflict of interest, an appointed official must disclose the conflict through a filing with the appointing authority. *Id.* § 59-704(3). The appointing authority may seek an advisory opinion from the Attorney General, and the official may then act on the legal advice. *Id.*

Senator Steve Bair
Senator Jeff C. Siddoway
April 6, 2010
Page 12

decides to waive the Department's conflict of interest policy and appoint a BLRD board member as the watermaster, he has broad authority to supervise the watermaster's water distribution activities to address any conflict of interest situation, including, but not limited to, issuing specific instructions to the watermaster or taking direct control of the watermaster's water distribution functions, if necessary or advisable to ensure the proper distribution of all water rights.

I hope that the foregoing discussion responds to the concerns underlying your request for legal guidance. Please feel free to contact me should you have any comments or questions on any of these matters. This letter is provided to assist you. The response is an informal and unofficial expression of the views of this office based upon the research of the author.

Sincerely,





CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

CJS/pb

Attachment

Via U.S. Mail and e-mail

cc: Gary Spackman, Interim Director, Department of Water Resources
John Homan, Deputy Attorney General

 State of Idaho Department of Water Resources	
Type: DEPARTMENT POLICY	Effective Date: 01 August 2014 (Supersedes Policy Dated: ALL PREVIOUS)
Title: STANDARDS OF CONDUCT	
Approved: 	Date: <i>July 28, 2014</i>

SCOPE

Maintaining a high standard of conduct, honesty, impartiality, common sense and mutual respect by Department employees is essential to insure the proper performance of business and strengthen public faith and confidence in the integrity of the Department and its employees. It takes all employees working together to maintain a high level of professional service. To achieve and maintain our workplace to be one that promotes these standards, IDWR has established specific expectations of all employees. It is important for employees to be aware of and fully understand these *required* expectations.

Accordingly, our employees must be aware of their responsibilities to the Department and to co-workers. Any violation of this policy could result in immediate discipline up to and including termination. However, we strive to take a constructive approach to corrective action matters to insure that actions that would interfere with operations or an employee's job are not continued.

POLICY

Although there is no way to identify every possible violation of standards of conduct, the following is a list of infractions including those stated in Rule 190 of the Division of Human Resources identifying behavior that could lead to disciplinary action or separation from state service (e.g., dismissal, suspension, demotion or reduction in pay). See IDWR Problem Solving and Due Process Procedures on WEnet and Rule 200 of the Division of Human Resources).

- Failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes, or rules of the agency or the Division of Human Resources and Idaho Personnel commission.
- Inefficiency, incompetency, or negligence in performing assigned duties, if a reasonable accommodation cannot be made for the disabling condition.
- Physical or mental incapability for performing assigned duties, if a reasonable accommodation cannot be made for the disabling condition.
- Refusal to accept a reasonable and proper assignment from an authorized supervisor.
- Insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the agency.
- Intoxication or being under the influence of alcohol, or the misuse of medications or controlled substances, while on duty.

IDWR POLICY	Title: Standards of Conduct	Effective Date: 01 August 2014
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INTERNAL COMMUNICATIONS

Internal communications include interactions in person, interactions through written notes, memos, and letters, and interactions using any electronic device such as telephone, email, text messages, social media, internet websites, blogs, YouTube, internet forums, etc. Every employee deserves respect and praise in public. If there are disagreements, employees should respectfully correct or criticize in private. Disagreements are to be expected and better decisions may grow from discussion and debate. Personal attacks, gossips, jokes, foul or offensive remarks and disparaging comments, even in the guise of humor or as an expression of irritability are destructive to the morale of the agency and damage trusting relationships. Interactions among employees shall be directed at issues and solutions. Employees are instructed to present concerns or problems to their supervisor. Meetings (not required by law to be recorded) or conversations may not be taped without prior consent of the individual(s) being recorded and the approval of the Director. Copies of recordings shall be provided upon approval by the Director. (See IDWR Internet and Electronic Device Policy on WEnet).

CONFLICT OF INTEREST

Employees are expected to use good judgment at all times. Employees shall not profit, directly or indirectly from public funds under their control, shall not have a private interest in any contract made by them in their official capacity; and must avoid self dealing in any purchase or sale made in their official capacity.

Any activity performed in the course of employment which might have the appearance of impropriety or preferential treatment of family or relatives, significant others, etc., is prohibited.

Employees shall not have a private interest in any contract, grant or other written agreement in an official capacity. Employees may not contract with the Department of Water Resources or with another state agency or entity within state government. To prevent the appearance of impropriety in Department contracts, the employee should refrain from disclosing insider, proprietary or confidential information to family, friends, or business associates. This is especially so when there are or could be reasonable perceptions drawn that unfair contracting practices have occurred because of these relationships to employees.

Employees should not act, but withdraw from any matter coming before them in the course of their official duties, if they or their family, relatives, significant others, etc., have a private interest in it. For example, if any employee has a private interest in, or is likely to become interested in a contract of IDWR, the employee should not take part in the preparation or approval of the contract or bid specifications.

If it is unclear that a conflict of interest exists, employees shall seek clarification from their immediate supervisor.

(Ethics in Government: <http://www.ag.idaho.gov/publications/legalManuals/EthicsInGovernment.pdf>)



RECEIVED

JUL 24 2013

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

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,

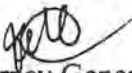


CLAY R. SMITH
Deputy Attorney General



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
ALAN G. LANCE

TO: Gary Spackman
Water Distribution Section Manager

FROM: John Homan 
Deputy Attorney General
Natural Resources Division

DATE: January 9, 1997

RE: Employment Law Status of Water Measurement District Hydrographer

Water measurement districts need to be aware that certain laws make it inherently risky to portray a working relationship as that of an "independent contractor" to avoid withholding and other responsibilities imposed under employment laws. Districts may want to consider budgeting for insurance premiums and other costs associated with carrying an employee on the payroll. If the District proceeds under a contract for services and attempts to portray the working relationship as that of an independent contractor, there is a potential risk that the District could later be required to make up employer contributions and penalties for taxes, Social Security and other withholdings on the entire amount of the contract. Current rules governing the Internal Revenue Service, Social Security Administration and the Idaho State Insurance Fund are crafted to allow taxing agencies to imply and find an employee/employer relationship despite the existence of a contract stating otherwise. Listed below are some general references to the laws which impact the specific requirements imposed on employers. Also attached is a list of factors the Social Security Administration considers to determine the worker status. The "Common Law Test" used by the Social Security Administration is helpful as it is reflective of the analysis used by the other governmental agencies on this issue.

WORKER COMPENSATION

I.C. § 42-706(3) states that each water measurement district created shall be considered an instrumentality of the state of Idaho. A provision in the workmen's compensation laws provides that every person in the service of the state or of any political subdivision thereof, under contract of hire, express or implied, constitutes employees in public employment and are subject to coverage under the worker's compensation law. See I.C. § 72-205

UNEMPLOYMENT INSURANCE

I.C. § 72-1316 imposes two traditional elements to distinguish between an “independent contractor” and an “employee” a *right to control* test and an *independent trade or profession* test.

INCOME TAXES

I.C. § 63-3035 provides that all employers who are required under Section 3401(a)(2) of the Internal Revenue Code to withhold monies for federal income taxes shall also withhold monies for state income taxes.

SOCIAL SECURITY TAXES

See attached materials

State Of Idaho Fiscal Policies Manual

Chapter Title - Expenditures Independent Contractor/Employee	Issue Date: 7/24/95
	Revised: Page: 1

PREFACE

IRS continues to place strong emphasis on the status of workers nationwide. The issue of employee versus independent contractor/consultant is one of which all state agencies must be keenly aware. Agency management must make every effort to ensure the State of Idaho is not placed in a position of liability as a result of improper worker classification.

DEFINITION

The Social Security Administration (SSA) has created the "Common Law Test" to determine worker status. The SSA test contains twenty-two long- standing criteria for determining the proper worker status and is found in Chapter 8 of the Federal Social Security Handbook, Sections 803 through 824. The SSA criteria is as follows:

803. UNDER THE COMMON-LAW TEST, WORKERS ARE EMPLOYEES if the person for whom they work has the right to tell them what to do and how, when, and where to do it. The employer does not have to give these orders, but needs only the right to do so.
804. THE FACTORS OR ELEMENTS SHOWING CONTROL over details of work are discussed in sections 805-824. The factors are to be weighed against or compared to those which point to an independent contractor status. Any single fact or small group of facts is not conclusive evidence of the presence or absence of control. All facts must be weighed and the conclusion must be based on a careful evaluation of all the facts and the presence or absence of factors which point to an employer-employee relationship, as well as those which point to an independent contractor status.

The weight to be given to the factors discussed in the following sections is not always constant. Their degree of importance may vary somewhat depending on the occupation being considered and the reasons for their existence. Some of them do not apply to particular occupations.

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805. A PERSON REQUIRED TO COMPLY WITH INSTRUCTIONS about when, where, and how to work is ordinarily an employee. Some employees may work without receiving instructions because they are highly proficient in their line of work and they can be trusted to work to the best of their abilities. However, the control factor is present if the employer has the right to instruct. Instructions may be oral or they may be in the form of manuals or written procedures, showing how the desired result is to be accomplished.
806. TRAINING of a person by an experienced employee is a factor of control because it is an indication the employer wants the services performed in a particular method or manner. This is especially true if the training is given periodically or at frequent intervals. Independent contractors ordinarily use their own methods and receive no training from the purchasers of their services.
807. INTEGRATION of the person's services in the business operations generally shows the person is subject to direction and control. In determining whether integration exists, it is necessary to determine the scope and function of the business and then to determine whether the services of the individual are merged into it. When the success or continuation of a business depend to an appreciable degree upon the performance of certain kinds of services, the people who perform those services must necessarily be subject to a certain amount of control by the owner of the business.
808. IF THE SERVICES MUST BE RENDERED PERSONALLY, it indicates that the employer is interested in the methods as well as the results. The employer is interested not only in getting a desired result, but also in who does the job. Lack of control may be indicated when an individual has the right to hire a substitute without the employer's knowledge.
809. HIRING, SUPERVISING AND PAYING ASSISTANTS by the employer generally shows control over all the workers on the job. Sometimes one worker may hire, supervise and pay the other workers, because of a contract under which the worker provides materials and labor and is responsible only for the attainment of a result. In such instances, the worker is an independent contractor. On the other hand, if the worker hires, supervises and pays other workers at the direction of the

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employer, the worker may be acting as an employee in the capacity of a supervisor for, or representative of, the employer.

810. THE EXISTENCE OF A CONTINUING RELATIONSHIP between an individual and the person for whom the individual performs services is a factor tending to indicate the existence of an employer-employee relationship. Continuing services may include work performed at frequently recurring, although somewhat irregular, intervals, either on call of the employer or whenever the work is available. This type of relationship is considered permanent if continuing or recurring work is contemplated, even if the services are performed on a part-time basis; are seasonal; or the person actually works only a short time.
811. THE ESTABLISHMENT OF SET HOURS OF WORK by the employer is a factor indicative of control. This condition bars the worker from setting his or her own time, which is a right of the independent contractor. Where fixed hours are not practical because of the nature of the occupation, a requirement for the worker to work at certain times is an element of control.
812. IF THE WORKER MUST DEVOTE FULL TIME TO THE BUSINESS of the employer, the employer has control over the amount of time the worker spends working. By implication, this restricts the worker from doing other gainful work. An independent contractor, on the other hand, may choose both for whom and when to work.

"Full-time" does not necessarily mean an 8-hour work day or a 5- or 6-day work week. The meaning of "full-time" may vary with the intent of the parties, the nature of the occupation, and the customs in the locality. These varying conditions should be considered in defining "full time".

Full-time services may be required even though not specified in the written or oral agreement; for example, a worker may not be permitted to work for anyone else, or a worker may have to meet a production minimum, which can only be met by devoting all working hours to that business.

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813. DOING THE WORK ON THE EMPLOYER'S PREMISES is not control in itself; however, it does imply the employer has control; especially where the work is of such a nature it could be done elsewhere.

A person working in the employer's place of business is physically within the employer's direction and supervision. The use of desk space and of telephone and stenographic services provided by an employer places the worker within the employer's direction and supervision, unless the worker has the option to use or not to use these facilities.

Work done off the premises does indicate some freedom from control; however, working off premises does not by itself mean that the worker is not an employee. In some occupations the services are necessarily performed away from the premises of the employer. This is true, for example, of employees of construction contractors.

814. IF A PERSON MUST PERFORM SERVICES IN THE ORDER OR SEQUENCE SET by the employer, indications are the worker may be subject to control; as the worker is not free to follow his or her own pattern of work, but must follow the established routines and schedules of the employer.

Often, because of the nature of an occupation, the employer either does not set the order of the services or sets them infrequently. However, the employer retaining the right to control is sufficient to show control exists..

815. IF REGULAR ORAL OR WRITTEN REPORTS MUST BE SUBMITTED to the employer, indications are control exists, in that the worker is compelled to account for his or her own actions.

816. AN EMPLOYEE IS USUALLY PAID BY THE HOUR, WEEK OR MONTH; whereas, payment on a commission or job basis is customary when the worker is an independent contractor. Payment by the job includes a lump sum, computed by the number of hours required to do the job at a fixed rate per hour. Also included may be weekly or monthly payments, if such periodic payments are a convenient way of paying a lump sum agreed upon as the cost of doing a job.

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The guarantee of a minimum salary or the granting of a drawing account at stated intervals, with no requirement for repayment of the excess over earnings, tends to indicate the existence of an employer-employee relationship.

817. PAYMENT BY THE EMPLOYER OF THE WORKER'S BUSINESS AND/OR TRAVELING EXPENSES is a factor indicating control over the worker. Conversely, a lack of control is indicated when the worker is paid on a job basis and has to take care of all incidental expenses.
818. THE FURNISHINGS OF TOOLS, MATERIAL, ETC. by the employer is indicative of control over the worker. When the worker furnishes the tools, materials, etc., a lack of control is indicated. However, in some occupational fields, employees customarily use their own hand tools.
819. A SIGNIFICANT INVESTMENT BY A PERSON in facilities he or she uses in performing services for someone else tends to show an independent status. On the other hand, the furnishing of all necessary facilities by the employer tends to indicate the worker is an employee.
820. PEOPLE WHO ARE IN A POSITION TO REALIZE A PROFIT OR SUFFER A LOSS, as a result of their services, are generally independent contractors, while people who are employees are not in such a position. Opportunity for profit or loss may be established by one or more of a variety of circumstances, ie; a person performing the following activities:
- A. Hires, directs and pays assistants
 - B. Has his or her own office, equipment, materials or other facilities for doing the work
 - C. Has continuing and recurring liabilities or obligations, and success or failure depends on the relation of receipts to expenditures
 - D. Agrees to perform specific jobs for prices agreed upon in advance and pays expenses incurred in connection with the work

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821. IF A PERSON WORKS FOR A NUMBER OF PEOPLE OR FIRMS AT THE SAME TIME, indications usually are an independent status exists, because the worker is usually free from control by the people or firms. However, a person may work for a number of people or firms and still be an employee of one or all of them.

822. WORKERS WHO MAKE THEIR SERVICES AVAILABLE TO THE GENERAL PUBLIC are usually independent contractors. Individuals may hold their services out to the public in a number of ways. They may have their own office and assistants; they may hang out a "shingle" in front of their home or office; they may hold business licenses; they may be listed in business directories or maintain business listings in telephone directories; or they may advertise in newspapers, trade journals, magazines, etc.

823. THE RIGHT TO FIRE is an important factor, indicating the person possessing the right is an employer. Independent contractors, on the other hand, cannot be fired as long as they produce results which measure up to their contract specifications.

Sometimes an employer's right to fire is restricted because of the employer's contract with a labor union. Such a restriction does not detract from the existence of an employment relationship.

824. AN EMPLOYEE HAS THE RIGHT TO END THE RELATIONSHIP with the employer at any time the employee wishes, without incurring liability. An independent contractor usually agrees to complete a specific job and is either responsible for its satisfactory completion or is legally obligated to make good for failure to complete the job.

POLICY

All state agencies are to comply with the federal regulations governing the proper classification of workers performing services.

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FISCAL IMPACT

If a worker is classified and paid as an independent contractor and is later determined, in fact, to be an employee, the State is responsible to immediately place this person on the bi-weekly payroll. As the employer, the State must make all future payments for the employee's services, less the applicable involuntary deductions, through the State's payroll system. The State would then be subject to complying with the Social Security Administration's (SSA) Statute of Limitations. The SSA Statute of limitations is the prior four calendar years. All remuneration, plus 100 percent of the applicable FICA taxation (both the employee's share and the employer's share) must be reported and paid by the employer. The Internal Revenue Service's quarterly 941 wage and tax statements would have to be revised and any additional tax developed would have to be remitted. Should additional federal taxation be due, the State would more than likely be assessed late deposit penalties. Late FICA tax deposit penalties may also be assessed.

The State could easily be confronted with additional liability for improper worker classification--to the worker, to the U.S. Secretary of Labor, to the Department of Justice, and to the Internal Revenue Service. The worker can sue the employer for the recovery of back wages, liquidated damages (an amount equal to the back wages), and the recovery of attorneys' fees. For willful violations of the Fair Labor Standards Act, the Department of Justice can criminally prosecute those individuals responsible for the violations. The penalty for the first offense is a fine of up to \$10,000. For subsequent violations the penalty can include a fine of up to \$10,000 and/or imprisonment for up to six months.

The Secretary of Labor has the power to initiate investigations to determine whether an employer has violated any provisions of the Act. Employees who "blow the whistle" on the employer cannot be retaliated against in any way by the employer. Special provisions of FLSA protect the employees.

The Internal Revenue Code empowers the IRS to assess the employer, as follows:

- a) An employer may be liable for an amount equal to 1.5% of wages (3%, if no information return was filed) if the employer erroneously treated a worker as an independent contractor for income tax withholding purposes. This does not relieve the employee from liability for 100% of his or her income tax bill [IRC Sec. 3509(a)(1), (b)].

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- b) An employer may be liable for 20% of the worker's share of FICA tax that should have been withheld (40% if no information return was filed), if the employer erroneously treated a worker as an independent contractor for FICA tax purposes [IRC Sec. 3509(a)(2), (b)].
- c) For attempts to evade or defeat employment taxes, an employer may be assessed a civil penalty equal to 100% of the total amount of the tax evaded or not collected [IRC Sec. 6672]. In addition, there is a criminal penalty of a \$100,000 fine (\$500,000 in the case of a corporation) and/or five years in prison [IRC Sec. 7201].
- d) For failing to file a correct W-2 with the Social Security Administration, the employer may be penalized \$50 per form (maximum penalty, \$250,000 per calendar year) [IRC Sec. 6721].
- e) A civil penalty of \$50 per statement may be imposed for willful failure to furnish correct wage and tax statements (Forms W-2) to employees [IRC Sec. 6674]. In addition, there is a criminal penalty consisting of a \$1,000 fine and/or one year in prison for willful failure to furnish W-2 forms, as required [IRC Sec. 7204].
- f) Interest on past-due tax payments

ADMINISTRATIVE PROCEDURES

If worker status is unclear, contact the Office of the State Controller, Division of Statewide Payroll for further guidance and assistance. Attached is a copy of form SSA-7160, Employment Relationship Questionnaire, for your use in choosing the proper worker classification.



TOE
420

Form approved
OMB No. 72-20411

EMPLOYMENT RELATIONSHIP QUESTIONNAIRE

This information is needed to determine whether the worker is an employee as that term is defined in the Social Security Act, as amended. It is submitted for the use of the Social Security Administration.

Notice.—All items must be answered, or marked "Unknown," or "Do not apply." If you need more space, use the space for "Remarks" on the last page or attach another sheet. If you need help in completing this form, contact any Social Security Administration office.

FIRM'S NAME	WORKER'S NAME
ADDRESS OF FIRM	WORKER'S SOCIAL SECURITY NO.
FIRM'S FEDERAL EMPLOYER'S IDENTIFICATION NO.	DATE WORKER'S SERVICES PERFORMED
	FROM 'S TO .19

Note.—The term "worker" refers to the person who performed the services.

The term "firm" refers to the individual, corporation, partnership, association, or other type of organization for whom the services were performed.

Check type of firm: ☐ Individual ☐ Partnership ☐ Corporation ☐ Other (please specify)

- Give nature of firm's business (for example, drugstore, homeowner, radio manufacturer, farmer, etc.)
- State worker's occupation or title and give a complete description of the work done by him.
- If the work was done under a written agreement or contract, please attach a copy.
 - If the agreement was not in writing, describe the terms and conditions of the work arrangement.
 - If the actual working arrangement differed in any way from the agreement explain the differences, why they occurred and the date or dates of such change.
- Was the worker given training in the work by the firm? ☐ Yes ☐ No If "Yes," how often and what kind?
 - Was the worker required to follow daily, weekly, etc., routines or schedules established by the firm? ☐ Yes ☐ No If "Yes," give examples
 - Was the worker given instructions about the way the work was to be done? ☐ Yes ☐ No If "Yes," explain the nature of the instructions
 - Could the firm change the methods used by the worker in doing the work, or otherwise direct him as to how to do the work? ☐ Yes ☐ No Explain your answer

5. (a) Did the firm engage the worker: ☐ Full-time ☐ Part-time ☐ Particular job
☐ Indefinite period ☐ Other (please explain) _____

(b) Did the firm require the worker to work during fixed hours or at certain times? ☐ Yes ☐ No
 If "Yes," explain _____

6. Name the months and number of days worked in each month during this period of employment. _____

7. (a) State the kind and value of tools and equipment furnished by: the firm _____

 the worker _____

(b) List any other expenses connected with the work that the worker had: _____

8. Was it agreed or understood that the worker would perform the services personally? ☐ Yes ☐ No
 If "No," explain _____

9. (a) Did the worker have helpers? ☐ Yes If "Yes," answer (b), (c) and (d). ☐ No
 (b) Were the helpers hired by: ☐ The worker? ☐ The firm?
 If hired by the worker, was the firm's consent and approval necessary? ☐ Yes ☐ No
 Who could discharge the helpers: ☐ The worker? ☐ The firm?
 (c) Who paid the helpers: ☐ The worker? ☐ The firm?
 If the worker paid the helpers, did the firm repay him? ☐ Yes ☐ No
 (d) How much of the work did the helpers do? _____

10. Who owned or rented the premises where the work was done? _____

11. (a) Check the type of pay worker received: ☐ Salary ☐ Commission ☐ Hourly wage ☐ Advance or draw
☐ Other (please explain) _____

(b) Was he guaranteed a minimum pay? ☐ Yes ☐ No

12. Was the worker eligible for a pension, bonuses, paid vacations, sick pay, etc? ☐ Yes ☐ No
 If "Yes," explain _____

13. Did the firm carry workmen's compensation insurance on the worker? ☐ Yes ☐ No

14. Were social security taxes deducted from amounts paid the worker? ☐ Yes ☐ No ☐ Unknown

15. How did the worker report his earnings for income tax purposes?
☐ Wages ☐ Self-employment income ☐ Unknown

16. (a) Was the worker permitted to work for others if such work would not interfere with the services for the firm?
☐ Yes ☐ No If "Yes," answer (b).
 (b) Describe any work he did for others: _____

17. (a) Could the firm discharge the worker at any time? ☐ Yes ☐ No
 (b) Could the worker quit at any time? ☐ Yes ☐ No
 (c) Would liability be incurred if the worker quit or was discharged before the job was completed?
☐ Yes ☐ No If "Yes," explain _____

18. About how many other persons perform for the firm services similar to those of this worker?

19. (a) Did the worker work under: ☐ His own business name? ☐ The firm's name?
 (b) Did the worker advertise or maintain a business listing in the telephone directory, a trade journal, etc.?
☐ Yes ☐ No
 (c) Did the worker hold himself out to the public as available to do work of this nature? ☐ Yes ☐ No
 Of any other nature? ☐ Yes ☐ No If "Yes," explain _____

 (d) Did the worker have a shop or office of his own? ☐ Yes ☐ No If "Yes," where? _____

 (e) Was a license or certificate needed for the work? ☐ Yes ☐ No If "Yes," what kind? _____

20. Please explain in detail why you believe the worker was an employee of the firm or was an independent contractor

21. Has any other governmental agency ruled on the status of services performed by the worker or another person performing the same or similar services? ☐ Yes ☐ No If "Yes," attach a copy of the ruling.

22. ANSWER NO. 22 ONLY IF WORKER WAS AN AGENT-DRIVER OR COMMISSION-DRIVER
 (a) List the products and/or services he distributes (for example, bakery products, laundry services):

 (b) If the worker distributes more than one product or service, which is considered the principal or main product? Explain _____

 (c) Does he serve: ☐ Customers or routes designated by the firm? ☐ His own customers? ☐ Both?

23. ANSWER NOS. 23 AND 24 ONLY IF THE WORKER WAS A LIFE INSURANCE SALESMAN
 Did the worker devote his entire or principal working time to the sale of life or annuity contracts for the firm?
☐ Yes ☐ No

24. (a) Under the terms of the original contract, was it agreed that the worker would work: ☐ Full-time
☐ Part-time ☐ Other (please explain) _____

(b) Were these terms of the contract ever changed? ☐ Yes ☐ No If "Yes," give the date and explain the changes _____

(c) Were the changes agreed upon by both the firm and the worker? ☐ Yes ☐ No

ANSWER NO. 25 ONLY IF THE WORKER WAS A HOME WORKER

25. (a) Who furnished materials or goods used by the worker? ☐ Worker ☐ Firm Was the worker furnished a pattern or given instructions to follow in making the product? ☐ Yes ☐ No
Explain _____

(b) Was the worker required to return the finished product either to the firm or to someone designated by the firm?
☐ Yes ☐ No

ANSWER NOS. 26, 27, 28, AND 29 ONLY IF THE WORKER WAS A TRAVELING OR CITY SALESMAN

26. Did the worker have an exclusive territory? ☐ Yes ☐ No Did the firm specify when and how often to work the territory? ☐ Yes ☐ No If "Yes," explain _____

27. (a) What percent of his total sales for the firm were made to wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments? _____ What percent of his total working time was spent in making such sales? _____

(b) What percent of his working time for the firm was spent in selling to organizations other than those specified in (a), such as manufacturers, schools, churches, homeowners, etc.? _____

28. What was the approximate number of hours worked per day for the firm? _____

29. Was the worker required to forward the orders to the firm? ☐ Yes ☐ No

REMARKS: (This space may be used for additional explanations)

I CERTIFY that all copies of contracts and all statements submitted herewith are true, correct, and complete to the best of my knowledge and belief.

(Signed) _____

(Title) _____

(Address) _____

Date: _____



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

April 12, 1977

WAYNE L. KIDWELL
ATTORNEY GENERAL

TELEPHONE
(208) 384-2400

Martel L. Miller
Deputy Director
Department of Administration
Statehouse Mail

Dear Marty:

This is in response to your letter of March 31, 1977, in which you asked whether for liability purposes water-masters are considered state "employees" as defined in Idaho's Tort Claims Act. "Employee" is defined in Section 6-902, Idaho Code as:

4. "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity, temporarily or permanently in the service of the governmental entity, whether with or without compensation, but the term employee shall not mean a person or or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which this act applies in the event of a claim.

A watermaster is a public administrative officer who performs functions both for the Department of Water Resources and for his water district. He is elected by and paid by water users in the water district. Thus, for some purposes he would be considered an employee of the water district.

Nevertheless, for purposes of the Tort Claims Act, and in turn the State's liability insurance, a watermaster would in all probability be considered an "employee" of the Department of Water Resources. This conclusion results

Martel L. Miller
Page 2

from the statutory structure of water districts and the fact that the watermaster's duties enumerated in Section 42-607, Idaho Code, are performed "under the direction of the Department of Water Resources."

It is the duty of the Department of Water Resources to direct and control the distribution of water from all streams. Section 42-602, Idaho Code. Pursuant to this charge, the Department is to divide the state into water districts, Section 42-605, Idaho Code, and is to provide for the appointment or election of a watermaster who is to be responsible for each district. Section 42-605, Idaho Code. It is the duty of the watermaster upon the taking of office to inform the Department of Water Resources as to all matters pertaining to water in his district, Section 42-606, Idaho Code, and to distribute the water within his district according to the directives of the Department and adjudicated rights of the district users. Section 42-607, Idaho Code. In addition to the description afforded by the Idaho Code, a search of the Idaho decisions discloses that a watermaster is deemed to be a ministerial officer and special deputy of the Commissioner of Reclamation [Director of the Department of Water Resources]. Bailey v. Idaho Irr.Co., Ltd., 39 Idaho 354, 227 Pac.1055 (1924). As a deputy of the Department of Water Resources, the watermaster, in discharging the statutorily imposed duties of his office, necessarily carries out a function of the state government.

Thus it would seem that watermasters are "employees" since they are "... persons acting on behalf of the governmental entity in any official capacity, temporarily or permanently in the service of the governmental entity, whether with or without compensation..."

If it is desirable to insure that watermasters are covered by our insurance policies, you may wish to specifically mention the position of watermaster in future policies. .

Sincerely,

DAVID G. HIGH
Assistant Attorney General

DGH/ec

Copy to: Jo Beeman

Appendix B2

Insurance and Liability

Water District Insurance and Legal Entities (December 7, 2017)	48
State Liability Insurance Memo for Water Districts, Flood Control Districts, and Water and Sewer Districts (October 27, 1986)	58
Deputy Attorney General Letter: Insurance and Employment Status for Watermasters (June 8, 1977)	64



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

State of Idaho Insurance Coverage

This document is intended as an overview of the State Risk Management Program. Complete details of the State of Idaho insurance programs, claims, forms and FAQs can be found on the Risk Management website: <https://risk.adm.idaho.gov/>

All references in this document to water districts, agencies, or employees includes or applies to state water districts created by the Idaho Department of Water Resources (IDWR) pursuant to Title 42, Chapter 6, Idaho Code, and water district employees.

Overview of Basics

State Insurance Coverage Available to Water Districts

- General Liability and Auto Liability (auto liability is limited to the use of water district-owned vehicles, not the use of privately owned vehicles)
- Major Property Buildings & Contents
- Major Property Equipment
- Auto Physical Damage
- Employee Bond/Crime
- Inland Marine (portable business property owned by the water district)

Cost to Water Districts for State Insurance Coverage

There are no costs to water districts for state insurance coverage. However, deductibles for any claim are the responsibility of the Water Districts at the cost(s) identified below. IDWR will pay annual premiums for the coverage categories listed above.

Coverage Dates

Coverage will be effective within 30 days after water districts submit insurance information to IDWR. Water Districts will be notified when coverage is effective. *Do not cancel any private insurance policies until IDWR confirms State of Idaho coverage.*

Enrolling in the State Risk Management Insurance Program

To enroll in the State of Idaho Risk Management Insurance Program, complete each form for the coverage requested and return forms to Idaho Department of Water Resources:

Janet Garrett, IDWR Insurance Coordinator

janet.garrett@idwr.idaho.gov

Phone: 208-287-4821

Fax: 208-287-6700

or

Idaho Department of Water Resources

Attn: Janet Garrett

PO Box 83270

Boise, ID 83720-0098

Summary of Insurance

General Liability & Auto Liability

Deductible: No deductible for this coverage

Limits of Coverage: General/Auto Liability - \$500,000

Water District Employee Coverage for General and Auto Liability is automatically provided by Risk Management. No forms or reporting requirements are needed for this coverage.

The Idaho Statewide Liability Coverage is a retained risk program that provides protection to covered water districts and their employees for financial loss as a result of a covered claim alleging a wrongful act or for errors or omissions (subject to exclusions). It also provides coverage for Employment Practices Liability for claims brought by employees or potential employees alleging a Wrongful Employment Practice, harassment or discrimination.

Before operating a water district-owned (or leased) vehicle, all water district employees must call the IDWR Insurance Coordinator and provide the employee's contact and driver's license information and other information required in the attached Auto Physical Damage form.

What Is Covered?

- Money damages arising from negligent or wrongful acts, with certain limitations
- Automobile Liability
- The costs of defending or investigating a suit or claim against you, including court costs, witness fees, attorney's fees, and other related costs
- Judgments or settlements resulting from covered suits/claims including interest required on a judgment
- The premium on a court-mandated bond connected with a liability suit
- Medical malpractice

Additional Services Provided:

- Certificates of Insurance
- Contract language review
- Proactive tort claim management with expert adjudicators
- Automobile liability identification cards (vehicle package for glovebox)

Major Property Buildings & Equipment

Deductible: \$2000 per occurrence. *Water District is responsible for all deductibles.*

Fine Art Deductible: \$500 per occurrence. *Water District is responsible for all deductibles.*

Limits of Coverage: \$500 Million

Idaho's Statewide Property Insurance Program is designed to provide water districts the ability to transfer the financial burden that results from property damage. The Property Insurance Program allows each water district to customize its coverage to insure:

- Water District-owned buildings
- Leased buildings as required by contract
- Contents

- Business property
- Mobile equipment - motorized equipment not licensed for road use
- Supplies
- Fine Art
- Equipment with a value greater than \$2,000 (Use Major Property Equipment form for equipment valued greater than \$2,000 and not included on Major Property Buildings and Contents form).
- Business interruption

Coverage for personal property of employees with a value of \$2,000 or more can be provided under the following conditions:

- Items that are required or requested by the employee's supervisor and are needed to perform the employee's duties.
- All items must be included on the State of Idaho Major Property Buildings and Contents form or Major Property Equipment form.

What Is Covered?

Coverage is provided at replacement cost on an "all-risk" basis which covers a number of potential claims (subject to certain exclusions and limitations), including:

- Damage from severe weather: wind, hail, lightning, earthquake, flooding, and wildfire
- Damage from vandalism and arson
- Building fire, smoke, and water damage
- Theft of water district property

Additional Services Provided:

- Certificates of Insurance
- Contract and lease review for insurance requirements
- Appraisals for high value buildings

Auto Physical Damage

Deductible: \$500 per occurrence. *Water District is responsible for all deductibles.*

Limits of Coverage: Actual Cash Value

The Statewide Automobile Insurance Program is designed to provide automobile physical damage coverage to water districts for **water district-owned or leased vehicles**. This coverage is available to water districts that own or lease a vehicle. The coverage does not apply to vehicles owned by water district employees that are used for official water district business. Coverage will pay for loss or damage to covered vehicles owned or leased by water districts due to collision, including comprehensive losses such as fire, wind, hail, theft, riot, and vandalism.

What Is Covered?

Physical damage coverage applies only to water district-owned or leased motorized equipment licensed for road use. This may include but is not limited to: passenger vehicles, ATVs, motorcycles, trucks, buses, and trailers. The coverage pays for repair of the water district-owned or leased motorized equipment licensed for road use or actual cash value if the vehicle is totaled.

Additional Services Provided:

- Certificates of Insurance
- We pursue subrogation claims against negligent parties and reimburse the water district deductible when recovery is successful

Coverage is not provided for:

- Wear and tear
- Mechanical failure unless the failure is a result of a covered peril
- Freezing
- Intentional damage

Employee Bond/Crime

Deductible: \$2000 per occurrence. *Water District is responsible for all deductibles.*

Credit Card Deductible: \$500. *Water District is responsible for all deductibles.*

Limits of Coverage: \$10 Million

The Crime Insurance Policy is designed to protect against direct loss to the water district arising from employee theft of money, securities or other property of either the water district or their clients. Like other businesses, a water district's money and valuable property can provide attractive targets for theft – often by employees. Even the best internal controls frequently fall short of stopping a trusted employee from engaging in fraudulent activity, especially as employees are often uniquely placed in situations where they are able to circumvent such controls.

What Is Covered?

- Public employee theft
- Faithful performance of duties
- Forgery or alteration
- Theft of money and securities inside the premises
- Robbery or safe burglary inside the premises
- Funds transfer fraud
- Money orders and counterfeit paper currency
- Credit card forgery
- Claims expense

Common Exclusions:

- Known acts of employees before the policy period
- Third-party employee dishonesty
- Accounting or arithmetic errors
- Unauthorized disclosure of confidential information

Inland Marine

Deductible: \$50 per occurrence. *Water District is responsible for all deductibles.*

Limits of Coverage: Replacement Value

Optional Inland Marine Coverage (IM coverage) is designed for water district-owned portable business property with a replacement cost value of \$2,000 or less. Most water districts use this coverage to

insure property that is subject to theft or breakage, or property that is frequently transported. Only those items regularly taken out of the office or off the premises typically valued at \$2,000 or less should be declared for IM coverage. The coverage is similar to the coverage provided by the Major Property Policy but is limited to items valued at \$2,000 or less.

Coverage for personal property of employees with a value of \$2,000 or less can be provided under the following conditions:

- Items that are required or requested by the employee's supervisor and are needed to perform the employee's duties.
- All items must be scheduled on the Inland Marine Coverage form.

What Is Covered?

Coverage is provided at replacement cost on an “all-risk” basis which covers a number of potential claims (subject to certain exclusions and limitations), including:

- Damage from vandalism and arson
- Fire, smoke, and water damage
- Theft of water district property

Common Exclusions:

- Real property or buildings
- Automobiles
- Consumable property

Summary of Claim Procedures

This document is intended as an overview of the claim procedures. Complete Details of the State of Idaho insurance claims and claim forms can be found on the Risk Management website at: <https://risk.adm.idaho.gov/index.html>.

Filing a Claim

If you need to file a claim, **do not send claims directly to Risk Management**. All claim forms must be submitted to Idaho Department of Water Resources:

Janet Garrett, IDWR Insurance Coordinator	or	Idaho Department of Water Resources
janet.garrett@idwr.idaho.gov		Attn: Janet Garrett
Phone: 208-287-4821		PO Box 83270
Fax: 208-287-6700		Boise, ID 83720-0098

Types of Claims

Property

All property claims over \$2,000 must be filed by completing the Property Loss Report form as soon as the water district becomes aware of the loss.

When a property loss occurs, a water district should

- Secure emergency response (fire department, police, emergency clean up).
- Secure the property to prevent further damage from exposure to the elements.
- Report losses involving theft, vandalism, or similar crimes to local law enforcement authorities as soon as discovered. Risk Management requires a copy of the police report.
- Make a list of involved property and details of the occurrence causing the loss.
- Secure witness information and contact numbers.
- Secure information regarding other involved parties including contact names and telephone numbers.
- If possible, take photographs of the area and damaged property.
- Provide all supporting information including incurred expenses, quotes, estimates, or vouchers showing the replacement cost of the item(s) to the IDWR Insurance Coordinator. This information must be submitted before a loss will be paid.

Inland Marine

Inland Marine claims must be filed within 90 days of the loss. To file an Inland Marine claim, complete the Property Loss Reporting Form and return to the IDWR Insurance Coordinator. Before submitting the Property Loss Reporting form to IDWR, ensure the following information is included:

- Check the box noting coverage under the Inland Marine Program
- The Inland Marine Certificate number (if known)
- Serial number

- Property tag number of involved property

Automobile Accident

The following documents are required to be carried in the glovebox of all water district-owned vehicles:

- Auto Accident Report Guide
- Certificate of Financial Responsibility
- Citizen Claim Procedure Form

If an accident occurs, follow the steps below:

- Request any necessary emergency services.
- Notify the police and exchange vehicle and driver information.
- Take photographs of the accident and the surrounding area, if safe to do so.
- Do not accept responsibility for the accident.
- Provide the other party with the Citizen's Claim Procedure Form (if they feel the state driver is at fault), which gives them instructions on how to file a claim with the State.
- Promptly complete the Accident Report Guide and turn it into the supervisor and the IDWR Insurance Coordinator.

If the vehicle is not safe to drive, have it towed to the nearest state facility or lot. If that is not possible, notify the IDWR Insurance Coordinator immediately, so storage charges can be kept to a minimum.

*If the vehicle **is** covered by the state's Auto Physical Damage Program*, obtain two estimates of repair costs and forward them to the IDWR Insurance Coordinator. The water district should not pursue the claim directly with the other party's insurer.

*If the vehicle **is not** covered by the state's Auto Physical Damage Program*, the water district may submit a claim to the other driver's insurance carrier if it believes the other driver is at fault.

Employee Dishonesty

If you find a loss apparently caused by employee dishonesty, follow the steps below:

- Contact IDWR's Deputy Attorney as soon as loss is discovered. Until you talk with IDWR's attorney, do not let anyone interview or demand an explanation of the employee, and do not start any personnel actions. Note any advice your legal counsel provides on conducting an in-house investigation and inform the IDWR Insurance Coordinator.
- Promptly report the loss to the IDWR Insurance Coordinator immediately after discovery. Discuss the steps you feel are needed to prove the extent of loss and to prevent further loss. Reporting delayed for more than 30 days can cause a forfeit of the state's bond coverage. It can also lead to further losses and may expose you to personal liability as well.
- Protect any known documentary evidence.
- Write a summary of your investigation including the employee's statement and employee contact information, witness statements and witness contact information, and documentation generated during the course of investigating allegations.

Citizen Claim Procedure

Idaho Code, Title 6, Chapter 9, known as the Idaho Tort Claims Act, makes provisions for tort claims against the State or employees of the State.

A Notice of Claim must be filed within 180 days from the date the claim arose or reasonably should have been discovered (Idaho Code, Section 6-905). Idaho Code Section 6-906A provides for time to present a claim from or on behalf of a minor child.

The tort claim is required to have the following accurate information:

- Name and residence of the person making the claim
- Date, time, and location of the occurrence
- Description of circumstances, actions, and conduct giving rise to the occurrence
- Description of any damage or injury resulting from the occurrence
- Documentation of damages claimed

A tort claim must be submitted by letter or form to the Secretary of State at:

Secretary of State
State of Idaho
P.O. Box 83720
Boise, ID 83720-0080
Fax: 208-334-2282
Email: claims@sos.idaho.gov

The citizen and/or legal representative are responsible for the proper and timely filing of claims with the Secretary of State in accordance with the Idaho Tort Claims Act. The water district should provide any citizen or third party inquiring or seeking to file a claim for damages against the State of Idaho, the water district, or its employees with a copy of Citizen's Claim Filing Procedure Form.

Use of Personal Vehicles

Privately-Owned Vehicles

IDWR does not pay insurance premiums or deductibles for privately owned vehicles. Privately owned vehicles must be adequately covered by public liability and property damage insurance, pursuant to Idaho Code. IDWR requires privately owned vehicles used to perform work for water districts to have liability coverage of at least \$500,000 per occurrence and \$500,000 aggregate per year for both bodily injury and property damage. Employees are also required to advise their private automobile insurance carrier prior to using a personal vehicle for state business, particularly when using the personal vehicle on a regular basis to perform state job duties. Mileage reimbursement or other water district budget line items (if necessary) are intended to cover all operating costs of the vehicle, including insurance, while on state business.

Coverage is not provided if an accident occurs during working hours when you are in a private vehicle. Employees using private vehicles to conduct official state business are not covered under the State's insurance.

Post-it* Fax Note	7671	Date	# of pages 6
To JOHN Hammond	From JOHN Compton		
Co./Dept.	Co.		
Phone #	Phone # 332-1872		
Fax # 327-7866	Fax # 334-5315		



327-7866

JIM JONES
ATTORNEY GENERAL

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

DEPARTMENT OF WATER RESOURCES
STATEHOUSE, BOISE, IDAHO 83720
TELEPHONE: (208) 334-4448

MEMORANDUM

TO: A. Kenneth Dunn, Director, Idaho Department of Water Resources

Ed Fridenstine, Risk Manager, Division of Insurance Management, Idaho Department of Administration

THRU: Phillip J. Rassier, Deputy Attorney General PJZ

FROM: Kenneth R. Arment, Deputy Attorney General KRA

DATE: February 18, 1986
Revised - October 27, 1986

RE: State Liability Insurance Coverage for State Water Districts, Flood Control Districts, and I.C. § 42-3201 Water and Sewer Districts

INTRODUCTION

This memorandum is issued in response to State insurance coverage questions raised by the filing of a complaint in a Jefferson County case entitled Marty v. State of Idaho. The plaintiffs in Marty allege that defendants tortiously operated the Mud Lake Water System which resulted in flood damage to plaintiffs' real property and farming operations. Among the named defendants in Marty are the local state water district, its chairman, the watermaster, the local flood control district, and its chairman. The state comprehensive liability plan covers and protects watermasters, as employees of the Department of Water Resources, from claims and civil lawsuits. See attached April 12, 1977 letter from David G. High, Assistant Attorney General.

The subject of this memorandum is whether the water district, flood control district and their officials are also covered by the state plan, or whether the districts are responsible for their legal defense and indemnification under the Idaho Tort Claims Act (Act). I.C. §§ 6-901 et. seq. At this point, it is important to note that Idaho Code, Title 42, establishes two separate and distinct "water district" entities.

A. Kenneth Dunn
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February 18, 1986
Revised October 27, 1986

The first type of water district, which shall be termed "State Water District" for the purposes of this memorandum, arises and is governed under I.C. §§ 42-601 through 42-618. These state water districts are created to provide for the distribution of water among appropriators under the direction and control of the Department of Water Resources. I.C. §§ 42-602 and 42-604.

The second type of water district arises and is governed under I.C. §§ 42-3201 through 42-3235 and shall be referred to as a Chapter 32 Water District. Chapter 32 provides for both water and sewer districts designed to promote the general welfare of the district inhabitants by providing services within the districts. I.C. §§ 42-3201 and 42-3202. Liability coverage for these Chapter 32 Water and Sewer Districts is also discussed in this memorandum.

For the reasons set forth below, I conclude that State Water Districts and their officials are covered by the state comprehensive plan provided by the risk manager. Flood control districts and Chapter 32 Water and Sewer Districts, however, are "political subdivisions" within the meaning of the Act, and must provide their own liability plan for themselves and their employees. I.C. §§ 6-902 and 6-903.

IDAHO TORT CLAIMS ACT

The term "liability of governmental entities" covers two different concepts or duties under the Act. I.C. § 6-903. The first is the duty to indemnify employees for awards based upon employee negligence arising out of the performance of duties in the scope and course of their employment, if a private person or entity would be liable for monetary damages under the same circumstances. The Act, however, provides additional defenses not available to private litigants. I.C. § 6-904. The second duty is to provide a legal defense for an employee against the claims brought, if such claims arose out of the course and scope of the employee's position. Thus, the governmental entity is responsible for the cost of defense and for the payment of any judgment on any claim or civil lawsuit against an employee for damages arising from negligence in the scope and course of the employee's employment. The definition of an employee is broad, and includes "elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity, temporarily or permanently," and with or without compensation.

A. Kenneth Dunn
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Revised October 27, 1986

The key question is: Which governmental entity does the employee represent? The Act recognizes two kinds of employers, (1) the state, and (2) political subdivisions defined in I.C. § 6-902 as follows:

"State" means the state of Idaho or any office, department, agency, authority, commission, board, institution, hospital, college, university or other instrumentality thereof.

"Political subdivision" means any county, city, municipal corporation, school district, irrigation district, special improvement or taxing district, or any other political subdivision or public corporation.

This distinction governs how liability insurance is procured and how claims against employees are paid. State instrumentalities are covered by a comprehensive liability plan which is purchased only by the Division of Insurance Management, Idaho Department of Administration. I.C. § 6-919. The risk manager apportions the cost of the liability plan among the state agencies and institutions. I.C. § 6-921. If for some reason there is no insurance coverage, the state is required to pay the judgment in the next appropriation to the state instrumentality whose tortious conduct gave rise to the claim. I.C. § 6-922.

Political subdivisions, on the other hand, have the power to purchase liability insurance for themselves and their employees. I.C. § 6-923. Political subdivisions have the authority to levy an annual property tax to provide for their own comprehensive liability plan through the purchase of insurance and other self-insurance options. I.C. § 6-927. In the event there is no insurance coverage, political subdivisions are required to levy and collect a property tax, at the earliest time possible, to pay the claim or judgment brought within the Act.

The policy and coverage of the Act is plain and fair. Only those governmental entities who share in the cost of procuring a comprehensive liability plan are entitled to its coverage. It is not fair nor prudent for all the taxpayers of Idaho to underwrite a political subdivision's liability costs. The statewide taxpayers do not get the direct benefits of the political subdivision, and such a policy would leave governmental entities less responsible and less cautious in performing their services.

A. Kenneth Dunn
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Revised October 27, 1986

Consequently, only state employees are covered by the state comprehensive liability plan. The Department of Water Resources is an executive department of state government, I.C. § 42-1701(1), and falls within the definition of "State" under the Act.

State Water Districts

The Department of Water Resources (Department) has the duty to have the immediate direction and control of the distribution of water from all of the streams within the State. I.C. § 42-602. In addition, the Department, pursuant to I.C. § 42-604, has established and defined all of Idaho's State Water Districts. The purpose of these districts is to provide for the peaceful distribution of water among appropriators by selecting a watermaster to distribute the waters within the district under the supervision of the Department according to the priority of rights among the water users within the district.

State Water Districts do not have the authority to tax their water users. Delivery of water may be curtailed until the water user pays its share for the cost of the water delivery and other expenses of the district. I.C. §§ 42-617 and 42-614. State Water Districts do not normally collect these costs. This duty is usually performed by county auditors and treasurers. I.C. § 42-613. State Water Districts have statutory authority to bring actions in civil court when payments to the district are delinquent, and for no other purposes. I.C. §§ 42-616 (action brought in the name of the county treasurer) and 42-618. Enforcement problems and actions are routed to and resolved under the direction of the Department. I.C. §§ 42-606, 42-607, and 42-701.

State Water Districts are an instrumentality of the Department for the task of distributing the waters of the state. The only purpose of these districts is to provide for the orderly distribution of water for appropriators under the direction of the Department. The legislature has chosen this structure so that some of the economic burden of regulation falls on those who benefit from it. The legislature, however, has not relinquished the State's power and direction over water regulation. The only authority of these districts to bring civil suits is to collect for the expense of the distribution of water. Consequently, as an instrumentality of the State, through the Department, State Water Districts and their employees are required to be covered by the State's comprehensive liability plan.

A. Kenneth Dunn
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February 18, 1986
Revised October 27, 1986

Flood Control Districts

Flood control districts are defined as "governmental subdivisions of this state and public bodies, corporate and politic," under I.C. § 42-3104. These districts are taxing districts and have the authority to sue and be sued in the name of the district, construct public works, enter into land transactions, promulgate rules and regulations, and have other powers to carry out incidental tasks. I.C. § 42-3115.

The director of the Department, and the Department are charged with statutory duties to examine, number and approve or disapprove proposed districts. I.C. §§ 42-3104 through 42-3108. The director has additional authority to appoint board members for the flood control districts, but the offices of chairman, the vice chairman, secretary, and treasurer are all filled through election by the board. I.C. §§ 42-3109 and 42-3111. The director also is required to receive the audit reports of district finances. I.C. § 42-3115(9).

The actual practice of reappointing board members for flood control districts usually entails the district submitting three names for appointment, and the Department selecting one of those individuals, usually the incumbent. The purpose of the director's role is merely to see that responsible people fill the board member positions in the interests of the flood control districts, and that a financial accounting is made. The director's role, not unlike the Secretary of State's role with corporations, is to provide protection for the public, and not to deal with internal management decisions or act as a supervisor of flood control districts. The board and officers of flood control districts have no duty or authority to act in the interests of the Department of Water Resources. The districts are financed from their own district tax bases. I.C. § 42-3114. Unlike State water districts, flood control districts are not instrumentalities of the Department, and they have their own rule making authority. Flood control districts fall within the Act's definition of a political subdivision and consequently must provide for their own liability coverage.

Chapter 32 Water and Sewer Districts

Water and sewer districts, under I.C. § 42-3207, are "governmental subdivision(s) of the state of Idaho and a body corporate with all the powers of a public or quasi-municipal

A. Kenneth Dunn
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Revised October 27, 1986

corporation." These districts are taxing districts. I.C. §§ 42-3213 and 42-3214. The chairman and board members are elected from within the district and are not subject to the review or supervision of the Department of Water Resources. These districts are established through petition to and order of the local state district court. I.C. § 42-3203. These are improvement districts functioning as independant political subdivisions over which the Department has no management or supervisory control. I.C. § 42-3212. These districts do not function as an arm of the Department for water regulation and are not instrumentalities of the Department. Chapter 32 Water and Sewer Districts are political subdivisions within the meaning of the Act and must provide for their own liability coverage.

Conclusion

State Water Districts are an instrumentality of the State for the purposes of water distribution among appropriators under the meaning of the Idaho Tort Claims Act. Coverage of State Water Districts and their employees, under the state comprehensive liability plan, therefore, is mandated by the Act.

In reality, the districts and their chairmen should face little or no liability under the unique structure of State Water Districts. Such coverage should not materially increase the cost of the comprehensive plan since the primary agent and the one most vulnerable to liability claims for work on behalf of the district is the watermaster, who has been covered by the State's comprehensive liability plan for several years. The increased risk exposure is functional only in those cases where the water district is distinguishable from the watermaster.

Flood control districts and Chapter 32 Water and Sewer Districts, however, are independent political subdivisions with broad taxing authority within the meaning of the Idaho Tort Claims Act. The Act requires these districts to provide their own comprehensive liability plans for themselves and their employees.

KRA:dc
Encl.



Cecil D. Andrus
Governor

R. Keith Higginson
Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Statehouse
Boise, Idaho 83720
(208) 384-2215

--MEMORANDUM--

RECEIVED
JUN 13 1977

Department of Water Resources
Western Regional Office

TO: REGIONAL SUPERVISORS
FROM: JO BEEMAN, Legal Counsel JPB
DATE: June 8, 1977
RE: INSURANCE COVERAGE FOR WATERMASTERS

Over the past few months, I have been told that some of our watermasters are worried about the possibility of being sued for actions arising out of their duties as watermasters. I understand that the watermasters fear that if they were sued, they would be individually liable. Accordingly, there has been some concern that the watermasters should purchase their own liability insurance. However, I have been advised recently that watermasters are probably covered by the state's liability insurance, and therefore, would be covered by this policy in the event they were sued for actions arising out of the course or scope of their employment or duties as watermasters.

My initial inquiry about insurance coverage for watermasters was directed to the Department of Administration which handles the liability insurance policies for all state employees. The Department of Administration then requested advice from the Attorney General's Office as to whether watermasters would be considered employees of the Department of Water Resources for liability purposes. The Attorney General's Office by letter then informed the Department of Administration that in all probability a watermaster would be considered "an employee" of the Department of Water Resources for liability purposes. A copy of this letter from the Attorney General's Office is attached for your information. Please call me if you have additional questions about this matter.

The watermaster is still required by Idaho Code, Section 42-605 to post a \$500 bond.

JPB/slg

Attachment



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

April 12, 1977

WAYNE L. KIDWELL
ATTORNEY GENERAL

TELEPHONE
(208) 384-2400

Martel L. Miller
Deputy Director
Department of Administration
Statehouse Mail

Dear Marty:

This is in response to your letter of March 31, 1977, in which you asked whether for liability purposes water-masters are considered state "employees" as defined in Idaho's Tort Claims Act. "Employee" is defined in Section 6-902, Idaho Code as:

4. "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity, temporarily or permanently in the service of the governmental entity, whether with or without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which this act applies in the event of a claim.

A watermaster is a public administrative officer who performs functions both for the Department of Water Resources and for his water district. He is elected by and paid by water users in the water district. Thus, for some purposes he would be considered an employee of the water district.

Nevertheless, for purposes of the Tort Claims Act, and in turn the State's liability insurance, a watermaster would in all probability be considered an "employee" of the Department of Water Resources. This conclusion results

Martel L. Miller
Page 2

from the statutory structure of water districts and the fact that the watermaster's duties enumerated in Section 42-607, Idaho Code, are performed "under the direction of the Department of Water Resources."

It is the duty of the Department of Water Resources to direct and control the distribution of water from all streams. Section 42-602, Idaho Code. Pursuant to this charge, the Department is to divide the state into water districts, Section 42-605, Idaho Code, and is to provide for the appointment or election of a watermaster who is to be responsible for each district. Section 42-605, Idaho Code. It is the duty of the watermaster upon the taking of office to inform the Department of Water Resources as to all matters pertaining to water in his district, Section 42-606, Idaho Code, and to distribute the water within his district according to the directives of the Department and adjudicated rights of the district users. Section 42-607, Idaho Code. In addition to the description afforded by the Idaho Code, a search of the Idaho decisions discloses that a watermaster is deemed to be a ministerial officer and special deputy of the Commissioner of Reclamation [Director of the Department of Water Resources]. Bailey v. Idaho Irr.Co., Ltd., 39 Idaho 354, 227 Pac.1055 (1924). As a deputy of the Department of Water Resources, the watermaster, in discharging the statutorily imposed duties of his office, necessarily carries out a function of the state government.

Thus it would seem that watermasters are "employees" since they are "... persons acting on behalf of the governmental entity in any official capacity, temporarily or permanently in the service of the governmental entity, whether with or without compensation..."

If it is desirable to insure that watermasters are covered by our insurance policies, you may wish to specifically mention the position of watermaster in future policies.

Sincerely,

DAVID G. HIGH
Assistant Attorney General

DGH/ec

Copy to: Jo Beeman

Appendix B3

Voting and Elections

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MEMORANDUM

TO: Allen Merritt

FROM: John Homan

RE: Voting by Corporations and other Legal Entities in Water District Elections

DATE: January 9, 2014

I.C. § 42-605 (4) provides that voting in a water district election shall be by majority vote of the water users present unless the voting by dollar amount assessed alternative is requested. I.C. § 42-605 (4) imposes a requirement that water users must be present at the meeting in order to vote. This restriction prevents the water user from absentee voting and voting by proxy whether or not the proxy is enhanced with a "Power of Attorney" or other written authorization. Because corporations and other legal entities own water rights and must be afforded the opportunity to vote at water district elections, I.C. § 42-605 (7) allows the corporation or other legal entity owning the water rights to designate a representative to vote in the water district election. I.C. § 42-605 (7) does not restrict or otherwise limit who corporations may designate as representatives to vote on its behalf at water district elections. Nothing in I.C. § 42-605 prevents different corporations owning water rights from designating the same representative to attend the meeting and cast votes on behalf of multiple corporations or legal entities in the water district election. Nor does there appear to be any prohibition in chapter 6, title 42 of the Idaho Code that prevents the designee of one corporation from acting as the designee for another corporation owning water rights in the same water district election. Unlike proxies for individual water users, I.C. § 42-605 (7) affords corporations and similar legal entities the ability to designate someone to vote on its behalf. Corporations, notwithstanding their legal existence authorized by law, have no other way to initiate the act of voting in a water district election without designating someone to attend the meeting and vote on its behalf.

A person designated by a corporation to vote at a water district election shall provide documentation of the designation prior to voting. In the event a person is designated by more than one corporation to vote at the water district election, the designee shall provide documentation from each corporation establishing the authority to vote. Upon satisfactory review of the documentation establishing the corporate designation, each corporate water user shall be determined to be present at the meeting and its designee shall be entitled to vote in the water district election.

If a voice vote or a vote by a show of hands is not a preferable alternative to conduct the election, a water district may authorize the use of written ballots in elections. In some cases, the use of a written ballot may serve to preserve secrecy or promote clarity and eliminate confusion in the event one person is designated by more than one corporation to vote in the election.

MEMORANDUM

TO: Nick Miller
FROM: John Homan
RE: Voting in Water District Elections under I.C. § 42-605
DATE: October 16, 2006

This Memorandum responds to the questions raised in your correspondence dated September 25, 2006. Phillip J. Rassier, Deputy Attorney General has already answered to a large degree the questions raised herein in a memorandum dated January 15, 2001 and a letter dated November 20, 1992. Attached hereto are copies of both documents. I have reviewed the relevant statutory provisions as well as both documents and concur completely with the interpretation of I.C. § 42-605.

In your first question you ask whether a water right owner could designate another person to vote in a water district election pursuant to a specific power of attorney, which only authorizes the task of voting the water right at the annual meeting. I.C. § 42-605 requires the water users to be present at the meeting and does not allow votes by proxy. The analysis is the same for the second question. There is no special provision that allows a family member to vote a relative's water right at the water district election. However, the language in I.C. § 42-605 (4) does allow a person other than the owner "*having the use for the ensuing season of any water right*" to cast a vote in a water district election. If requested, a lessee or renter could provide a copy of a lease or rental agreement for the ensuing season to the credential committee. A management type employee, family member or any other person may also vote in a water district election provided they have obtained full authority over the use of a water right for the ensuing season. If requested, an employee or family member will need to produce to the credential committee a notarized and recorded power of attorney authorizing full control over the water right for the ensuing season.

Finally, your third question asks who is the appropriate party to cast a vote for a water right owned by a business entity at the water district election. I.C. § 42-605 (7) establishes that a corporation or other type of water delivery organization shall be considered a person for voting purposes and authorizes that entity to designate someone to vote on its behalf at the annual meeting. A corporate resolution or other type of document should be presented to the credential committee indicating an authorized officer or person representing the business entity has designated the person to the cast vote at the annual meeting. The guidance provided herein is based solely on IDWR's interpretation of the statutory provisions and is not an opinion of the Office of the Attorney General.

MEMORANDUM

TO: Allen Merritt, Southern Regional Manager, IDWR
FROM: Phillip J. Rassier, Deputy A.G., IDWR *PJR*
RE: Water District Elections under I.C. § 42-605
DATE: January 15, 2001

You have requested guidance on the issue of whether a person, through a power of attorney, may be allowed to vote at a water district election on behalf of another person. Section 42-605, Idaho Code, provides in relevant part:

(4) Voting shall be by majority vote of the water users present at the meeting unless one (1) or more water users requests voting using the procedure which follows in this subsection. In such case the meeting chairman shall appoint a credentials committee to determine the number of votes each water user present is authorized to cast. If requested, each person present, owning or having the use for the ensuing season of any water right in the stream or water supply comprising such water district . . . shall be entitled to a number of votes equal to the average annual dollar amount and any fraction thereof assessed for that person's qualifying water right . . .

In previous correspondence, I have related IDWR's position to be that "a proxy vote should not be allowed in water district elections in the absence of the owner of a water right, except that in the absence of the owner a right may be voted by another person present who has the use of the right for the ensuing irrigation season such as a contract purchaser, tenant, renter or lessor" *See* Letter to Kent W. Foster, dated November 20, 1992.

Your question in essence asks whether the requirement of the statute that a water user be present at the meeting in order to vote may be avoided if the document authorizing a person to vote for another not present at the meeting is characterized as a "power of attorney" as opposed to a "proxy." The answer is that, for purposes of authorizing a person to vote at a water district election, a power of attorney should be treated, in most cases, the same as a proxy. A "power of attorney" is defined as "a legal instrument authorizing one to act as the attorney or agent of the grantor." The term "proxy" is similarly defined as "authority or power to act for another; a power of attorney authorizing a specified person to vote corporate stock." *See Webster's New Collegiate Dictionary* (1977 ed.). Therefore, a power of attorney authorizing another person to cast a vote in one's place is really just another term for a proxy.

There is a circumstance in which a power of attorney would entitle a person to vote for another. That is where the power of attorney extends to the person seeking to vote full authority over the use of the water right for the ensuing irrigation season. Such a power of attorney should be acknowledged before a notary public and filed for record with the county recorder before being accepted as authorization to vote at a water district election.

The guidance provided in this memorandum is based solely upon IDWR's interpretation of the statutory provision and is not an opinion of the Office of the Attorney General.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

November 20, 1992

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
West One Bank
P.O. Box 50130
Idaho Falls, ID 83405

Dear Kent:

This letter responds to your request of October 27, 1992 asking for my thoughts and comments or reference to prior decision or opinion on several questions relating to voting in water districts under I.C. § 42-605 and § 42-605A. My response to your questions is based solely upon IDWR's interpretation of these statutory provisions and should not be construed to represent an expression of the views of the Office of the Attorney General unless reference is made to a prior Attorney General opinion.

Question 1: How, pending the ultimate court decree in the Snake River Basin Adjudication Proceeding, is it determined, for voting purposes under § 42-605 (and § 42-605A), whether a particular claimed right is sufficiently valid? What criteria is a credentials committee to use?

Response: The list of water rights entitled to be voted under I.C. § 42-605 and § 42-605A is comprised of and limited to those water rights which have previously been "adjudicated or decreed by the court" or are "represented by valid permit or license issued by the department of water resources." I.C. § 42-605.

Question 2: Idaho Code § 42-605(4) speaks of voting by "water users present," "each person present," and "a person present." Section 42-605A(6) has similar language, "each person present," and "a person present." We wonder if this means present either in person or by proxy? In other words, can someone such as a contract purchaser or a tenant, vote, if duly authorized by a written proxy or power of attorney from the owner? Since the language discusses "owning or having the use for the ensuing season" it seems like a contract purchaser or tenant might have been anticipated in the statutory language. It appears clear that a corporation can designate someone on its behalf to cast a vote (§ 42-605(7)).

Response: The Department in the past has advised that a proxy vote should not be allowed in water district elections in the absence of the owner of a water right, except that in the absence of the owner a right may be voted by another person present who has the use of the right for the ensuing irrigation season such as a contract purchaser, tenant, renter or lessor. The Department concurs with your reading of I.C. § 42-605(7) which authorizes a water delivery organization to designate someone to cast a vote on its behalf.

The Department's interpretation rejecting the use of proxies under § 42-605(4) as described above is supported by a comparison of the language in the statute with the language in I.C. § 42-2401(3) which specifically provides for the use of proxies in irrigation or canal company elections for the election of directors and to transact any other business of the corporation. I.C. § 42-2401(3) authorizes those "stockholders who are represented in person or by proxy" to vote at the regular annual meetings of the corporation.

Question 3: If not by written proxy or power of attorney, how does one satisfactorily demonstrate he has "the use for the ensuing season" of a particular right? Is a copy of the sale contract or lease agreement adequate?

Response: A contract, lease agreement or similar written document is considered adequate to demonstrate that a person is entitled to the use of a water right for the ensuing season.

Question 4: What specific documents does a credentials committee consult to determine the list of the rights entitled to vote? For instance, assuming the district officials desire to have a list of valid rights prepared before the annual meeting so that when the people come it is possible to check any claims of "having the use for the ensuing season" against the list of valid rights, how would the Department suggest they go about such preparations?

Response: Idaho Code § 42-606 requires watermasters to make an annual report to the Department prior to the expiration of the watermasters's appointment for the current year. This report is to show the total amount of water delivered by the watermaster during the year, the amount delivered to each water user, the total expense of delivery and the apportionment of expenses among users and all debits and credits to be carried over to the following year. The watermaster report together with a list of the water rights in the district should provide the credentials committee with the information necessary to determine the list of

Kent W. Foster
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November 20, 1992

rights entitled to vote. The Department will made available an updated list of the water rights in the district prior to the annual water district meeting if requested.

Question 5: And, under either § 42-605 or § 42-605A, if the right has not previously been assessed, how does the district go about determining the "dollar amount and any fraction thereof which the right would have been assessed had it existed and been reasonably used when water was available under the priority of the right during the previous season"?

Response: The method of determining the vote to which a right not previously assessed is entitled requires a good faith estimate of the amount of water which would have been delivered under the right had it been used during the previous season. The process for making this estimate requires a review of the water delivery records of the district to determine the number of days that the right would have been allowed to divert water during the previous season given the available water supply and the priority date of the right in question.

Once an estimate of the amount of water that would have been delivered is made it is necessary to multiply this number times the dollar amount per unit of water delivered used to determine water user assessments in the district. The total dollar amount that would have been assessed had the right been delivered in the previous season equals the number of votes that the owner of the right is entitled to cast for that right.

I hope that these responses to your questions are adequate for your needs. Please let me know if I may provide further assistance.

Sincerely,



PHILLIP J. RASSIER
Deputy Attorney General
Department of Water Resources

cc: Skip Jones - Eastern Region

Appendix C

Water District Document Examples

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WATERMASTER'S REPORT

From _____, 20____ To _____, 20____

Water District No. _____

Name of Watermaster _____

Mailing Address _____

AFFIDAVIT OF WATERMASTER

STATE OF IDAHO)
) ss.
COUNTY OF _____)

_____, being first duly sworn, deposes and says that he/she is Watermaster of Water District _____, having been lawfully appointed by _____, Director, Idaho Department of Water Resources, and that the volumes of water, as stated in this report and prorated by him/her to the water right holders of the district are correct.

(Deputy) Watermaster District No. _____

Subscribed and sworn to before me, this _____ day of _____, 20____

(SEAL)

Notary Public

My Commission expires _____

Boise, Idaho _____, 20____

I HEREBY CERTIFY, that _____ was lawfully appointed by me as Watermaster of Water District No. _____, and that the information contained in this report, as herein sworn to, is, to the best of my knowledge and belief, correct.

Director, Department of Water Resources

By _____

	WATER RIGHT OWNER	IDWR WATER RIGHT NO.	DIVERSION NAME/REMARKS
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30			

	1	2		3		4		5			
	Total Delivery in 24-Hour Sec. Feet	Total Cost		Adopted Budget		Credits		Debits		Cost Per 24-Hr. Sec. Ft \$ _____	
		\$	cts.	\$	cts.	\$	cts.	\$	cts.		
1										Total No. Days of Watermaster	
2										days at \$ /day	\$
3										Total No. Days of Asst. Watermaster	
4										days at \$ /day	\$
5										Other expenses charged pro rata	\$
6										TOTAL COST	\$
7										Total No. 24-Hour Sec. Feet Delivered	
8										Cost per 24-Hour Sect. Feet Delivered	\$
9											
10											
11											
12											
13											
14											
15											
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SECTION 42-606 IDAHO CODE

REPORTS OF WATERMASTERS. All watermasters shall make an annual report to the department of water resources prior to the expiration of the watermaster's appointment for the current year. This report shall show the total amount of water delivered by the watermaster during the preceding year, the amount delivered to each water user, the total expense of delivery and the apportionment of expenses among users and all debits and credits to be carried over to the following year. Such report shall also include records of stream flow the watermaster used or made in the process of distributing water supplies. The director may ask for other information deemed necessary in assuring proper distribution of water supplies within the district. The reports of watermasters to the department of water resources shall be filed and kept in the office of the department.

Instructions for Completing Annual Watermaster's Report

This form has been developed to assist the watermaster in complying with some of the annual reporting requirements of Section 42-606, Idaho Code. The form provides for summary of the amount of water delivered by the watermaster to each user, the total expense of delivery and the apportionment of expenses among water users, including debits and credits. Water distribution and hydrologic information including stream flow records, daily diversion data, water right information and water right priority cut summaries should be presented in a separate water distribution report.

Complete this annual report form of delivery and costs as follows:

- 1) Enter water right holder name, corresponding IDWR water right number or numbers, and corresponding diversion name and/or remarks on page 2;
- 2) Enter the total amount of water delivered to each user as total 24-hour second feet under column 1, page 3. Total 24-hour second feet is a flow rate expressed in terms of one day or 24 hours. For example, a continuous diversion of 2 cfs over 20 days would equal 40 24-hour second feet.
- 3) Under column 3, page 3, enter the amount of money assessed or billed to each user at the beginning of the year. The assessment may be found in the previous year's adopted budget report.
- 4) In the work space provided on the right hand side of page 3, add up total watermaster salary costs and expenses and enter as 'TOTAL COST'. Then divide this total cost by the total number of 24-hour second feet delivered (sum of column 1) to obtain the cost per 24 hour second feet delivered, or the unit cost factor.
- 5) Under column 2, page 3, multiply the unit cost factor (obtained in step number 4 above) by each user's total 24-hour second feet delivery in column 1 to obtain the total cost against each user.
- 6) For each user, subtract the total cost amount in column 2 from the adopted budget in column 3 and enter the difference either as a credit or debit (negative differences entered as debits, positive differences entered as credits).
- 7) Sign the report before a notary public and submit the original to the appropriate regional office of the Department of Water Resources. Retain one copy for the Water District.

WATERMASTER'S PROPOSED BUDGET

FOR 20__

Water District No. _____

Stream _____

Watermaster Name _____

Mailing Address _____

Name of Secretary _____

Secretary Mailing Address _____

SECTION 42-615, IDAHO CODE

PROPOSED BUDGET FOR SUCCEEDING YEAR. Each watermaster shall, at least fourteen (14) days prior to the annual meeting of the water users of the water district, also prepare a proposed budget for the succeeding year, together with a distribution of the amount of the budget to the respective water users, using the actual deliveries for the past irrigation season or seasons, as the basis for distribution. The proposed budget and distribution shall be submitted to the water users for consideration and approval at the next annual water meeting.

In conformity with the above statute, I hereby submit a Proposed Budget for _____.
(YEAR)

WATERMASTER

(This report must be forwarded to the Secretary of the last Annual Water User's Meeting of your District.)

	WATER RIGHT OWNER	IDWR WATER RIGHT IDENT No.	DIVERSION NAME/REMARKS
1			
2			
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	PAST SEASON DELIVERIES										AVE. DELIVERY FOR PAST SEASONS	ESTIMATED BILLING	ADJUSTED BILLING
	1		2		3		4		5				
	20__		20__		20__		20__		20__				
1													
2													
3													
4													
5													
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WATERMASTER						ASSISTANT WATERMASTER, SECRETARY, STAFF, ETC.						OTHER EXPENSES		TOTAL COSTS	
YEAR	DAYS	SALARY		TOTAL		DAYS	SALARY		TOTAL						
WATERMASTER'S PROPOSED BUDGET															
NEXT YEAR															

Complete this proposed budget report form as follows:

- 1) Enter water right holder name, corresponding IDWR water right number or numbers, and corresponding diversion name and/or remarks on page 2;
- 2) If you wish to estimate next season's assessments based on the average delivery of past seasons, then enter the actual water deliveries to each user for the past two to five seasons on page 3. You have the option of using at least the past two seasons or up to five seasons for averaging. You also have the option of using last year's delivery or one year's delivery as a basis of determining assessments for the next season. Enter deliveries as total 24-hour second feet. Total 24-hour second feet is a flow rate expressed in terms of one day or 24 hours. For example, a continuous diversion of 2 cfs over 20 days would equal 40 24-hour second feet.
- 3) If using the averaging method, enter the average delivery for past seasons in column 6 of page 3. If you are not averaging, then enter each user's delivery from last year in column 5 and skip column 6.
- 4) In the work space provided at the top of this page, enter next year's proposed watermaster salary, secretary and/or staff salaries, and expenses. You may use the past season costs and expenses, or average past seasons' costs and expenses as an aid in determining next year's budget. A more detailed listing or itemization of expenses and salaries can be attached to this form.
- 5) Divide the total proposed budget amount for next year by the total past season delivery (total of column 5, page 3) or average past seasons deliveries (total of column 6, page 3) to obtain a unit cost factor.
- 6) Under column 7, page 3, multiply the unit cost factor by each user's past season or average past seasons deliveries to obtain the estimated billing for the next year.
- 7) Use column 8, page 3, to enter the adjusted billing amount if the district wishes to carryover debits and credits from the previous season. (Refer to the last watermaster report. If a user had a credit, subtract that credit from his or her estimated billing in column 7 of this report, and enter the difference or adjusted amount in column 8. If a user had a debit, then add that debit to his or her billing amount shown in column 7 and show as adjusted billing in column 8.
- 8) Sign the report and retain to present to the water users at the next annual meeting for the water district.

AGENDA
WATER DISTRICT 37B
2020 ANNUAL MEETING

Thursday, February 13

1:00 p.m.

Call Meeting to Order and Introduction (copies of Meeting Agenda, 2019 Annual Meeting Minutes, Budget and Proposed Resolutions on the table at entrance)	Lou Andersen (Chairman)
Selection of 2020 Meeting Chairman	Lou Andersen
Selection of 2020 Meeting Secretary	Meeting Chairman
Approval of minutes from 2019 Annual Meeting	Meeting Chairman
Water Master report on activity of 2019 year	Rusty Kramer
Treasurer report for 2019 year	Matt McLam
Discussion of Proposed 2020 District 37B Budget	Meeting Chairman
Adoption of Proposed 2020 Resolutions and Budget	Meeting Chairman
District news and updates 1. IDWR	Brian Ragen Rob Whitney
Adjournment of Meeting	Meeting Chairman

Appendix D

Robert's Rules of Order

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ROBERTS RULES CHEAT SHEET

To:	You say:	Interrupt Speaker	Second Needed	Debatable	Amendable	Vote Needed
Adjourn	"I move that we adjourn"	No	Yes	No	No	Majority
Recess	"I move that we recess until..."	No	Yes	No	Yes	Majority
Complain about noise, room temp., etc.	"Point of privilege"	Yes	No	No	No	Chair Decides
Suspend further consideration of something	"I move that we table it"	No	Yes	No	No	Majority
End debate	"I move the previous question"	No	Yes	No	No	2/3
Postpone consideration of something	"I move we postpone this matter until..."	No	Yes	Yes	Yes	Majority
Amend a motion	"I move that this motion be amended by..."	No	Yes	Yes	Yes	Majority
Introduce business (a primary motion)	"I move that..."	No	Yes	Yes	Yes	Majority

The above listed motions and points are listed in established order of precedence. When any one of them is pending, you may not introduce another that is listed below, but you may introduce another that is listed above it.

To:	You say:	Interrupt Speaker	Second Needed	Debatable	Amendable	Vote Needed
Object to procedure or personal affront	"Point of order"	Yes	No	No	No	Chair decides
Request information	"Point of information"	Yes	No	No	No	None
Ask for vote by actual count to verify voice vote	"I call for a division of the house"	Must be done before new motion	No	No	No	None unless someone objects
Object to considering some undiplomatic or improper matter	"I object to consideration of this question"	Yes	No	No	No	2/3
Take up matter previously tabled	"I move we take from the table..."	Yes	Yes	No	No	Majority
Reconsider something already disposed of	"I move we now (or later) reconsider our action relative to..."	Yes	Yes	Only if original motion was debatable	No	Majority
Consider something out of its scheduled order	"I move we suspend the rules and consider..."	No	Yes	No	No	2/3
Vote on a ruling by the Chair	"I appeal the Chair's decision"	Yes	Yes	Yes	No	Majority

The motions, points and proposals listed above have no established order of preference; any of them may be introduced at any time except when meeting is considering one of the top three matters listed from the first chart (Motion to Adjourn, Recess or Point of Privilege).

PROCEDURE FOR HANDLING A MAIN MOTION

NOTE: Nothing goes to discussion without a motion being on the floor.

Obtaining and assigning the floor

A member raises hand when no one else has the floor

- The chair recognizes the member by name

How the Motion is Brought Before the Assembly

- The member makes the motion: *I move that (or "to") ...* and resumes his seat.
- Another member seconds the motion: *I second the motion* or *I second it* or *second*.
- The chair states the motion: *It is moved and seconded that ... Are you ready for the question?*

Consideration of the Motion

1. Members can debate the motion.
2. Before speaking in debate, members obtain the floor.
3. The maker of the motion has first right to the floor if he claims it properly
4. Debate must be confined to the merits of the motion.
5. Debate can be closed only by order of the assembly (2/3 vote) or by the chair if no one seeks the floor for further debate.

The chair puts the motion to a vote

1. The chair asks: *Are you ready for the question?* If no one rises to claim the floor, the chair proceeds to take the vote.
2. The chair says: *The question is on the adoption of the motion that ... As many as are in favor, say 'Aye'.* (Pause for response.) *Those opposed, say 'Nay'.* (Pause for response.) *Those abstained please say 'Aye'.*

The chair announces the result of the vote.

1. *The ayes have it, the motion carries, and ...* (indicating the effect of the vote) or
2. *The nays have it and the motion fails*

WHEN DEBATING YOUR MOTIONS

1. Listen to the other side
2. Focus on issues, not personalities
3. Avoid questioning motives
4. Be polite

HOW TO ACCOMPLISH WHAT YOU WANT TO DO IN MEETINGS

MAIN MOTION

You want to propose a new idea or action for the group.

- After recognition, make a main motion.
- Member: "Madame Chairman, I move that _____."

AMENDING A MOTION

You want to change some of the wording that is being discussed.

- After recognition, "Madame Chairman, I move that the motion be amended by adding the following words _____."
- After recognition, "Madame Chairman, I move that the motion be amended by striking out the following words _____."
- After recognition, "Madame Chairman, I move that the motion be amended by striking out the following words, _____, and adding in their place the following words _____."

REFER TO A COMMITTEE

You feel that an idea or proposal being discussed needs more study and investigation.

- After recognition, "Madame Chairman, I move that the question be referred to a committee made up of members Smith, Jones and Brown."

POSTPONE DEFINITELY

You want the membership to have more time to consider the question under discussion and you want to postpone it to a definite time or day, and have it come up for further consideration.

- After recognition, "Madame Chairman, I move to postpone the question until _____."

PREVIOUS QUESTION

You think discussion has gone on for too long and you want to stop discussion and vote.

- After recognition, "Madam President, I move the previous question."

LIMIT DEBATE

You think discussion is getting long, but you want to give a reasonable length of time for consideration of the question.

- After recognition, "Madam President, I move to limit discussion to two minutes per speaker."

COMMITTEE OF THE WHOLE

You are going to propose a question that is likely to be controversial and you feel that some of the members will try to kill it by various maneuvers. Also you want to keep out visitors and the press.

- After recognition, "Madame Chairman, I move that we go into a committee of the whole."

POINT OF ORDER

It is obvious that the meeting is not following proper rules.

- Without recognition, "I rise to a point of order," or "Point of order."

POINT OF INFORMATION

You are wondering about some of the facts under discussion, such as the balance in the treasury when expenditures are being discussed.

- Without recognition, "Point of information."

POINT OF PARLIAMENTARY INQUIRY

You are confused about some of the parliamentary rules.

- Without recognition, "Point of parliamentary inquiry."

APPEAL FROM THE DECISION OF THE CHAIR

Without recognition, "I appeal from the decision of the chair."

Rule Classification and Requirements

Class of Rule	Requirements to Adopt	Requirements to Suspend
Charter	Adopted by majority vote or as proved by law or governing authority	Cannot be suspended
Bylaws	Adopted by membership	Cannot be suspended
Special Rules of Order	Previous notice & 2/3 vote, or a majority of entire membership	2/3 Vote
Standing Rules	Majority vote	Can be suspended for session by majority vote during a meeting
Modified Roberts Rules of Order	Adopted in bylaws	2/3 vote