

GUIDANCE

**Components of a Ground Water District Curtailment Request and Report
and
Analysis by the Idaho Department of Water Resources**

Idaho Code § 42-5232
Idaho Code § 42-5244A
Idaho Code § 42-5244B

Revision **1.0**
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**Idaho Department of Water Resources
Water Distribution Section**

Purpose

This document offers guidance to Ground Water Districts (“GWDs”) regarding the information the Idaho Department of Water Resources (“IDWR”) requires from GWDs when GWDs ask IDWR to curtail GWD patrons pursuant to Idaho Code § 42-5244B. This document also describes how IDWR evaluates the information and processes curtailment requests from GWDs. This document is a statement of policy and may be modified by IDWR at any time.

Background

In 2019, the Idaho Legislature revised how GWDs levy assessments and apportion mitigation plan obligations. Now GWDs can request IDWR curtail diversions owned/operated by GWD patrons who are either delinquent in paying their assessment or not complying with their proportionate share of a mitigation plan. These statutes do not authorize IDWR to consider requests for curtailment for delinquency of payments levied by the GWD prior to April 1, 2019.

The pertinent statutes are listed below. Visit <https://legislature.idaho.gov/statutesrules/idstat/> for the most current version.

- Idaho Code § 42-5232: Levy of Assessments
- Idaho Code § 42-5244A: Apportionment of Mitigation Plan Obligations
- Idaho Code § 42-5244B: Delinquent Assessments – Noncompliance with a Mitigation Plan

The following process steps are IDWR’s recommendations for implementing the code sections referenced above.

Process Steps

1. GWD establishes assessment pursuant to Idaho Code § 42-5232 or apportion mitigation plan obligations pursuant to Idaho Code § 42-5244A.
2. GWD levies assessment to patron or evaluates compliance with mitigation plan.
3. GWD identifies patron delinquent in paying their annual assessment or evidence of noncompliance with mitigation plan.
4. GWD makes several attempts to reach out to the patron by mail or phone to inform them of the delinquent annual assessment or assessments related to noncompliance with mitigation plan under Idaho Code § 42-5232(6). If contact is made, the GWD and patron agree to a plan to resolve the delinquent assessment. The GWD should inform the patron that Idaho Code § 42-5244B authorizes the GWD to report the patron to IDWR for curtailment if the delinquent assessment is not resolved.
5. If contact is not made between the GWD and patron, or an acceptable plan cannot be agreed to, the GWD then prepares a report to include all evidence of delinquency or noncompliance with a mitigation plan, records and accounts of previous contact with the patron regarding the delinquent assessment, and any other supplemental information that characterizes the offense. Idaho Code § 42-5244B provides a brief description of the report components.

6. GWD submits the curtailment request and report via mail or email to the IDWR Water Distribution Section in the Boise State Office and copies the watermaster and regional manager of the local IDWR office. This report shall contain the information required by Idaho Code § 42-5244B and also contain valid contact information, to include a phone number, if available, for the patron.
7. IDWR analyzes the information and, if necessary, asks follow-up questions of the GWD.
8. IDWR determines whether the GWD has reasonably apportioned assessments based on the factors set forth in Idaho Code § 42-5232(7) or has reasonably apportioned mitigation plan obligations based on the factors set forth in Idaho Code § 42-52244A.
 - a. If IDWR determines the GWD has reasonably apportioned assessments or has reasonably apportioned mitigation plan obligations IDWR will mail a notice of pending curtailment to the patron explaining the issue and including a statement that the Watermaster will be instructed to initiate curtailment proceedings on pertinent diversions in a minimum of 14-days from the date of the letter unless IDWR receives a request from the GWD to withdraw the curtailment. Copies of this letter will be sent to the GWD and Watermaster. The patron may request a hearing under Idaho Code § 42-1701A(3).
 - b. If IDWR determines the GWD has not reasonably apportioned assessments or has not reasonably apportioned mitigation plan obligations, or if IDWR determines it lacks sufficient information to make a determination, IDWR will mail a letter to the GWD detailing the reasons IDWR is denying the curtailment request. The GWD may submit additional information not previously submitted to IDWR and request IDWR reconsider the denial. If the GWD is aggrieved by IDWR's denial the GWD may request a hearing under Idaho Code § 42-1701A(3).
9. If the delinquent annual assessment has not been paid in full or the noncompliance with a mitigation plan is not remedied in full by the end of the deadline contained in the notice of pending curtailment, IDWR will confirm nonpayment with the GWD, then instruct the Watermaster of the Water District to commence curtailment proceedings on all diversions pertinent to the delinquent assessment (email correspondence from IDWR to the Watermaster is acceptable documentation of this instruction). The Watermaster will contact the patron to arrange the details of the curtailment such as the date to meet on-site and the system shut down procedures.
10. Curtailment will remain in effect until the GWD requests IDWR rescind the curtailment notice. IDWR will send a rescindment letter to the patron and copy the Watermaster. In addition to mailing a hard copy letter, IDWR will also attempt to contact the patron by phone or email to expedite the process for the patron.
11. IDWR and the GWD will retain pertinent documentation for their records.

Note: During Step 8(a) IDWR may contact the patron directly to inform them a curtailment request had been submitted and that IDWR will be sending them a curtailment letter. This contact may serve as an opportunity for IDWR to obtain additional information from the patron

and to explain that curtailment can be avoided with an immediate payment of the full delinquent assessment and subsequent rescindment request from the GWD as described in step 10.

IDWR may delay sending a curtailment notice or delay actual curtailment if a patron notifies IDWR that payment has been sent to the GWD. In this eventuality, IDWR will inform the GWD of the patron's notification and IDWR's intent to delay.

IDWR Guidance on Report Components Pursuant to Idaho Code § 42-5244B

- Name and contact information for the patron (phone number & email if available)
- Invoices to the patron clearly showing the amounts and dates of assessments levied starting April 1, 2019
- Evidence supporting the claim of noncompliance with mitigation plan obligations starting April 1, 2019.
- Copies of all correspondence or other communication sent to the patron prior to sending the report to IDWR (make sure communication is dated)
- GWD budget
- Detailed breakdown of total GWD costs for administration and mitigation
- Identify the water rights assessed and associated Water Measurement Information System ("WMIS") numbers associated with the water right points of diversion
- Details of how the assessments are apportioned amongst the patrons
- Details of how the mitigation obligations are apportioned among the patrons

IDWR Notice of Pending Curtailment Letter

- Will list assessment amount, water rights, WMIS numbers
 - Will inform patron they should get the most current assessment amount from GWD
- Request patron to either pay assessment by the deadline set in the letter or request hearing under Idaho Code § 42-1701A(3), or be curtailed

What IDWR Reviews and Confirms in the GWD Request

- Patron's name and ownership of water rights and land pertinent to the water right(s) place of use
- Water right details such as diversion rate, volume and priority date

- How many, and the status of, wells in IDWR's WMIS database which are pertinent to the water rights.
- The financial calculations and the math presented are accurate, and the final totals are correct

Frequently Asked Questions

1) Who determines if an assessment has been paid in full?

The GWD should have the necessary information to determine if an assessment has been paid in full for delinquent assessments levied on or after April 1, 2019. IDWR suggests the GWD notify IDWR by email when payment is made in full to the GWD to avoid delays that may occur by the GWD mailing a letter to IDWR.

2) What if the assessment paid does not cover late fees, interest charges, etc...that have accrued in the time since IDWR mailed the curtailment letter? If the patron pays the amount listed in the original assessment, they will not pay in full their assessment. Does the GWD have to resubmit a new request with the remaining balance and start the process all over again?

IDWR's curtailment notice to the patron will state the actual dollar amount provided in the GWD's report plus a statement directing the patron to contact the GWD to obtain the current or full amount owed including late fees or interest accrued since the report was sent to IDWR. The GWD should not have to re-start the process if a late fee is not included with the payment. The GWD and IDWR should review those situations and facts on a case-by-case basis.

3) Does the GWD need to mail delinquency reminders more often? Weekly, monthly, etc... Do the mailings need to be by certified mail in order to document said notifications?

IDWR understands the GWD is sending a monthly statement. IDWR recommends each monthly statement past the initial 30-day due date include information that delinquent assessments may be forwarded to IDWR for curtailment proceedings pursuant to Idaho Code § 42-5244B. IDWR suggests the GWD notify the patron once the delinquent report and request for curtailment has been forwarded to IDWR. There is no requirement the mailing be sent via certified mail.