#### **MEMORANDUM**

DATE: December 10, 1991

TO: Norm /

FROM: Ron

RE: Water District 01 Improvements

In August you wrote a memo which asked that the hydrology staff and I identify ways of improving timeliness in the Water District accounting. You asked that we also identify how long implementation will take, the cost and the expected improvement in timeliness. The following five "Proposed Improvements" have been identified as actions that will have possible benefits in timeliness.

# Proposed Improvement 1. - AUTOMATED INFORMATION ACCESS

Justification: Because of the size of Water District 1 and the number of people it impacts, it is difficult for the watermaster to get daily data related to storage and priority cuts out to all potentially interested parties every day. A system that allows people desiring information to be able to access these data at any time by telephone would not only make current data more accessible it would reduce the personnel requirements associated with handling requests for information.

Action: Install DEC-TALK hardware on the VAX and a WATTS line for accessing DEC-TALK information.

Estimated Cost: No out-of-pocket costs for DEC-TALK but personnel costs for programming and installation were estimated at about \$5000 and the WATTS line will cost about \$150 per month, depending upon usage.

Implementation time: This project was initiated in 1989 and was completed for use during the 1991 irrigation season. An upgrade to DECvoice would greatly improve the clarity of the speach. This upgrade would cost in excess of \$10,000.

Benefits: This system provides anyone immediate access to specific information from the most recent water right accounting run. During 1991 the system received about 1000 inquiries. This represents a substantial savings in personnel time that now can be devoted to more productive work areas.

Estimated Time Savings: We estimate that the time saved by water district staff will equate to about one week in getting the final accounting completed for

1991. However, the benefits in the perception of timeliness on the part of users is immeasurable. Additional useage is likely if DEC-TALK were upgraded to a higer quality digitized voice system.

# Proposed Improvement 2. REVIEW & DIGITIZE CHARTS

Justification: For many years recorder charts have been sent to the state office at the end of the year to be digitized. It has taken a substantial amount of time for this process to be complete and then the digitized data had to be further reviewed, corrected and merged with the database. If these charts were to be reviewed immediately at the end of each week the need for year-end digitizing could be eliminated.

Action: Have someone from the watermaster's staff review each recorder chart as it is brought in and make the appropriate data corrections at that time.

Estimated cost: If the digitization, and entry of data is done by hand in the watermaster's office there would be no additional costs. A digitizer, for the water district and required software however, would cost between \$2500 and \$5000.

Implementation time: Accomplishing this improvement without a digitizer was dependent upon having sufficient trained staff to be able to review data as it comes in and to make necessary corrections in the data base. This was done in 1991 and all canal data have been review and corrected in the data base by Dec. 1, 1991.

Estimated time savings: We anticipate that this change will result in shortening the time to the final accounting by about two weeks.

# Proposed Improvement 3. COLLECT REAL-TIME PUMP DATA

Justification: During the past 14 years one of the most time consuming data preparation activities has been the preparation and entry of pump diversion data. By having these data available in a better form, ie. a form requiring fewer hand calculations at the end of the year, the final diversion data could be completed in about thirty (30) days less time than in past years. However, the collection of daily pump data has proven extremely difficult. The man-power requirements simply can not be justified. We have spent over \$70,000 on We have spent over \$70,000 on investigations through the University of Idaho in an effort to establish an automated system for collecting time-tagged pump data. The results of this work has been unsatisfactory. There may be a way to use power as an indicator of diversion rate. unfortunately does not provide the daily time-tagged data we need. However, some improvement can be made in reconstructing the pumping period by having monthly

power use figures.

Action: Nearly two years ago a study was initiated through the University of Idaho to evaluate the possibility of using power use data to measure diversion rate. Assuming the study determines that power use can be related to diversion rate, we will then need to get power records from the appropriate power companies through a direct data transfer. The next step then would be to evaluate methods of breaking down these data into daily diversion records. Ultimately we would like to acquire daily power use records.

Estimated Cost: The university study is costing about \$21,000. The cost of collecting monthly power data will be primarily be personnel and travel costs. It is unlikely that the additional costs for these activities will exceed \$1000 for the season

Implementation time: While working on more streamlined methods for getting pump diversion data improvements can be made by collecting power meter readings each month and encourage operators to keep better pumping records on the "pump cards" they are asked to keep and return to this office. If the U of I studies indicate that power data can reasonably be used as a measurement of diversion rate then negotiations need to continue with the power companies to acquire their power records. Our previous efforts to acquire the utilities power records from have unsuccessful. During the 1991 irrigation season power meter readings were taken by water district personnel monthly. The U of I is proceeding with the evaluation available pump discharge vs. power data. anticipate a report by mid-summer of 1992.

Estimated Time Savings: If it is possible to ever get time-tagged pump data the time savings are estimated to be about one man-month. We anticipate that the increased data collection efforts during 1991 will reduce the time to the final accounting run by about one week.

#### Proposed Improvement 4. DAILY DATA ENTRY & REVIEW

Justification: It is critical to the water district operation that current data are correctly entered each day. While much of the data is obtained directly from the HYDROMET system there is still a significant amount of data that have to be hand entered. In addition, even the HYDROMET data need to be reviewed each day. In addition, the reach gains program should be run daily to help identify data errors. In addition this person would have the responsibility of compiling the information for the annual watermaster's report.

Action: The review of all of the daily data and the reach gains analysis would require an additional professional staff person. This person could also be put

in charge of the preparation of the annual reports. However, a more limited daily review is already done. All data have been entered daily and accounting runs made three times a week since 1989.

Estimated Cost: An additional staff person can be expected to cost about \$45,000 per year excluding the additional office space that may have to be acquired.

Implementation Time: Additional staff would be a decision that needs to be made by the water users. The implementation of the existing procedures has already been completed.

Estimated Time Savings: While an additional person to review data may improve the daily accounting data, the overall improvement in timeliness for completing the final accounting has been estimated at about three weeks. However, this individual probably would be able to take a year off of the time required to get annual reports through 1992 completed.

Proposed Improvement: 5 - USGS DATA ACQUISITION

Justification: The river and reservoir data required by Water District 1 are collected by the USGS. Data review takes time but there do appear to be actions the could take to improve the quality USGS timeliness of data they provide to the water district. The USGS is geared toward publishing data, not providing data for real-time use. Consequently much of the data provided by the USGS has to be extensively corrected. Reservoir data are rounded to the point that it affects the computation of daily gains. We have to remove these rounding errors by hand. In addition the contents for Palisades has to be reduced by 201,000 AF before we can hand enter and proofread these data. Delays in getting these data and error corrections we have to make delay the completion of final water district data by about thirty (30) days each year.

Action: Keep working on the USGS to provide the data the water district has contracted for them to provide.

Estimated Cost: There should be no additional costs. If we got the data in the final form transferred directly to our data base there would be a net cost savings. It would likely represent the equivalent of one-quarter man-year in time savings.

Estimated Time Savings: By having final data down-loaded to the VAX directly from the USGS in final form we would be in a position of having our final accounting data within one week of receiving these data.

LAW OFFICES

#### RIGBY, THATCHER, ANDRUS,

RIGBY & KAM, Charlend

25 NORTH SEGOND STREET - P.O. BOX 250 - REXBURG, IDAHO 83440
RAY W. RIGBY - GORDON S. THATCHER - G. RIGH ANDRUS
JERRY R. RIGBY - MICHAEL S. KAM - GREGORY W. MOELLER
TELEPHONE (208) 356-3633 - TELEPHONE (208) 529-5531 I.F.
FAX (208) 356-0768

November 11, 1991

JOHN W KEYS III
REGIONAL DIRECTOR
U S DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
550 W FORT STREET
BOX 043
BOISE ID 83724

Dear Mr. Keys:

RE: Contract for Palisades Reservoir and Ririe Reservoir Storage Space

Mitigation, Inc. does hereby make application to contract with the Secretary of the Interior of the United States for the 80,500 acre feet of noncontracted storage space in Ririe Reservoir and the 18,980 acre feet of noncontracted storage space in Palisades Reservoir, and in support thereof, submits the following:

- 1. Mitigation, Inc. is an Idaho corporation, with its registered office in Idaho located at 25 N. 2nd E., POB 250, Rexburg, Madison County, Idaho, and its registered agent, Ray W. Rigby, at the same address.
- 2. The stated purposes, as set forth in the Articles of Incorporation of said corporation, includes the power to enter into said contract.
- 3. Said Articles of Incorporation were filed and accepted by the Secretary of State, State of Idaho, on September 27, 1991 (a certified copy thereof is included herewith) and said corporation is in good standing.
- 4. Said corporation has adopted By-laws, a fully executed copy of which is enclosed herewith.
- 5. An organizational meeting has been held and the officers and directors of said corporation are as shown in said By-laws.

JOHN W KEYS III
REGIONAL DIRECTOR
U S DEPARTMENT OF THE INTERIOR
NOVEMber 11, 1991

Page two

- 6. Informational meetings have been held within the affected area, and said corporation is presently in the process of submitting stock subscription forms to all water users within Idaho Water District 01 to be used in allocating the initial capital stock in said corporation.
- 7. This application is being filed pursuant to the Fort Hall Indian Water Rights Act of 1990, Public Law 101-602, 104 Stat. 3060, and the 1990 Fort Hall Indian Water Rights Agreement.
- 8. This corporation has been deemed by the Committee of Nine as an entity acceptable to the said Committee of Nine to contract for said storage.
- 9. Said corporation is submitting this application by its registered agent and attorney by hand delivering same to your office on November 12, 1991, prior to the expiration of one year from the date the above mentioned legislation became law, to-wit; November 16, 1991.
- 10. Said corporation stands ready, willing and able to immediately proceed with the necessary negotiations preliminary to a final contract.

Please acknowledge the date and time of receipt of this application, and please advise at once if there are other requirements than those set forth herein to make the necessary application to contract for the purposes herein stated.

Sincerely yours,

Mitigation, Inc.

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Registered Agent and attorney for said

corporation

# State of Idaho

# Department of State

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the corporation and limited partnership records of this State.

I FURTHER CERTIFY That the annexed is a full, true and complete transcript of MITIGATION, INC.

Dated: September 27, 1991



Pete or Cenavrusa

SECRETARY OF STATE

Jonya Coulson

Corporation Clerk

# State of Idaho

# Department of State

CERTIFICATE OF INCORPORATION OF

MITIGATION, INC.

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that duplicate originals of Articles of Incorporation for the incorporation of the above named corporation, duly signed pursuant to the provisions of the Idaho Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I issue this Certificate of Incorporation and attach hereto a duplicate original of the Articles of Incorporation.

Dated: September 27, 1991

Vite of Enaveusa

SECRETARY OF STATE

#### ARTICLES OF INCORPORATION

OF

# MITIGATION, INC.

91 SEP 24 AM 8

KNOW ALL MEN BY THESE PRESENTS:

That I, the undersigned, being of full age and citizen of the United States, acting as incorporator in behalf of those adversely impacted by the implementation of the 1990 Fort Hall Indian Water Rights Agreement, adopt the following Articles of Incorporation for this corporation, under provisions of Idaho Code § 30-1-1, et seq.:

#### ARTICLE I

The name of this corporation shall be MITIGATION,

ARTICLE II

PURPOSES AND POWERS

The purposes for which this

The purposes for which this corporation is formed are:

- To take over, own, hold, lease, control, manage Α. and maintain mitigation water storage space as the appropriate contracting entity pursuant to a contract with the United States of America in accord with Article 12.3 of the 1990 Fort Hall Indian Water Rights Agreement as said Agreement has been validated by an act of Congress known as Title XII of the Reclamation Projects Authorization and Adjustment Act.
- To hold and allocate said water storage space for В. benefit firms, associations, of those persons, the corporations, bodies politic, or subdivisons thereof, including instrumentalities Idaho, become of the State of who stockholders of this corporation pursuant to the Bylaws.

- C. To do all things that may be necessary to obtain benefits for the stockholders who are adversely impacted by reason of the implementation of the 1990 Fort Hall Indian Water Rights Agreement.
- D. To lease space or water to others than shareholders of the Corporation.
- E. To acquire additional water and water storage space for the benefit of the stockholders.
- F. To be responsible for the operation and maintenance costs allocable to irrigation associated with 80,500 acre feet of storage space in Ririe Reservoir and the 18,980 acre feet of storage space in Palisades Reservoir.
- G. To levy and collect, pursuant to Idaho Code § 42-2201 et seq., from the stockholders and the owners of all the land to which the water and water rights are made appurtenant, regardless of whether the water is used by said owner or holder, including reasonable administrative charges, tolls, assessments and charges, including a reasonable reserve fund, for the purpose of conducting the business of the corporation and meeting the obligations thereof.
- H. Said corporation shall have a first and prior lien, except as to the lien of taxes, upon the land to which said water and water rights are appurtenant, and upon which it is used; said lien to be perfected, maintained and foreclosed in the manner set forth in Idaho Code § 42-2203 through 42-2209.
  - I. To buy, own, hold, lease and dispose of such real

and personal property as may be necessary or expedient for the proper conduct of its business.

- J. To commence, prosecute or defend suits.
- K. To enter into, make, perform and carry out contracts of every kind for any lawful purpose, without limit as to amount, with any person, firm, association, corporation, municipality, state government or any subdivision, district or department thereof.
- L. To borrow money and to execute or negotiate notes, bonds, mortgages or other obligations for the payment of money for the purpose of raising revenue to defray the expense of construction, improvement and all other capital expenditures, as well as the management, maintenance and operation of the company assets.
- M. To do any and all such other acts, things, or enter into business or businesses in any manner connected with, or necessary, incidental, convenient or auxiliary to any of the objects hereinbefore enumerated, or calculated directly or indirectly to promote the interests of the corporation and in carrying out its purposes, or for the purpose of attaining or furthering any of its business, and to do any and all acts and things, and to exercise any and all other powers which a natural peson could do or exercise and which now or hereafter may be authorized by law.
- N. The several clauses contained in the statement of purposes shall be construed as both purposes and powers, and the statements contained in each clause shall not be limited or

restricted by reference to or inference from the terms of any other clause, but shall be regarded as independent purposes and powers, and no recitation, expression or declaration of specific or special powers or purposes herein enumerated shall be deemed exclusive, but it is hereby expressly declared that all other lawful powers, not inconsistent herewith, are hereby included.

# ARTICLE III

# DURATION

Subject to dissolution in the manner provided by law, the corporation shall be perpetual.

#### ARTICLE IV

# REGISTERED OFFICE

The registered office of said corporation in the State of Idaho shall be located in the County of Madison. The post office address of the registered office of said corporation in the State of Idaho, County of Madison, shall be P.O. Box 250, Son. 2nd E., Rexburg, ID 83440-0250. Ray W. Rigby shall be the registered agent for the corporation at said address.

#### ARTICLE V

#### CORPORATE STOCK

The aggregate number of shares which the corporation shall have authority to issue is 100,000, all of which shall have no par value, shall be assessable, and shall be designated "Class A Shares" without preemptive rights but with full voting rights. Said stock shall be limited to those who have been

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RECEIVED SEC. OF COM determined to be eligible in accordance with federal law, the Fort Hall Indian Water Rights Agreement of 1990, and the Bylaws of this corporation. The stock shall not be transferable without the consent of the board of directors.

#### ARTICLE VI

# MANAGEMENT

The business of the corporation shall be managed by a board of not less than five (5) directors and not more than nine (9) directors, the exact number to be determined by the Bylaws; except initially the incorporator shall act as a single director until the first meeting of the incorporator when Bylaws shall be adopted, specifying the number of directors and their appointment to serve until the first meeting the shareholders or until their successors are elected and Directors need not be individual shareholders, but qualify. shall be affiliated with or a shareholder of an entity shareholder of this corporation. Directors shall be elected annually for one year terms.

# ARTICLE VII

# INCORPORATORS

Following is the name and post office address of the incorporator:

NAME OF INCORPORATOR

POST OFFICE ADDRESS

Dale Rockwood

6665 N. 55 E. Idaho Falls, ID 83401

#### ARTICLE VIII

#### LIMITATIONS OF LIABILITY

All present or past directors, officers, employees or ARTICLES OF INCORPORATION - PAGE 5 6289A

corporation and the heirs personal or of the representatives of such person, shall be indemnified and may be advanced expenses by the corporation if said person was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee, or agent of the or was serving at the request is corporation or director, officer, employee or agent of corporation as a another corporation, partnership, joint venture, trust or other enterprise, against expenses (including fees), attorneys' judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action proceeding, had no reasonable cause to believe his conduct was unlawful and is so determined in accordance with Idaho Code § 30-1-5(d), and if so determined such person shall be entitled to all the other benefits as set out in Idaho Code personal liability to 30-1-5 and shall have no corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, officer, employee or agent; provided that this provision shall not eliminate or limit the liability of such person (i) for any breach of the duty of loyalty to the corporation or its stockholders, (ii) for acts

or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 30-1-48, Idaho Code, or (iv) for any transaction from which such person derived an improper personal benefit. This section shall not eliminate or limit the liability of such person for any act or omission occurring prior to the date when this section becomes effective.

# ARTICLE IX

# BYLAWS

The initial Bylaws shall be adopted by the Board of Directors. The power to amend or repeal the Bylaws of the corporation shall thereafter be by a two-thirds (2/3) vote of the stockholders.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of September, 1991.

Dale Rockwood

STATE OF IDAHO, ) ss.
County of Madison.)

On this 23rd day of September, 1991, before me, the undersigned a notary Public in and for said State, personally appeared DALE ROCKWOOD, known to me to be the person whose name subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho Residing at: Rexburg, Idaho My Commission Expires: 3-12-91

OF

# MITIGATION, INC.

#### ARTICLE I. SHAREHOLDERS

#### Section 1.

- (a) All persons, associations, partnerships, corporations, or instrumentalities of the State of Idaho who hold valid state water rights and are water users in Water District Ol, who feel that the implementation of the 1990 Fort Hall Indian Water Rights Agreement will adversely impact their irrigation water supplies, either now or in the future, may subscribe for shares of the capital stock of said corporation, based upon the average of their diversions over the past five years, as recorded in the records of Water District Ol.
- (b) The board of directors shall determine from the evidence available, including said records of Water District 01, who qualifies as a stockholder and the number of shares of the corporation that said subscribers shall be allocated. Should any applicant for stock disagree with the conclusions of said board of directors, then said applicant may have the matter resolved by a board of arbitration, consisting of a person designated by said board of directors, also a person designated by the Bureau of Reclamation of the United States, from the Minidoka, Idaho office, and the District 01 Watermaster. The decision of said board of arbitration shall be binding upon the parties.
- Thereafter, associations, (c) any persons, partnerships, corporations, or instrumentalities of the State of Idaho who hold valid state water rights and are water users in Water District Ol, who were not allocated capital stock in subscriptions, and initial determine that implementation of the 1990 Fort Hall Indian Water Rights adversely impacting their irrigation Agreement was supplies may apply to said board of directors to subscribe for capital stock in the corporation. If said board of directors determines that said applicant is qualified, meets the above criteria, and makes payment of such per share costs determined by the Board of Directors that shall be no less than as have been previously paid by each other stockholder, together with interest at 12 percent per annum from the date of the initial stock subscription, then such applicant shall be entitled to become a stockholder of the corporation. If such applicant shall be refused the right to subscribe for all or any part of the stock requested, said applicant shall have the right to have the matter finally determined by said board of arbitration in the manner provided for above in Section 1.(b).

Section 2. Meetings of shareholders shall be held at the registered office of the corporation at Water District 01 offices at 150 Shoup Avenue, Suite 15, Idaho Falls, Idaho, unless another place shall have been determined by the directors and stated in the notice of meeting, either within or without the State. Annual meetings shall be held at 10:00 o'clock a.m. on the day before the first Tuesday of March, unless a holiday and then on the next business day. Telephonic meetings shall be authorized for annual and special meetings of the shareholders. Those stockholders present at a regular or special meeting shall constitute a quorum. Cumulative voting shall be permitted at the annul stockholders' meeting in the election of directors.

#### ARTICLE II. DIRECTORS

Section 1. The number of directors shall be seven (7). Directors shall be elected annually at the regular stockholders' meeting for one (1) year terms. All must be shareholders or members of a shareholder entity.

Section 2. The initial officers and board of directors, who shall hold office until the first annual meeting of shareholders, or until their successors have been elected and qualified, are as follows:

AME/POSITION	ADDRESS

Dale Rockwood 6665 N. 55 E. President and Director Idaho Falls, ID 83401

Dell Raybould 3215 N. 2000 W. Vice-President Rexburg, ID 83440

Claude Storer 12313 N. 65 E. Secretary-Treasurer Idaho Falls, ID 83401

Ed Clark
Director
Rt. 2
Ashton, ID 83420

Ted Hanson 3810 E. 850 N. Director Rigby, ID 83442

Paul R. Berggren 224 Berggren Lane Director Blackfoot, ID 83221

James Siddoway 148 N. 2nd E. Director Teton City, ID 83451

Section 3. The board of directors shall create seven (7) director districts, each of which shall encompass shareholders holding approximately one-seventh (1/7) of the capital stock of the corporation, and shall generally outline the boundaries of each of said districts. Hereafter, each future Director must reside in a Director District, and be elected by the shareholders of this corporation residing within said district.

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Section 4. Four (4) directors shall constitute a quorum.

Section 5. Directors meetings may be held within or without the State of Idaho. Telephonic meetings shall be authorized for regular and special meetings of the directors.

Section 6. A regular meeting of the board of directors shall be held without notice immediately following the annual meeting of shareholders and at the same place. The board of directors may provide for holding of additional regular meetings without notice.

Section 7. Special meetings of the board of directors may be held at any time all directors are present without notice, or may be called by the president or any four (4) directors on three (3) days notice given personally or by telephone or telegraph or by mail. Special meetings shall be held at the place fixed by the board of directors for the holding of meetings, or if no such place has been fixed, at the principal business office of the corporation.

Section 8. Directors, as such, shall not receive any salaries for their services, but by resolution of the board of directors a fixed sum and expenses of attendance, if any, may be allowed for attendance at meetings of the board of directors and at any other meetings beneficial to the interests of the corporation.

Section 9. The board of directors shall have power to make and adopt such rules and regulations, not inconsistent with law, the Articles of Incorporation or these Bylaws, as it may deem advisable for the management, administration, and regulation of the business and affairs of the corporation, and, upon notice given thereof to the stockholders, such policies, rules and regulations shall become as binding upon the stockholders as if they were contained in these Bylaws.

Section 10. The board of directors shall cause to be established and maintained an accounting system, which shall properly record all receipts and expenditures of the corporation, and a report thereof given to the shareholders at each annual meeting.

Section 11. A Director may be removed by a two-thirds (2/3) vote of a quorum, consisting of 51% of the capital stock represented by the shareholders within the district he represents, providing a minimum of five (5) stockholders are present in person, and providing said director and the shareholders of said district are given at least ten (10) days notice specifying the purpose, place and time of the special meeting held for that purpose. All notices shall be given by the Secretary of the corporation.

Section 12. A director of the corporation who is present at a meeting of the directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 13. No director shall serve more than two (2) consecutive one (1) year terms as president.

#### ARTICLE III. OFFICERS

section 1. The officers of the corporation shall be a president, vice president, secretary and treasurer. The officers shall be elected annually at the regular meeting of the board of directors held after the annual meeting of shareholders and shall hold office only so long as they are satisfactory to the board of directors. The offices of secretary and treasurer may be combined in one person. The secretary and treasurer need not be directors of the corporation. Assistant secretaries may be elected or appointed by the Board of Directors at any time.

Section 2. The president shall be the principal executive officer of the corporation to put into effect the decisions of the board of directors. Subject to such decisions, he shall supervise and control the business and affairs of the corporation. He shall preside at meetings of the shareholders and directors.

Section 3. Subject to any specific assignments of duties made by the board of directors, the vice president, secretary and treasurer shall act under the direction of the president. The secretary shall prepare and keep minutes of the meetings of the shareholders and the directors and shall have general charge of the stock records of the corporation. The treasurer shall (a) have charge and custody of and be responsible for all funds and securities of the corporation; (b) deposit all moneys in the name of the corporation in such banks, trust companies or other depositories as shall be selected in accordance with these bylaws; and (c) perform such other duties as from time to time may be assigned to him by the president or the directors.

Section 4. A vacancy in any office may be filled by the directors for the unexpired term.

#### ARTICLE IV. MISCELLANEOUS

Section 1. The board of directors may authorize any officer or agent to enter into any contract or to execute any instrument for the corporation. Such authority may be general or be confined to specific instances.

Section 2. Certificates representing shares of the corporation shall be in such form as the board of directors shall determine. The transfer books of the Corporation shall be closed ten (10) days before the annual shareholders' meeting. Proxies must be on file with the corporate secretary prior to commencement of the meeting.

Section 3. Officers, directors, employees and agents of the corporation shall be indemnified in accordance with Idaho Code § 30-1-5 and Article VIII of the Articles of Incorporation.

# ARTICLE V. WATER DISTRIBUTION.

Section 1. The legal title to all water rights acquired by the Corporation shall be held by the Corporation. The water right shall be made appurtenant to the land of all stockholders to which any water can be delivered.

Section 2. The Board of Directors, after consultation with such persons and officials as they deem necessary, may lease all, allocate all, or lease part and allocate part of the Corporation's water, attempting to collect reasonable charges for the water, keeping in mind that those most impacted should be most mitigated. Leases and allocations shall be billed in advance and no water shall be delivered until the billing therefor has been paid. All shareholders shall be billed equally per acre foot allocated.

section 3. In the event that there is not adequate water available for use by the stockholders, a reasonable charge for which at market value would not cover the annual O & M for said water, the directors shall be entitled to pay any shortfall from reserves, or if such are inadequate, to assess the capital stock of all shareholders equally to cover said shortfall. Nonpayment of such assessment may result in the sale of the capital stock in the manner provided by law, or upon a uniform policy and procedure adopted by the board of directors.

Section 4. The corporation shall be under no duty and shall not be held liable for failure to deliver water during the irrigation season when such failure occurs from a deficiency of water or from other causes, including floods, tornados, Acts of God, fluctuation or loss of power, or other occurrences which are beyond the control of the corporation.

Section 5. No water shall be delivered to stockholders of this corporation until all past due and current assessments have been paid. No stock shall be transferred on the books of the corporation until all past due and unpaid assessments thereof are paid.

#### ARTICLE VI. ACTION WITHOUT MEETING

Section 1. Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all directors.

#### ARTICLE VII. AMENDMENTS

Section 1. These bylaws may be altered, amended or repealed, or new bylaws may be adopted only by a two-thirds (2/3) vote of a quorum consisting of shareholders representing a minimum of 51% of the capital stock of the corporation, where at least 20 shareholders are present in person, at a meeting called for that purpose, and providing a copy of the proposed amendment is included in the notice of the meeting.

# ARTICLE VIII. ASSENT OF DIRECTORS AND STOCKHOLDERS

Section 1. We, the undersigned, directors of Mitigation, Inc., an Idaho corporation, having read and fully considered the foregoing draft of a code by bylaws for the said corporation, do hereby assent to the adoption, and do hereby adopt, the foregoing bylaws as and for Mitigation, Inc., an Idaho corporation.

Dated this 8th day of November, 1991.

Dale Rockwood

Dale Rockwood

Mcel Maybould

Dell Raybould

Claude Storer

Ed Clark

Ted Hanseh

Faul Serggren

Paul Berggren

James Siddoway

# CERTIFICATE

STATE OF IDAHO, ) ss. County of Madison. )

We, the undersigned Directors and Secretary of Mitigation, Inc., an Idaho corporation organized under the laws of the State of Idaho, do hereby certify:

- 1. That the Directors signing this certificate are the Directors of said corporation and that Claude Storer is the Secretary-Treasurer of said corporation.
- 2. That the subscribers to the foregoing assent are the Directors of said corporation.
- 3. That the said subscribers signed said assent on the day it bears date, and then and there adopted the foregoing ByLaws as the ByLaws of said corporation.

IN WITNESS, Our hands and the seal of the said corporation this 8th day of November, 1991.

Dale Rockwood

Mele Baybould

Dell Raybould

Claude Storer

Claude Storer

Ted Hansen

Ted Hansen

Paul Berggren

James Siddoway

ATTEST:

Secretary-Treasurer

# AFFIDAVIT

STATE OF IDAHO, ) ss.

County of Madison. )

CLAUDE STORER, Being first duly sworn, deposes and says:

I am the duly elected, qualified and acting Secretary-Treasurer of Mitigation, Inc., an Idaho corporation, and as such I have the custody of certain corporation records, including the book of Bylaws to which this Affidavit is attached, and the same is a full, true and correct copy of the ByLaws of said corporation as adopted by the stockholder and director of said corporation.

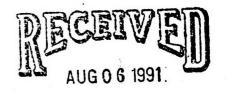
Secretary-Treasurer

Subscribed and sworn to before me this 8th day of November, 1991.

NOTARY PUBLIC FOR IDAHO

Residing at: Rexburg, Idaho
My Commission Expires: 3-12-93





Department of Water Resources

#### STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL **BOISE 83720-1000** 

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ATTORNEY GENERAL OPINION NO. 91-7

TO: Bruce Balderston, CPA Legislative Auditor Statehouse Boise, Idaho 83720-1000

Per Request for Attorney General's Opinion

#### **OUESTIONS PRESENTED:**

LARRY ECHOHAWK

ATTORNEY GENERAL

- 1. Define: (a) the nature of Water District 1, (b) its term of existence, and (c) the existence of officers capable of transacting business for the district.
- Does Water District 1 have responsibility and control over all water bank funds and if so, are these funds subject to the same requirements imposed on other district funds?
- Does the Committee of Nine, which is the advisory committee for Water District 1, have any control over the use and distribution of any retained water bank funds?
- Does the watermaster for Water District 1 have authority to invest regular water district funds or water bank funds in common stocks, corporate bonds, mutual funds and other types of equity securities?

#### CONCLUSIONS:

- (a) Water District 1 is an instrumentality of the state established by a predecessor of the Director (Director) of the Department of Water Resources, pursuant to Idaho Code § 42-604, for the purpose of assisting the Department in carrying out its responsibility to distribute the public waters of the state in accordance with the rights of prior appropriation.
  - The term of existence of Water District 1 as an

administrative and geographic unit is continuous from its date of creation until dissolved by order of the Director. Water District 1 is active year-round.

(c) The current officers of Water District 1 are the chairman and secretary whose primary duties are (1) presiding over the annual meeting of the district, (2) transmitting a certified copy of the budget to the Idaho Department of Water Resources (IDWR) and the county auditor in some circumstances, and (3) preparing, maintaining and transmitting the minutes of the meeting to the IDWR. The daily business activities of the district are transacted by a watermaster elected by the water users and appointed by the Director. The watermaster of Water District 1 presently serves as treasurer.

Idaho law provides four alternative methods for the collection and disbursement of water district funds: (1) the county auditor and treasurer may collect and disburse the assessments; (2) the county auditor and treasurer may collect the assessments, and the water district treasurer may hold and disburse the water district funds; (3) the watermaster may collect the assessments, and the county treasurer may hold and disburse the assessments; (4) the watermaster may collect the funds, and the water district treasurer may hold and disburse the assessments. Idaho law does not permit the watermaster to act as treasurer for a water district. Thus, Water District 1's present practice of allowing the watermaster to also serve as treasurer is not permissible.

- water District 1 has responsibility and control over water bank funds associated with the operation of the Upper Snake Rental Pool. The funds are of two types, monies held for the benefit of persons leasing water into the rental pool, and monies assessed by the district as an administrative charge on water rented from the Upper Snake Rental Pool. New rules provide that the district must assess a 10% surcharge which is transferred to the IDWR as reimbursement for its costs. The district retains the remainder of any assessment. Water bank funds must be handled in the same manner as other district funds, but must be maintained in a separate bank account. Water bank funds retained by the district can only be used to pay for the district expenses, improvements and projects authorized by Idaho Code § 42-613A and must not be paid to water users or used to reduce assessments to water users.
- 3. Idaho Code § 42-1765 does not vest in the local committee of a water district, here the Committee of Nine, any responsibilities regarding the collection, investment, or disbursement of water bank funds. The water district retains authority over water bank funds.

4. The watermaster of Water District 1 should not have custody of the funds of Water District 1. Assuming Water District 1 has elected to follow Idaho Code § 42-619, a district treasurer should be elected to have custody of Water District 1 funds and to make disbursements from these funds. The district treasurer is prohibited by the provisions of the Public Depository Law, chapter 1, Title 57, Idaho Code, from investing any district funds in common stocks, corporate bonds, mutual funds and other types of equity securities.

#### INTRODUCTION

Water District 1 includes all of the area of the state served by water from the Snake River from the Wyoming border to the Milner diversion dam near Twin Falls. The issues you seek guidance on arose in the course of your performance of an audit of Water District 1 requested by state legislators for fiscal years 1988, 1989 and 1990. The issues raised involve the proper handling of funds generated (1) by the assessment of water users to pay for watermaster services, and (2) by an administrative rental pool charge on each acre foot of stored water rented from the Upper Snake Rental Pool.

#### ANALYSIS:

# Question No. 1

The first question asks us to define the nature of Water District 1, its term of existence and the existence of officers capable of transacting business for the district. Your letter states that you are informed by the watermaster that Water District 1 and its officers are active only one day per year at the annual meeting in March, except for the watermaster who also serves as the treasurer for the district.

The existence and operation of state water districts, such as Water District 1, are governed by the provisions of chapter 6, Title 42, Idaho Code, first enacted in 1903. Act of March 11, 1903, 1903 Idaho Sess. Laws 223. State water districts are instrumentalities of the state that exist for the purpose of assisting the IDWR in carrying out its duty under Idaho Code § 42-604 to provide for the distribution of the public waters of the state in accordance with rights of prior appropriation. Idaho Code § 42-602 imposes upon the IDWR a duty

<sup>&</sup>lt;sup>1</sup> The public waters distributed by Water District 1 provide water for approximately 1.3 million acres of irrigated farm land in the Snake River Plain. Water District 1 is the largest water district in Idaho and is sometimes cited as the largest district of its kind in the country. Records for diversions from the area that became Water District 1 and on file with the IDWR commence

to exercise immediate direction and control over the distribution of water from all of the streams to the canals and ditches diverting therefrom. The doctrine of prior appropriation provides that as between appropriators, "the first in time is first in right." Idaho Code § 42-106.

Idaho Code § 42-604 directs the IDWR to create water districts for each public stream and its tributaries, or other independent source of water supply within the state. The statutory requirement applies only to streams or other water supplies for which the relative dates of priority of appropriation have been determined by court decree. There are currently 108 state water districts in Idaho of which 84 are active in 1991. Once established, a district remains in existence as an administrative and geographic unit until dissolved by a subsequent order of the Director. Depending upon the water distribution needs of the water users, a water district may be active year-round or only during the irrigation season. According to IDWR records, Water District 1 has been active year-round since 1919.

After a water district is established by the IDWR, Idaho Code § 42-605(1) provides that the district shall hold an annual meeting for the purpose of conducting its business. Unless otherwise set by the district, the time for the annual meeting is the first Monday in March of each year. The affected water users consist of all persons owning or having the use of decreed, licensed or permitted water rights in the waters of the stream or water supply comprising the district.

Idaho Code § 42-605(4) requires the water users at the annual meeting to choose a chairman and secretary. The primary duties of the chairman and secretary are to preside over the meeting, to send a certified copy of the approved budget to the county auditor<sup>2</sup> and IDWR, to keep the minutes of the annual meeting and to forward a certified copy of the minutes to the IDWR. Idaho Code §§ 42-605 and 42-613.

Idaho Code § 42-605(3) also requires the water users to elect a watermaster at the annual meeting. The watermaster must subscribe an oath to faithfully perform the duties of the office. The primary duties of a watermaster are to make reports about the distribution of water to the IDWR, to deliver the water in accordance with the prior rights, and to prepare the annual

in 1912.

<sup>&</sup>lt;sup>2</sup> This duty to send the approved budget to the county auditor does not apply to those water districts that elect to proceed under some alternative procedures in Idaho Code §§ 42-618 and 42-619.

budget for the water district. Idaho Code §§ 42-606, 42-607 and 42-615. Although a watermaster generally serves only during an irrigation season, Idaho Code § 42-608 authorizes the water users to employ a watermaster throughout the year. Water district records on file with the IDWR indicate that the watermaster for Water District 1 has served on a year-round basis since 1919.

The Idaho Supreme Court has held that a watermaster is a public administrative officer who holds office until a successor is elected or appointed and qualified. Big Wood Canal Co. v. Chapman, 45 Idaho 380, 263 P. 45 (1927). A watermaster does not serve as an agent of the water users, but is a ministerial officer. Bailey v. Idaho Irrigation Co., 39 Idaho 354, 227 P. 1055 (1924).

The last part of your first question asks us to define the officers capable of transacting business for Water District 1. We take your question to mean all the ordinary types of transactions of an operating water district, such as disbursements for expenses and payment of salaries.

Idaho Code § 42-613, previously codified as Idaho Code § 41-513, states the general procedure for adoption of a water district budget, collection of the monies and payment of the expenses. The basic procedure is for the secretary of the water district to prepare a certified copy of the annual budget approved at the annual meeting and to send the certified copy to the county auditor.<sup>3</sup> The county auditor then prepares an assessment roll and delivers it to the county treasurer who collects the assessments and deposits the funds collected into a special account. The county treasurer pays the expenses of the water district, including the salary of the watermaster and assistant watermasters, in accordance with the procedures for payment of bills by the county.<sup>4</sup> The basic concept is for the water district to use existing county officers as its fiscal agents.<sup>5</sup>

In 1947, the Idaho Legislature enacted an optional procedure for the collection of the district budget for water districts

<sup>&</sup>lt;sup>3</sup> The requirement for an annual budget began in 1927, See Act of February 19, 1927, ch. 39, 1927 Idaho Sess. Laws 51.

<sup>4</sup> Idaho Code § 42-611, repealed in 1989, specifically required the presentment of the bill for watermaster services at a regular meeting of the board of county commissioners.

<sup>&</sup>lt;sup>5</sup> The distribution of water on an organized basis began with the Act of March 11, 1903, 1903 Idaho Sess. Laws 223. We are not concerned with the initial collection and disbursement procedures of that act, however, because Water District 1 did not come into existence until 1919.

whose area includes land in more than four counties. Act of January 31, 1947, ch. 11, 1947 Idaho Sess. Laws 11, now codified at Idaho Code § 42-618. In 1969, this alternative procedure became available to all water districts with the enactment of the Act of March 27, 1969, ch. 305, 1969 Idaho Sess. Laws 913.

The relevant language of Idaho Code § 42-618 is as follows:

In water districts the water users, instead of following the provisions of sections 42-612, 42-613, 42-614, 42-615, 42-616, and 42-617, may, at any annual meeting, authorize the watermaster 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 district. When so authorized the watermaster shall collect such compensation and expenses directly from the water users. (Emphasis added).

Idaho Code § 42-618 is ambiguous when read in the context of the balance of the chapter. First, this section could be interpreted to mean that the watermaster, if so authorized under Idaho Code § 42-618, has the authority to collect, hold and disburse the assessments collected from water users. This position interprets the phrase "instead of following the provisions of Idaho Code sections 42-612, 42-613, 42-614, 42-615, 42-616, and 42-617" in Idaho Code § 42-618 as an expression of legislative intent to eliminate completely the application of those enumerated sections to water districts that elect to comply with the alternative procedure provided by Idaho Code § 42-618. This position also interprets Idaho Code § 42-618 as authority for the watermaster to collect the monies from the water users directly, to hold the funds, and to disburse the funds, including disbursement to his assistants and to himself. The argument is that, if the watermaster receives his compensation from someone other than himself, the watermaster is not receiving his compensation "directly." This is the current administrative interpretation of the statute by Water District 1 and represents a possible interpretation of an anomalous statute.

Second, as you suggest in your letter, this section may be interpreted as only authorizing the watermaster to collect the assessments of the water district; the county treasurer would still retain the authority to hold and disburse the water district funds in accordance with the general procedures for payment of bills by the county. Since Idaho Code § 42-613 distinguished between collection of assessments and disbursements of district funds, an amendment that only addresses collection could be interpreted as only changing the law regarding collection of assessments. This interpretation of Idaho Code

§ 42-618 is supported by the plain meaning of that section.

Since Idaho Code § 42-618 is ambiguous, we may review existing administrative evidence, such as interpretation of statutes, to determine the legislative intent for enactment of that provision. While a long-standing administrative interpretation of a statute is entitled to great weight and will be followed unless there are cogent reasons for holding otherwise, Kopp v. State, 100 Idaho 160, 595 P.2d 309 (1979), we must also consider the consequences of this interpretation. State ex rel. Evans v. Click, 102 Idaho 443, 447-448, 631 P.2d 614, 618-619 (1981). If the first interpretation, which is the one made by Water District 1, were correct, then Water District 1 would not have to comply with the provisions of the enumerated sections regarding deposit of monies with the county treasurer. The logic of this interpretation would also mean, however, that Water District 1 would not be The logic of this interpretation required to adopt an annual budget as provided in Idaho Code § 42-612;6 that the adoption of the budget would not cause the amount allocated to each ditch, canal company, irrigation district or other water user to become a debt thereof as provided in Idaho Code § 42-612; and that Water District 1 would not have specific authority to impose a minimum annual charge per water user.

We conclude that the Legislature did not intend to strip a water district of the powers stated in Idaho Code §§ 42-612, 42-613, 42-614, 42-615, 42-616, and 42-617 simply because a district elects to use the alternative collection procedures of Idaho Code § 42-618. Indeed, this conclusion is bolstered by the fact that Water District 1 has generally complied with the procedures set forth in these enumerated sections, except for the collection procedures of those sections, and that the county treasurer continues to collect the assessments in the counties of Madison, Teton and Fremont for Water District 1. This inconsistent administrative practice undermines the argument that there is a long-standing administrative interpretation of Idaho Code § 42-618.

The first interpretation, which concludes that Idaho Code § 42-618 authorizes the collection, holding and disbursement of assessments by the watermaster, would also be in conflict with Idaho Code § 42-611, which was not repealed until 1989. See Act of April 4, 1989, ch. 286, 1989 Idaho Sess. Laws 710. Idaho Code § 42-611 required the watermaster and his assistants to present a bill for their services to the board of county commissioners. The board then orders a warrant to be issued to the watermaster and assistants. The first interpretation ignores the

<sup>&</sup>lt;sup>6</sup> Of course, a water district would not be prohibited from adopting an annual budget.

requirements of Idaho Code § 42-611 and would allow the watermaster to disburse the funds to himself in contravention of this section.<sup>7</sup> The election of a water district to proceed under Idaho Code § 42-618 does not excuse compliance with Idaho Code § 42-611 because Idaho Code § 42-618 did not make reference to Idaho Code § 42-611.8

Idaho Code § 42-618 merely replaced the procedures for collection of monies stated in the enumerated sections with the alternative collection procedures provided by Idaho Code § 42-618. The enumerated sections otherwise remained in effect. Thus, if a water district only elects to proceed under Idaho Code § 42-618, the county treasurer retains the authority to hold and disburse the funds of the water district and not the watermaster.

This interpretation also preserves the division of responsibility that exists under the older and newer statutes between the watermaster and the designated treasurer. In 1989, the Legislature enacted Idaho Code § 42-619, an alternative procedure for the holding and disbursement of water district funds. In water districts for which the county commissioners

The above legal interpretation of these sections by Water District 1 differs from the actual practice. An agreement between the IDWR and the Committee of Nine regarding watermaster services became effective on March 4, 1979. The practice under this agreement, as we understand it, is for the watermaster of Water District 1 to transmit the monies he collects from the water users to the IDWR. The IDWR then issues checks for the salaries of the watermaster and his assistants. Accordingly, the watermaster has not been issuing the check for his own salary. Finally, the present practice of the IDWR issuing the salary checks to the watermaster further undermines the argument in favor of the interpretation that the watermaster must receive his compensation "directly" without any intervening actors.

<sup>8</sup> We note that the last sentence of Idaho Code § 42-613 is in many respects duplicative of Idaho Code § 42-611. That last sentence of Idaho Code § 42-613 requires payment of the watermaster and his assistants "in the same manner as bills against the county are paid." Idaho Code § 42-611 provides a specific procedure for presentment to the board of county commissioners and for payment of the watermaster and his assistants. Idaho Code § 42-618 is somewhat anomalous because it lists Idaho Code § 42-613 but does not list Idaho Code § 42-611, even though all of Idaho Code § 42-611 and a portion of Idaho Code § 42-613 concern the same subject--payment of the watermaster and his assistants. The rationale for drafting Idaho Code § 42-618 in this manner is unknown. The existence of this duplication, however, does not change our conclusion.

elect to discontinue the county treasurer's duty to hold and disburse district funds, the water users are required to elect or appoint a treasurer. The statute imposes upon the district treasurer a duty to keep a complete, accurate and permanent record of all funds received by and disbursed for and on behalf of the district. The treasurer is required to deposit all funds of the district in a designated depository approved at the annual meeting, and must comply with the Public Depository Law, chapter 1, Title 57, Idaho Code. The statute also authorizes any water district to elect or appoint a treasurer to exercise the duties provided for in Idaho Code § 42-619 even if the county commissioners have not determined to stop providing the bill paying service for the district. Idaho Code § 42-619(3) and (10).

Under the original disbursement procedure, the county treasurer held and disbursed the funds of the water district. Idaho Code § 42-613. Similarly, under the more recent amendments in 1989, the treasurer of the water district holds and disburses the funds. Idaho Code § 42-619. The county auditor and treasurer collect the water district assessments unless the water district elects to use the alternative procedures of Idaho Code § 42-618; in that case, the watermaster collects the assessments.

Based upon the foregoing review of the applicable statutes, we conclude that the water districts have four options regarding the collection and disbursement of water district funds: (1) the county auditor and treasurer may collect and disburse the assessments as provided in Idaho Code § 42-613; (2) the county auditor and treasurer may collect the assessments in accordance with the provisions of Idaho Code §§ 42-601 through 42-617, and the water district treasurer may hold and disburse the water district funds in accordance with Idaho Code § 41-619; (3) the watermaster may collect the assessments as provided in Idaho Code § 42-618, and the county treasurer may hold and disburse the watermaster may collect the assessments as provided in Idaho Code § 42-618; or (4) the watermaster may collect the assessments as provided in Idaho Code § 42-618, and the water district treasurer may hold and disburse the assessments as provided in Idaho Code § 42-618, and the water district treasurer may hold and disburse the assessments as provided in Idaho Code § 42-619.

Although Water District 1 has apparently elected to proceed in accordance with the alternative procedures of Idaho Code §§ 42-618 and 42-619 described above, we are aware of no formal action adopting these procedures. Further, we note that Water District 1 has not implemented the provisions of Idaho Code § 42-619. For example, the local procedures for Water District 1 do not provide for a water district treasurer. Rather, the management of the monies received is vested in the watermaster with authority to disburse and invest funds. See Rule 4.3 of Water District 1 Rental Pool Procedures, approved by the Committee of Nine on May 29, 1991 and the Idaho Water

Resource Board on May 31, 1991. Since the treasurer's duties necessarily involve oversight of the expenditures of the watermaster, if the watermaster also acts as the treasurer, he holds an office incompatible with his office as watermaster.9

We recognize that our conclusions differ from current and past practices of Water District 1 and that a very real problem is how to proceed during the remainder of the present water year in light of this opinion. The next annual meeting of Water District 1 will occur in March, 1992. We recommend against continuing with the present arrangements until the next annual meeting because of the problems we have identified. Instead, the officers of Water District 1 or the Director should arrange for the election or appointment of a treasurer.

# Question No. 2

Your second question asks whether Water District 1 has responsibility and control over all water supply bank funds, and if so, whether these funds are subject to the same requirements imposed on other water district funds? The records of the IDWR show that Water District 1 has operated a "rental pool" to facilitate the rental of storage water in the Upper Snake River

<sup>9</sup> We are not aware of an Idaho Supreme Court decision that specifically adopts the common law doctrine of incompatibility of office as a part of our law, although other states have developed considerable case law on this doctrine. See People ex rel. Chapman v. Rapsey, 16 Cal.2d 636, 107 P.2d 388 (1940); Township of Belleville v. Fornarotto, 228 N.J. Super. 412, 549 A.2d 1267 (1988); 63A Am.Jur.2d Public Officers and Employees § 65 at 717-718 (1984). If the question were presented to the Idaho Supreme Court, we believe it would apply the doctrine to the present situation for two reasons: First, it is a part of the common law, and the Idaho legislature adopted the common law as the rule of decision in the courts of this state when not "repugnant to, or inconsistent with, the constitution or laws of the United States . . . " Idaho Code § 73-116. Second, the Idaho Supreme Court would have the same policy concern that resulted in the creation of this common law doctrine in other states. other states have generally applied the doctrine to prevent one person from holding an office that has a fiscal accounting function with respect to another office which is held by the same The obvious purpose of this prohibition is to protect the public monies, and the prohibition reduces the risk of improper use of public funds. Here, one person holds the offices of watermaster and of treasurer for Water District 1. Since the office of treasurer has a fiscal accounting function over the watermaster, the present administration of Water District 1 presents the precise situation that resulted in the initial creation of this common law doctrine.

Basin since the early 1930's. In 1979, the Legislature provided a statutory basis for the rental pool operation by enacting Idaho Code §§ 42-1761 to 42-1766.

These code provisions<sup>10</sup> created the water supply bank to be operated by the Idaho Water Resource Board (Board). The Legislature directed the Board to adopt rules and regulations governing the management, control, delivery and use and distribution of water to and from the water supply bank. Idaho Code § 42-1762.

Idaho Code § 42-1765 authorizes the Board to appoint local committees to facilitate the rental of stored water. The statute provides that a local committee shall have the authority to market stored water between consenting owners and consenting renters under rules and regulations adopted by the Board. The Board adopted rules and regulations implementing its water supply bank authority in October, 1980. IDAPA 37.D, Water Supply Bank Rules and Regulations (1980). The Board adopted amendments to the Water Supply Bank Rules and Regulations on March 22, 1991. Pursuant to Idaho Code § 67-5204 the amended rules went into effect twenty days after being filed with the IDWR.

Rule 6 of the Board's current rules governs the appointment of local committees to facilitate the rental of stored water. The rule requires the local committee to adopt procedures governing the rental of stored water in a manner consistent with the Board's rules. The procedures must include provisions determining the price for water placed into the bank, the price of water rented out of the bank, and a provision determining the amount of the administrative rental pool charge to be paid to the local committee by persons renting water from the bank. IDAPA 37.D.6.1.2,3 and 4.11

The Board by resolution renewed the appointment of the Committee of Nine as the local committee for Water District 1 for a five-year term on May 24, 1988. Previous Board rules did not address how the local committee is to manage the moneys generated by collection of the administrative rental pool charge. Rule 6,1,11 of the newly amended rules requires that local committee procedures provide for the "Management of rental pool

<sup>10</sup> Idaho Code §§ 42-1761 through 1766.

IDAPA 37.D.6.2 requires the local committee procedures to require a 10% surcharge for credit to the revolving development account and the water management account established by Idaho Code §§ 42-1752 & 42-1760. Therefore, the total price for water rented from the water bank is the sum of (1) the price paid to the lessor of the water, (2) the 10% surcharge paid to the IDWR, (3) the amount retained by the local committee.

funds as public funds pursuant to the Public Depository Law, chapter 1, Title 57, Idaho Code."

The Legislature in 1986 amended Idaho Code § 42-1765 to restrict how funds generated from the administrative charge may be used. The amendment provides that, "[a]ny proceeds retained by a district shall be used exclusively for public purposes as set forth in section 42-613A, Idaho Code." Idaho Code § 42-613A provides as follows:

42-613A. Proceeds from the lease of stored water -District retention -- Control and use. Each water
district created pursuant to section 42-604, Idaho
Code, shall be authorized to retain in a special
account the proceeds from the rental of storage water
leased under the provisions of section 42-1765, Idaho
Code. The account shall not be used to reduce
assessments to water users nor shall it be paid to
water users in any event. Notwithstanding the
supervisory responsibilities of the department of water
resources over the activity of water districts, the
account shall be under the exclusive control of the
water district within which the leased water is stored.

All proceeds from the lease of stored water which are retained by any district under this section shall be used solely for one or more of the following public purposes:

(1) Expenses of the district.

(2) Improvements to the district's facilities, including a reasonable reserve for future improvements.

(3) Educational projects designed to increase public awareness in the area of water distribution, water rights and water conservation.

(4) Other public projects designed to assist in the adjudication, conservation or more efficient distribution of water.

Idaho Code § 42-613A authorizes a water district to maintain a special account to retain the proceeds generated from its rental pool operation. The statute emphasizes that the account shall be "under the exclusive control of the water district." The Legislature could not have been more specific in its intent. The clearly expressed intent of the Legislature must be given effect. Ottesen on Behalf of Edwards v. Board of Comm'rs of Madison County, 107 Idaho 1099, 695 P.2d 1238 (1985). We interpret the language of the statute to require that the funds generated by the district's operation of a rental pool must be maintained by the water district in the same manner as other water district funds are maintained but that use of the funds is limited as provided in the statute.

The statute requires that funds in the special account "shall not be used to reduce assessments to water users nor . . . paid to water users in any event." This requirement places a clear duty upon the water district to ensure that the rental pool funds are not intermingled with the normal operating funds of the district. All funds from the rental of water, other than the administrative charge, are held in trust to be paid to the owners of the water placed into the rental pool. Based upon the specific wording of the statute we conclude that Water District 1 does have responsibility and control over all water bank funds.

# Question No. 3

The third question asks whether the Committee of Nine has any control over the use and distribution of retained water bank funds? As previously discussed, the Committee of Nine is the advisory committee for Water District 1.12 The Committee of Nine is the entity approved by the Water Resource Board to serve as the local committee under Idaho Code § 42-1765.

Idaho Code § 42-1765 describes the role of the local committees in administration of the water bank. Idaho Code § 42-1765 states:

The water resource board may appoint local committees to facilitate the rental of stored water. The committee shall have the authority to market stored water between consenting owners and consenting renters under rules and regulations adopted by the board. . . .

In exercising its authority under this section, the local rental committee shall determine, in advance,

<sup>12</sup> The Committee of Nine is elected annually by the water users at the annual Water District 1 meeting. The Committee of Nine functions as an executive body representing the interests of the water users throughout the year. The makeup of the Committee is structured so as to provide representation for both stored and natural flow water users throughout the several reaches of the approximately 300-mile stretch of the Snake River from the Wyoming border to Milner Dam. The initial establishment of the Committee of Nine in the spring of 1919 grew out of the need to provide organizational continuity to the complex task distributing storage and natural flow water rights over the great distance encompassed by the district and to provide for the systematic collection of hydrographic information on the river. 1919 Annual Report For Water District No. 36. Commissioner of Reclamation at the time, W. G. Swendsen, approved of the establishment of the Committee of Nine. He also approved of the recommendation of the Committee that the district thereafter be operated on a year-round basis.

at the annual meeting of water users each year, that portion of the proceeds for the year from the lease of stored water to be paid to consenting contract holders of the storage water rights as reimbursement for their costs and that portion to be retained by the district in which the committee is located. Any proceeds retained by a district shall be used exclusively for public purposes as set forth in section 42-613A, Idaho Code. (Emphasis added.)

Idaho Code § 42-1765 does not vest in the local committee of a water district, here the Committee of Nine, any responsibilities regarding the collection, investment, or disbursement of water bank funds. The statute specifically requires the water district to retain authority over the funds and to administer the funds in accordance with Idaho Code § 42-613A.

#### Question No. 4

The fourth question asks whether the watermaster for Water District 1 is allowed to invest water assessment funds or water bank funds in common stocks, corporate bonds, mutual funds and other types of equity securities? It is apparent that since a water district is defined as an instrumentality of the state by Idaho Code § 42-604, the officers of such districts are subject to the general provisions of law governing the management of funds which come into their possession. This last question involves two issues: [1] What is the role of the watermaster in the management of the funds? [2] What are the authorized types of investments for these funds?

As explained earlier, Water District 1 has elected to proceed under the alternate procedures of Idaho Code § 42-619, which provides for a water district treasurer. The district treasurer has authority to "keep a complete, accurate and permanent record of all moneys received by and disbursed for and on behalf of the district." Idaho Code § 42-619(3). Since the district treasurer has an oversight authority regarding expenditures of the watermaster, that office is incompatible with the office of watermaster. One person cannot hold both positions. Supra, at note 9. Therefore, the watermaster has no authority to invest the funds of Water District 1.

Idaho Code § 42-619 requires that the water district treasurer comply with the provisions of the Public Depository Law, chapter 1, Title 57, Idaho Code, (the Act). The Act is designed to safeguard and protect the public moneys of all governmental entities having the power to levy taxes or assessments. The investment of public funds must be made in accordance with the Act even though interest so earned is less

than what might be earned by more speculative investments. Oversmith v. Highway Dist. No. 2, 37 Idaho 752, 218 P. 361 (1923). Statutes governing the general powers of governmental entities must be construed in pari materia with the provisions of the Public Depository Law. See Id.

Idaho Code § 57-105 defines "'[p]ublic moneys' . . . [as] all moneys coming into the hands of any treasurer of a depositing unit . . . . " Therefore, the monies received by Water District 1 as water user assessments or as payments into the water bank are "public monies under the provisions of the Public Depository Law." The district treasurer for Water District 1 must deposit in a designated depository all public monies of \$1,000 or more on hand. See Idaho Code § 57-127 (Supp. 1990). A designated depository in which public moneys may be authorized for deposit includes "any national bank, state bank, trust company, federal savings and loan association, state savings and loan association, federal credit union or state credit union, located in the state . . . . " Idaho Code § 57-110 (Supp. 1990). In most instances, the designated depository must be within the boundaries of the See Idaho Code \$\$ 57-128 and 57-130 (Supp. depositing unit. The statute contains an exception providing that upon 1990). appropriate approval the treasurer may invest surplus or idle funds of the depositing unit in investments permitted by Idaho Code § 67-1210. Section 67-1210 lists the types of investment vehicles authorized for use by the state treasurer in investing idle moneys in the state treasury. The list includes numerous types of obligation type securities issued by federal, state and local governmental entities and public corporations. The list does not, however, include common stocks, corporate bonds, mutual funds or other types of equity securities.

Consequently, Water District 1 is not authorized to invest any district funds, whether generated from water user assessments or water bank activities, in equity securities such as common stocks, corporate bonds or mutual funds.

#### **AUTHORITIES CONSIDERED:**

#### Idaho Statutes

Act of March 11, 1903, 1903 Idaho Sess. Laws 223.
Act of February 19, 1927, ch. 39, 1927 Idaho Sess. Laws 51.
Act of January 31, 1947, ch. 11, 1947 Idaho Sess. L. 11.
Act of March 27, 1969, ch. 305, 1969 Idaho Sess. Laws 913.
Act of April, 4, 1989, ch. 286, 1989 Idaho Sess. Laws 710.
Idaho Code § 42-106.

Bruce Balderston, CPA Page 16

Idaho Code §§ 42-601 through 619.
Idaho Code § 42-1752.
Idaho Code § 42-1760.
Idaho Code §§ 42-1761 through 42-1766.
Idaho Code § 57-105.
Idaho Code § 57-110 (Supp. 1990).
Idaho Code § 57-127 (Supp. 1990).
Idaho Code § 57-128 (Supp. 1990).
Idaho Code § 57-130 (Supp. 1990).
Idaho Code § 67-1210.
Idaho Code § 67-5204.
Idaho Code § 73-116.
Chapter 1, Title 57, Idaho Code.

#### Idaho Cases

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Bailey v. Idaho Irrigation Co., 39 Idaho 354, 227 P. 1055 (1924).

Big Wood Canal Co. v. Chapman, 45 Idaho 380, 263 P. 45 (1927).

Kopp v. State, 100 Idaho 160, 595 P.2d 309 (1979).

Ottesen on Behalf of Edwards v. Board of Comm'rs of Madison County, 107 Idaho 1099, 695 P.2d 1238 (1985).

Oversmith v. Highway Dist. No. 2, 37 Idaho 752, 218 P. 361 (1923).

State ex rel. Evans v. Click, 102 Idaho 443, 631 P.2d 614, (1981).

#### Cases from other Jurisdictions

People ex rel. Chapman v. Rapsey, 16 Cal.2d 636, 107 P.2d 388 (1940).

Township of Belleville v. Fornarotto, 228 N.J. Super. 412, 549 A.2d 1267 (1988).

Bruce Balderston, CPA Page 17

#### Other Authorities

IDAPA 37.D Water Supply Bank Rules and Regulations.
Rule 4.3 of Water District 1 Rental Pool Procedures.
63A Am.Jur.2d Public Officers and Employees § 65 (1984).
1919 Annual Report For Water District No. 36.

DATED this 5th day of August, 1991.

LARRY ECHOHAWK Attorney General State of Idaho

LARRY ECHOHAWK

Analysis By:

..

David J. Barber Deputy Attorney General Natural Resources Division

Phillip J. Rassier Deputy Attorney General Idaho Department of Water Resources



## 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

TO: Ron Carlson, Eastern Region Manager

FROM: Norm Young, Administrator

RE: Water District 01 Accounting Methods

DATE: August 2, 1991

I continue to be extremely concerned about the present procedure used by Water District 01 whereby the flow data is adjusted after the end of the irrigation season. This method was adopted when the program was initiated in the 1970's to allow accurate accounting of all water supplies and uses. The accuracy provided by this procedure is important, but recent experience has shown that it comes with an unacceptable sacrifice of timeliness. Water users are hindered in planning for the upcoming year because the carryover storage is not known, they are not able to track with needed confidence their storage use as the season progresses, and some have received unexpected, large billings for previous years for water rentals they did not know they were making. Annual reports have not been finalized, printed and distributed as required by Section 42-614, Idaho Code.

In view of these concerns and in an effort to assure that the process created by the department for use in Water District 01 is and continues to be state-of-the-art, I am asking that you and the staff of the Hydrology Section evaluate the current watermaster accounting processes and associated procedures with the intent of identifying ways to make the accounting more of a real-time process. I am requesting that this evaluation be completed with a written report to me by December 1, 1991. I envision that the report will describe the various alternatives relative to the actions needed to implement, how long it will take to implement them, the cost, and the expected improvement in timeliness, along with any downsides to implementing the action. It should also include a schedule to bring up to date the preparation, printing and distribution of all annual reports now backlogged.

I recognize that it is unlikely that an accounting procedure could ever be implemented that is not subject to criticism by those being regulated and assessed. However, I believe it is important that we periodically assess the procedure and

reasonable alternatives. Obviously, I would like a procedure that provided "final" data on a real-time basis. I doubt that this is possible, but I think a reasonable goal is to have data considered final within a maximum of one month after it is collected. Some action to improve timeliness needs to be implemented this year to avoid a repetition of the billing problems experienced this spring.

It is not my intent to discard accuracy as a very important goal of the accounting procedure, but a livable balance must be established between accuracy and timeliness. Quality data needs to be made available in time to meet the needs of the water users, the USBR, and the Department.

cc: Keith Higginson Wayne Haas Alan Robertson

1970

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION
IDAHO FALLS, ID
ph. (208) 525-7161

FAX NO. (208) 525-7177

#### TRANSMITTAL COVER SHEET

OMNIFAX

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# List of Pumps on Teton River from Harrops Bridge to Mouth of Teton Canyon (Including Tributaria

	Name of Pump	1990 Si	torage Dive	ated.	199
× 1.	South Pipe (Teter Pipeline)	18.7cts	2,406	A. F.	
(1)	J. Ricks	3.0	304	11	
11	Boelke (Teton Pipeline)	8.6	925	4	
11	Clements ville (Teton Pipeline,	36.0	3,450	4	
11	R. + J. Brown	8.4	1,469	4	
6.	P.L. Stoff (On a tributury)	1.0	60	"	
11	B. Parkinson	24.1	1,530	"	
8.	P. Stevens (on Canvon Ck)	7.6	951	4	
11	V. Schwiendiman	26.0	3,120		
11	C.M. Olsen		0	4	
11	R.R. Ricks	1.8	116	4	
12.	R.B. Ricks	7,4	1,013	15	
11	Canyon Ck Lateral (On Canyon Ch	25.8	4,414	4	
111	George Cropo (Canyon Ck		173	4	
1 1					

\* Teton Pipeline Included EHCO Ranch, Clint Hoopes,
Deman + Terry Bott, Rex + Larry And, Parrell, And, Garnen
Simmons, Max & Mennill Rammel, Glen Nelson, KJ. Arnold,
My + K Parkinson

- 11	Thru							
Total	EXCHANGE	PUMP	DATA	(majo	DOT	5) =	1990	
		and the same	4-2			Set Mary	Aur.	

EXCHANGE PUMP  1 COVINGION BROS 2 L LOOSLI		0.0	EXCHANGE PURP 8 V SCHNENDIMAN 9 M PARKINSON 10 M & M RAMMEL	CFS PUMPED AF YR  0. 0. 0.	0.0	EXCHANGE PUMP 15 RICKS, R. 16 EHCO RANCH 17 D. L. & R ARO 19 HINK, INC.	0. 0. CES bfuller es	919.8 0.0 0.0 0.0
G USBR 2 G NELSON S STEVECO CANYON C CANYON CR LAT B PARKINSON	0. 2. 0.	326-6	1) D ROTT 12 C HOOPES 13 URPR 5 14 HOOPES BROS	0. 0. 0.	0.0	19 R & J BROWN 20 USBE 3 21 USBE 1	0 - 0 -	0.0

#### WATER DISTRICT 1 ANNUAL MEETING Elks Lodge, Idaho Falls March 5, 1991

Keith SIK WAYNE AM

#### AGENDA

9:00 a.m.	Introduction of Agenda - Chairman Paul Berggren
9:10 9:30	IWUA Legislative Report - Ted Diehl IWUA Education Committee Report - Vergil Temple
10:00 a.m.	Call to Order - Chairman Paul Berggren Welcome - Mayor Campbell
	Election of Temporary Chairman Election of Temporary Secretary
	Reading of Minutes for 1990
	Selection of Committees
	Henrys Fork Dist. 1 (Main river ab Lorenzo) Lower Valley Dist. 2 (Feeder Canals) Dist. 3 (Lorenzo to Shelley) Dist. 4 (Below Shelley)
	Report on Committees & Elections Committees Excused: Credentials, Order of Business
	Roll Call
	Election of Committee of Nine
11:00 a.m.	Reports - Bureau of Reclamation a. Water Supply Outlook b. BOR Activities
11:40	Finance Committee Report - Reed Murdock
11:50	Lunch Break (No host luncheon - \$7.00 roast beef)
1:00 p.m.	IDWR Director's Report - Keith Higginson
1:15	Adjudication Update - Dave Shaw
1:45	Annual Report of the Committee of Nine - Paul Berggren
2:00	Ron Carlson - Watermaster's Report
2:15	Resolutions & Election of Watermaster
	Unfinished Business New Business

#### WATER DISTRICT 1 ANNUAL MEETING

#### Resolutions 1991

1. BE IT RESOLVED, That the watermaster continue to apply the best available methods and technology to assure: accurate deliveries of natural flow and stored water, consistent regulation procedures, the availability of water supply and diversion records to the water users, and that all water users are assessed for water deliveries on an accurate and equitable basis.

BE IT FURTHER RESOLVED that the watermaster continue to expand and maintain automated data collection where it can effectively reduce personnel costs, travel costs, or result in cost or water savings for Snake River water users or assure better and more current data.

- 2. That the water users of Water District 1 continue the cooperative program with the Idaho Department of Water Resources as outlined in the Memorandum of Understanding signed by the Chairman of the Committee of Nine and the Director of the Department of Water Resources on March 3, 1979.
- 3. We recommend that Ronald D. Carlson be re-elected watermaster for the ensuing year. This recommendation shall, under the cooperative program with the IDWR, authorize the watermaster to hire a full time staff of a deputy, two assistants, a secretary, and a data specialist. Thirty-three percent of the watermaster's salary and benefits shall be paid from non-water district funding provided by the Idaho Department of Water Resources.
- That the duties of the watermaster shall begin on this date and continue for a period of one full year.
- Proposed Budget for Water District 1 for the year beginning March 1, 1991.

#### 1991 Water District Budget

HYDROPGRAPHERS	
16 CON DUST.	\$ 8,000
Idaho Falls 800 hrs. (+ mi.)	3,000
Lower Valley 400 hrs. (+ mi.)	3,500
Henrys Fork 1,800 hrs. (inc. mi.)	17,000
Teton River 520 hrs. (+ mi.)	4,100
RIVER RIDERS	\$ 35,600
Righy & helbe biv.	\$ 6,000
Blackfoot Division 600 hrs. (+ mi.)	3,200
Swan Valley 480 hrs. (+ mi.)	3,200
Upper Falls River 250 hrs. (+ mi.)	1,200
Willow Creek 5 mos. @ \$550 (inc. mi.	) 3,000
Idaho Falls 6 mos. @ \$450 (inc. mi.	) 1,500
Milner 12 mos. @ \$ 30 (inc. mi.	360
PROGRAM EXPENSES	\$ 18,460
Automation Expansion	\$ 15,000
Sutron	34,500
Streamgaging	105,000
U of I Studies	25,000
	\$179,500
PERSONNEL EXPENSE	
Retirement	\$ 6,200
State Tax	800
Social Security	5,000
Mileage	23,000
State Insurance Fund	2,400
Employment Insurance	500
Part-time Help	4,900
Miscellaneous Hydrographer Expense	500
MISCELLANEOUS EXPENSE	\$ 43,300
IWUA	\$ 2,500
Otto Otter	500
Postage	2,000
Supplies, phone, copying	2,500
Audit	3,300
	1,200
Meetings	\$ 12,000
WATERMASTER	
IDWR Contract	\$253,000
Report	4,500
Travel	2,900
	\$260,400
Total 1991 Budget	\$549,260
Estimated General Assessment	\$606,260
UPPER VALLEY ADDITIONS	
Committee of Nine	\$ 7,000
Attornies Fees	50,000

(3c)

6. WHEREAS, it is the watermaster's responsibility to assure the proper delivery of both natural flow and storage supplies to all water users, and;

WHEREAS, the normal cost of delivering water to many diversions is less than their normal assessments when based upon their total season use of water;

NOW, THEREFORE, BE IT RESOLVED that the watermaster of Water District 1 is hereby authorized to assess a \$20.00 minimum charge for every diversion within its jurisdiction.

- 7. Resolved that the watermaster shall prepare a report in accordance with Idaho Code, Sec. 42-614, which shall become the official billing to the individual water users, canal companies, and irrigation districts, and is hereby authorized to collect all of the expenses of delivering the waters of the district, including his salary and that of his assistants, and shall make all disbursements necessary to the conduct of the business of administering and delivering the waters of the district.
- 8. Resolved that no ditch, canal company, or other water users shall have the right to demand and receive water, and the watermaster shall not deliver to such person until receipt of the amount due and payable from such user for the past years water use.
- 9. Resolved that copies of the minutes of the annual meeting, the budget as approved, all resolutions approved, and the report prepared in accordance with Sec. 42-614, shall be filed with the county clerks of Bonneville, Madison, Teton, and Fremont Counties.
- 10. WHEREAS, the Committee of Nine has been appointed by the Idaho Water Resource Board pursuant to Sec. 42-1765, Idaho Code, and;

WHEREAS, the watermaster of Water District 1 has traditionally acted on behalf of the Committee of Nine in as manager of the rental pool, and;

WHEREAS, it is necessary to an orderly rental program that the watermaster continue to have the authority to act on behalf of the Committee of Nine,

THEREFORE, BE IT RESOLVED that for the purpose of water board appointment and managing the rental pool of Water District 1, the watermaster be considered to be a member of the Committee of Nine.

- BE IT FURTHER RESOLVED that with the exception noted in 11. Resolution No. 8, we recommend that the Committee of Nine The members be continued with nine regular members. representing the Burley and Minidoka Irrigation projects are to be alternated between the two districts as they arrange. In addition, advisory members representing the Bureau of Reclamation, Teton Basin, Gooding Canal, A & B Irrigation, the Wyoming State Engineer and a member from the Burley or Minidoka District; whichever is not currently represented on the regular committee be included. Any canal company or district desiring to have representatives attend meetings of the Committee of Nine should notify the watermaster, who will then advise them of dates and time of committee meetings so that they may have the opportunity to attend such meetings.
- 12. WHEREAS, it is in the best interest of the water users of Water District 1 to account for all diversions which might adversely affect any prior natural flow or storage diversions;

BE IT RESOLVED that the watermaster shall collect records of water diversions during the entire year.

13. WHEREAS, the Committee of Nine represents irrigators from all areas of Water District 1, and;

WHEREAS, the Water Bank Rules specify that the operation of the water bank will be by and for irrigators, and;

WHEREAS, the Water District's Credentials Committee has historically specified that "no person be elected to membership and service on the Committee of Nine, Committee on Organization, and Order of Business or Credentials Committee unless he be a land owner and a water user . . ", and;

WHEREAS, questions have arisen over the definition of "land owner" and "water user."

IT IS, THEREFORE, RESOLVED by the water users of Water District 1 this Fifth day of March 1991, that water user and land owner shall be defined as follows:

- 1. That he owns an irrigated farm that is comprised of more than twenty (20) irrigated acres, that has valid surface water rights deliverable by the Snake River Watermaster.
- That he has received over 50% of his annual income during one or more of the past ten years from farming activities within the portion of the

14. WHEREAS, the resolution of the Idaho Water Resources Board (IWRB) designates the Committee of Nine as the local committee for the operation of the Rental Pool; and,

WHEREAS, the Committee of Nine is presently working of a redraft of the rental pool rules;

NOW, THEREFORE, be it resolved that the members of Water District 1 hereby confirm the authority of the Committee of Nine to adopt the rules for 1991; and,

BE IT FURTHER RESOLVED that copies of the 1991 Rules be published and available to the water users of the district as soon as possible, but prior to April 1, 1991.

#### RESOLUTION 15

WHEREAS, it has been over fourteen years since the collapse of the Teton Dam; and,

WHEREAS, during that period of time the United States Government has made extensive investigations and studies to pinpoint the cause of its failure, and representatives of the United States government have informed the people of the Upper Snake River Valley of Idaho that a safe dam can be built at the present dam site; and,

WHEREAS, the need for the Teton Dam and Project has not diminished but has increased by reason of growing demands for upstream storage, power, flood control, fish and wildlife, and recreation; and,

WHEREAS, the citizens of the Upper Snake River Valley ever since the failure of the Teton Dam, have expressed their desire that the dam be reconstructed and have urged its reconstruction by resolutions unanimously adopted every year at local, district, and state water meetings, copies of which have been sent to the Idaho Congressional Delegation, the Secretary of Interior, and the U.S. Commissioner of Reclamation.

NOW, THEREFORE, BE IT RESOLVED by this Assembly representing the water users of the Upper Snake River area of Idaho, that the U.S. Government forthwith commence reconstruction of the Teton Dam of the Lower Teton Basin Federal Reclamation Project.

BE IT FURTHER RESOLVED that copies of this Resolution be sent to each member of Idaho's Congressional Delegation, to the Secretary of Interior, and to the U.S. Commissioner of Reclamation.

Dated this \_\_\_5th\_\_ day of March, 1991.

CHAIRMAN, Committee of Nine

SECRETARY, Committee of Nine

#### WATER DISTRICT 1 - PROPOSED RESOLUTIONS

#### NO. 16 - GALLOWAY

WHEREAS, the possibility of certain species of salmon being listed as threatened or endangered under the Endangered Species Act is very real and could result in severe demand for the use of upper Snake reservoir storage rights; and,

WHEREAS, one possible alternative is to construct the Galloway Project on the Weiser River to provide such water;

NOW, THEREFORE, BE IT RESOLVED that Water District 1 encourage legislative funding for the study of the Galloway Project as an alternative to provide water to help alleviate the salmon crisis in Idaho.

#### NO. 17 - U.S. FILING FEES - SNAKE RIVER BASIN ADJUDICATION

WHEREAS, the United States will be a major claimant and beneficiary as a result of having their water rights defined and decreed in the Snake River Basin Adjudication (SRBA); and,

WHEREAS, the United States is contesting the payment of adjudication filing fees, the absence of which might be to delay the completion of the SRBA;

NOW, THEREFORE, BE IT RESOLVED that Water District 1 support the State of Idaho and the Idaho Department of Water Resources in completing the Snake River Basin Adjudication and be authorized to participate in any appeal of the filing fee issue as initiated by the United States.

#### NO. 18 - 1990 FORT HALL WATER RIGHTS SETTLEMENT AGREEMENT

WHEREAS, the 1990 Fort Hall Water Rights Settlement Agreement has received the approval of the United States, State of Idaho, Committee of Nine, and Tribal Council and is in accord with previous resolutions adopted by this Water District;

NOW, THEREFORE, BE IT RESOLVED that Water District 1 approve the Fort Hall Water Settlement Agreement of 1990.

#### NO. 19 - FISH FLUSH WATER

WHEREAS, the Committee of Nine agreed in January 1991 to support flexibility in the operation of the Water Bank and adopted an interim rule to facilitate leases for said purposes;

NOW, THEREFORE, BE IT RESOLVED that Water District 1 continue in its support of the rental of available water bank water for fish flush purposes in the lower Snake River consistent with its Rental Pool Procedures.

. . . . .

WHEREAS, the best solution to eliminate the affects of the Rock Creek case is to support the proposed congressional legislation introduced by the Idaho congressional delegation to establish state primary; and

WHEREAS, the National Energy Security Act of 1991 proposes an even further extension of FERC's authority in contravention of state water law;

NOW, THEREFORE, BE IT RESOLVED that Water District Ol support congressional legislative bills designed to establish state primacy in water law and require federal agencies to comply therewith.

#### #21 COMPREHENSIVE STATE WATER PLANS

WHEREAS, threats for the out of state diversion of Idaho's already appropriated waters persist in these years of drought;

NOW, THEREFORE, BE IT RESOLVED that Water District Ol support comprehensive state water planning be continued and that such legislative action as necessary be taken to insure that any proposed out-of-state diversion is reviewed under all legal provisions which have been U.S. Supreme Court validated.

BE IT FURTHER RESOLVED by Water District Ol that all efforts be made to encourage reasonable consideration of economic factors in any mitigation plan proposed.

#### #22 OUTSTANDING RESOURCE WATERS

WHEREAS, the designation of certain waters as outstanding resource waters could exclude all future use which could degradate the receiving waters below their current quality;

NOW, THEREFORE, BE IT RESOLVED that Water District Ol support review of the procedures by which Idaho Health and Welfare can designate special resource waters and lock in a level of water quality which may have the effect of eliminating any reasonable growth.

#### #23 GREATER YELLOWSTONE STUDIES

WHEREAS, the Greater Yellowstone Framework Study could have the effect of foreclosing future water uses and protections for Water District Ol users;

NOW, THEREFORE, BE IT RESOLVED that Water District Ol oppose efforts in the Greater Yellowstone Framework Study which would lock-up water use in the Upper Snake Basins in Idaho and Wyoming.

#### #24 MITIGATION WATER CONTRACT

WHEREAS, the District users that will be impacted by the assertion of the Fort Hall Tribes' rights under the 1990 Agreement has selected a non-profit corporation as the vehicle to hold and allocate said water amongst those impacted;

NOW, THEREFORE, BE IT RESOLVED that Water District Olsupport such efforts as necessary for said non-profit corporation to contract for and obtain mitigation water for use in Water District Ol as a result of the implementation of the Fort Hall Water Rights Agreement.

#### #25 WATER DISTRICT 01 LEGISLATION

WHEREAS. House Bill 320 proposes changes to Chapter 6 of Title 42 of the Idaho Code to give a minimum of legal status to a water district, including authority to authorize an advisory committee; and

WHEREAS, Senate Bill 1061 proposes an equitable solution to voting in water district meetings and for charges against non-consumptive users previously not charged;

NOW, THEREFORE, BE IT RESOLVED that Water District Ol users in their 1991 annual meeting support the passage of both bills.

5392m

PLANNED METHOD LINITIAL?

1. Annual Storage Alloc.

USBR determines

USBR determines

2. Data Collection

2. Res contents, outflow

5 River flows

c. Canal diversions

UM obtains from USBR

Will hydrographers, telemanics

UM hidreariphers

3. Taily allocation of natural flow and determination of storage use

Natural flow not determined. WM periodically balances accom stored flow at Blackfoot computed as E DS minus chall trans losses minustorage deliv above Blackfoot with accom stored flow at Blackfoot computed from total flow there minuratural gain below lowest dir (Farrons Canal) near Blackfoot gage. These are balances by cutting natural flow rights, which adjusts the storage delia values. This balance is made only after the "normal flow" below the Parsons Canal recedes to zero.

"Normal flow" is observed flow at a gage less stored flow. It is the remaining natural flow after upstream diversions have taken their natural flow entitlements. This remaining natural flow will be used als by other canals.

The "normal flow" method works only in situations where upitream rights are all older than the downitream rights. In balancing stored flows at Blackfoot by means of adjusting computed storage deliveries the natural flow rights are cut to the proper priorities, perisheally

WM obtains from USBR im hydrographers, telemanes will hydrographers

For each reach:

reach gain = D-I+DS+5div Reach gains are summed downitream to each gage to get natural flow at the gage. Natural flows are allocated to oldest priorities. Additional diversion. or stored water.

4. Gain to American Fails "Newell'formula sometimes modified. Reservoir

Similar to all other reaches Am F reach gain = 0 - I + DS + Edir

<u>ITEM</u>	PRESENT METHOD	PLANNER METHOD (Thirty)
5. Output.		PLANNED METHOD [JAITIAL]
2. Timing	A lag of one to several days occurs in doing all data work and balancing stored flow at Blackfort to get priority date cuts.  After computation by WM.	All data handling and computation for the
b. Decision process	After computation by WM.	previous 24 hours can be done each day.  Whi would not do computations, with  computer output available daily he would  se free to make the daily discious:  niolved in cutting rights, informing water
c Briling	"Several frantic weeks in getting the bills out" (after Oct 1.)	users, managing data aquisition, etc. Since total diversions would be available daily the bills could be sent out almost
d. Woicemaster Region-	Freient format. Published by I March	Immediately effect Oct 1.  Similar to present format except where method of water right allocation effect.
		All data would be listed by computer for direct insertion into the report.
6. Structure of WMI Operations.		
a. Snoke River below) Neeley	With for current reports.	Supervision by WM.
b. Srazi liver abovi Neeley	supervision by WM	Supervision by WM.
C. Henrys Fk basin	Fremont-Madison District provides deputy win services including computations of water right allocation. Data provided periodically in him	Supervision by WM.
d. Heodwater tribi.	periodically to WM. Separately managed. Data provided to WM periodically.	Supervision by WM.
7. Equipment	Office equipment.	Typewriter style terminal connected to

. .

7.

ITEM

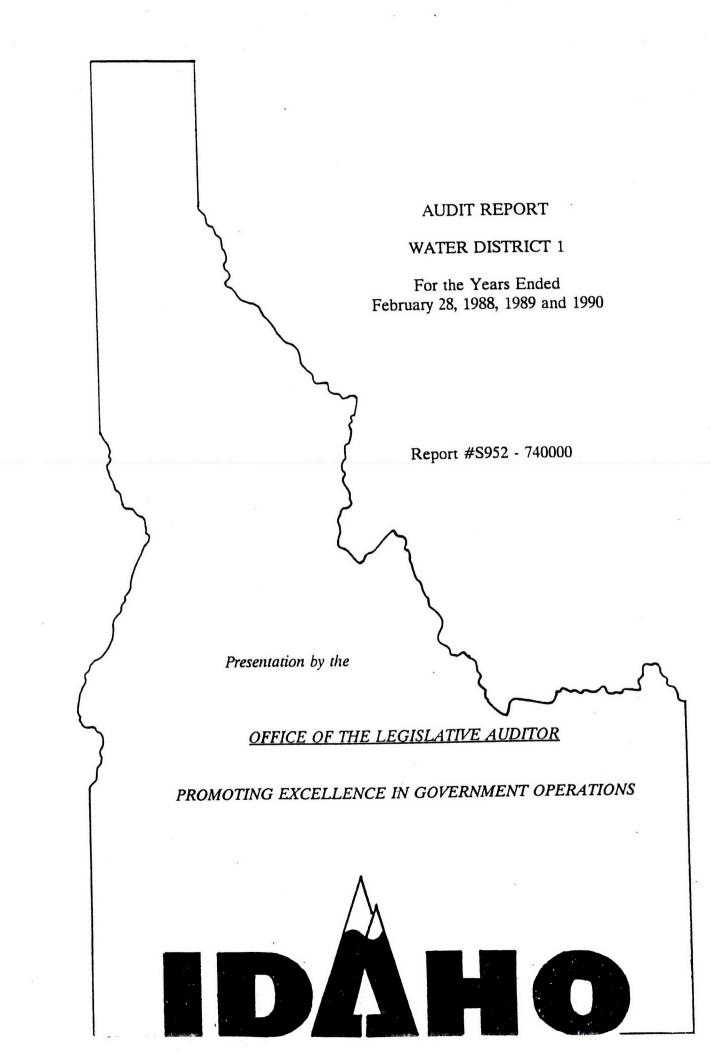
PRESENT METHOD

PLANNED METHOD [INITIAL]

3. River management to meet div. requests.

Relies on WM experience. In normal years releases are made to provide a flow of 1000-2000 et at Blackfort. In dry years it is attempted to minimize the Blackfort flow. There is no systematic procedure to base releases on the expected natural flow and dir orders for the next day or two.

Reach gains would be projected for the next three days based upon the trend in the immediate past gains. These would be summed to determine projected natural flows. Direction orders which would be submitted to the WM up to two days in advance of need would be used with the projection natural flow to identify a charge in storage release required to meet the diversions, taking the times into consideration. This computation is similar to the variety natural flow allocation discrimination except that required storage release is determined instead of the actual stored flow. The win would then notify USBR, which would determine where the drafts would be made.



### **FOREWORD**

PURPOSE OF THE AUDIT

Our fiscal/compliance audit of Water District 1 was made to determine:

- 1. The adequacy and accuracy of the fiscal records and the reliability of the system of internal control in order to issue an opinion on the fairness of the accrual basis statements.
- The degree of compliance with various State laws, rules and regulations affecting the fiscal operations of the District.
- Areas in the administrative and fiscal operations which could be improved and to make recommendations for improvements.

SCOPE OF THE AUDIT

We examined the financial statements of Water District 1 for the fiscal years ended February 28, 1988, 1989 and 1990.

Information contained in this report was gathered from accounting and administrative records. We interviewed several employees of Water District 1.

AUDIT AUTHORIZATION

Reported to the Joint Finance-Appropriations Committee of the Idaho Legislature as authorized by IDAHO CODE, Section 67-445.

ASSIGNED STAFF

Donald Berg, Staff Auditor

ADMINISTRATION AND TECHNICAL REVIEW

Bruce Balderston, CPA, Legislative Auditor Larry Kirk, CPA, Deputy Legislative Auditor

**GRAPHIC LOGISTICS** 

Carol Wells, CDP Sharon Natanson

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### DIGEST OF AUDIT

**SCOPE** 

REPORT SUMMARY

FINDING #1

FINDING #2

We audited the financial operations of Water District 1 for the fiscal years ended February 28, 1988, 1989 and 1990. Our audit was made for the purposes of formulating an opinion on the financial statements and to evaluate internal controls and compliance to various rules, regulations, and state laws. In addition we sought information to respond to concerns raised by legislators and members of the Water District.

We have issued an unqualified opinion on the presented financial statements of Water District 1. However, the fiscal operation and organizational structure of the District needs improvement. This report contains six findings concerning various violations of state laws, regulations, and rules established by the Water Resource Board and Water District 1. Many of these laws, rules and regulations governing the actions of Water Districts appeared unclear or ambiguous to us. As such, we requested an Attorney General's opinion to clarify many of the issues discussed in this report. We have included a finding and recommendation that the Department of Water Resources or the Water Resource Board consider seeking legislation to clarify the laws governing Water Districts. For reader convenience, the Attorney General's Opinion #91-7 has been included as Appendix B in this report.

Finding one concerns the handling of District funds and the location in depositories not allowed by Idaho Code. We found that the District had deposited funds in various commercial and investment accounts not allowed by law. In addition, the Watermaster assumed the duties of District Treasurer, a function determined by the Attorney General as incompatible with his duties as Watermaster. We have recommended that the District deposit all funds in depositories allowed by law. We further recommended, as did the Attorney General, that the District discontinue with the present arrangement until the next annual meeting. Instead, the officers of Water District 1 or the Director of Water Resources should arrange for the election or appointment of a treasurer.

Finding two concerns the investment of District funds in stocks and other equity securities not allowed by Idaho Code. Nearly all of the investments made by the District were in unsecured equities and high risk FINDING #3

FINDING #4

FINDING #5

mutual funds. Some of these investments declined in value and were sold at a loss. We have recommended that these investments be liquidated in a timely fashion and all future investments of the District comply with Idaho Code.

Finding three identifies delays by the Watermaster in issuing the annual report of the District. The information used to prepare the annual report is also used by the members of the District to determine the amount of water leased from the "Water Supply Bank." We believe that the date the report is issued was intended to establish the timing of when lease payments to water owners are due. We have recommended that the annual report be issued by February 1st of each year as required by law.

Finding four discusses the reasons for delays in lease payments from the Water Supply Bank. We interpret the Water Supply Bank Rules adopted by the District to require lease payments be made when the annual report of the Watermaster is issued. Idaho Code requires that this annual report be issued by February 1. However, lease payments have not been paid for up to six months past this date. The delays in issuing the annual report may have contributed to the delays in making lease payments. In addition, the District may not have collected all of the lease payments by February so full distributions are not possible. However, we believe the District's cash flow is the primary reason for the delays in lease payments. The District made a major change in the timing of assessments which adversely affected the cash flow. As such, we have recommended that the District's cash flow be improved by reversing the change in the timing of assessments made in 1988 or by some other means to allow the Districts to make lease payments on time as intended by the Water Supply Bank Rules.

Finding five concerns the depository for water supply bank funds and the use of the funds not allowed by Idaho Code. Idaho Code is very specific that these funds be maintained in a separate account, not be used to reduce assessments or otherwise paid to water users. These funds have not been maintained in a separate account and have been used for cash flow financing of the District following the change in assessment procedures discussed in finding four. The local advisory committee, the Committee of Nine, assumed authority over water supply bank funds beyond the duties allowed such committees in Idaho Code.

Finding six addresses the need for amendments and new sections to the Idaho Code concerning the organization and authority of Water Districts. Most of the findings cited in this report resulted from misinterpreting the requirements of the law. We believe recent amendments to the laws governing Water Districts contradict other sections or lack clarity specifying the actions allowed. In addition, the code does not clearly identify an individual or group that should manage day-to-day activities of the District. The financial management structure of Water Districts can now include a treasurer who is loosely responsible to the Director of the Department of Water Resources rather than to the members of the District. We believe that Water Districts should have an administrative board to oversee daily activities of the District. This board would be responsible to the members of the District for administering District funds and representing the District in other activities during the year. This board would not have any authority over the Watermaster or the distribution of the waters of the District. The Committee of Nine has generally been acting in this capacity. However, this local committee lacks the legal authority to make decisions for the District or obligate the District in contract negotiations or other matters. Therefore, we have recommended that Water District 1, Department of Water Resources, or Water Resource Board seek legislation to establish an administrative board for Water Districts within Idaho Code to clarify these administrative and financial management issues.

This is the first time we have audited Water District 1. We were requested to perform the audit due to concerns raised by legislators and local constituents. As an instrumentality of the State, Water Districts may be audited by this office but usually are not. The prior audit for the fiscal year ending February 28, 1987 was conducted by Rudd & Co., CPA in Idaho Falls and did not contain any findings or instances of non-compliance with rules, regulations or State laws.

The following four questions were developed to guide our examination of the concerns raised relative to the District. We have restated the questions and summarized our responses here, with further information concerning these issues contained in the "Additional Information" section of this report.

Several of the members of the District have indicated difficulty in getting timely and understandable financial information. What type of accounting system does the

**RESPONSE #1** 

**QUESTION #2** 

**RESPONSE #2** 

**QUESTION #3** 

**RESPONSE #3** 

**QUESTION #4** 

**RESPONSE #4** 

District have and is this system the reason for delays and unclear information?

The accounting system is mainly a manual one which has contributed to the delays in preparing financial statements. Recent changes have included a computerized system which should improve timeliness. We have suggested that the District alter its reporting format to conform to acceptable standards of financial presentation.

Does the District invest in common stocks or other equity securities and, if so, what are the investment policies and practices followed.

The District has several hundred thousand dollars invested in marketable securities and equity investments not allowed by Idaho Code as discussed in Finding #2.

Are payments made timely to owners of leased water, and if not, what is the cause?

Payments to owners of leased water have <u>not</u> been made timely and the amount withheld beyond the intended due date has steadily grown since 1988. We believe these delays are primarily due to a change in the timing of the general water assessments in 1988. This issue is discussed further in Finding #4.

What is the role and function of the "Committee of Nine" and under what authority was it established.

The Committee of Nine apparently has a long history beginning at the turn of the century with limited authority as granted by the Water Resource Board and Idaho Code. Committee members represent geographic areas and diverse interests of the District. The Committee's only legally authorized function is to facilitate the rental of water through the water supply bank. This committee, however, has assumed additional duties that are not supported by state laws, Water Resource Board policies, or Department of Water Resources regulations. The Committee of Nine has directed the Watermaster in the operations and finances of the District. The committee acts much like a Board of Directors in all matters relating to the District without any authority to do so. According to the Attorney General's Opinion, the official officers of the District are the Chairman and Secretary during the

annual meeting and the Watermaster duly appointed to conduct the daily affairs of the District during the year. At no time has the Committee of Nine been authorized to direct the operations or finances of the District beyond the duties involved in facilitating the marketing of stored water within the water supply bank.

We thank Mr. Ron Carlson, Watermaster, and his staff for their assistance and cooperation during the audit.

### ADDITIONAL INFORMATION

QUESTION #1
What type of accounting
system does the District
have and is this system
the reason for delays
and unclear information?

The following provides additional information concerning the questions raised about Water District 1 operations and procedures.

The accounting system used by the District is a fairly informal, manual system with few written procedures or policies except resolutions issued by the Committee of Nine which direct the functions of the Water Bank. A general ledger is kept showing expenses by category and receipts by date and purpose. The number of expenditures averages around 50 per month with major expenses being water bank rental payments, District improvements, and payments to the Department of Water Resources for administrative costs and salaries. Most receipts are collected during the spring of each year for water assessments and are easily confirmed to assessment records and water rights. The District recently acquired a computer software package to provide a basic general ledger, expenditure and revenue details, and summaries for financial statement preparation.

The Watermaster acts as the District's treasurer and prepares a summary of the year's expenditures and receipts, with comparisons to budget, for the annual meetings in March. The District's fiscal year ends February 28 and the annual meetings are scheduled a few days later in March. This timing of events makes statement preparation for the annual meeting difficult and audited statements impossible.

The information prepared by the Watermaster is generally complete but is not presented in accordance with accepted accounting principles and does not clearly show the changes in the District's account balances or financial position.

QUESTION #2
Does the District invest
in common stocks or
other equity securities
and, if so, what are the
investment policies and
practices followed?

OUESTION #3
Are Water Bank lease
payments made timely to
owners of leased water,
and if not, what is the
cause?

The District continues to hold various stock and bond investments through D.B. Fitzpatrick, Investment Advisor. The day-to-day investment decisions are made by Fitzpatrick based on a general investment "Resolution" issued by the Committee of Nine. The Committee is primarily involved in this issue because investable funds were generated from water banking activities which the Committee believed they controlled. The investment resolution states the intention is for long term growth to finance future development and improvements in the District. The District made other money market and mutual fund investments with current operating funds.

A significant change in the timing of water assessments occurred in 1988. The change was initiated by the Committee of Nine and approved by the general membership at the annual meeting.

Prior to this change the water users received an annual assessment which showed: (1) the estimated assessment for the coming year, and (2) an adjustment to actual for the prior year assessment based on the actual amount of water delivered to the user. The members of the District decided that they preferred to pay the actual amount due, rather than pay an estimated amount with adjustments in the following year. This severely limited the District's cash flow for 1989. To facilitate the transition to the new billing procedure, Water Bank funds were used to finance Water District operations. Cash flow was further limited when the water bank did not "sell" as much water as in past years. Consequently, the District has been unable to meet current payments to water owners and owes approximately \$275,000 as of February 28, 1990.

OUESTION #4
What is the role and function of the "Committee of Nine" and under what authority was it established?

The members of the Committee of Nine are nominated by sub-committees and elected by the entire body of the District. Resolutions adopted by the members of the District at the annual meeting generally identify the procedures and powers of the Committee. The activities of the Committee are purely advisory to the District. The Committee of Nine is appointed by the Water Resource Board to assist in the marketing of stored water in the water supply bank. Restrictions on the use of water bank funds are also contained in Idaho Code.

# FINDINGS AND RECOMMENDATIONS

FINDING #1 -

Water District funds are not deposited in a county treasury as required by Idaho Code.

Idaho code 42-611, drafted in 1903, directs the Water-master to bill the board of county commissioners, designated by the members of the District at the annual meeting, directly for his compensation and that of his assistants. These costs are then paid by the county treasurer and added to the tax rolls for the coming year. All other expenses of the Water District are paid by the county commissioners "...in the same manner as bills against the county are paid." as directed by 42-613, This was essentially the financial management structure of Water Districts until 1947.

Idaho Code section 42-618, entitled "Alternate Plan for Collecting Expenses in Water Districts", was established in 1947. This section authorizes the Watermaster to collect his compensation and expenses directly from the water users of the District rather than follow the provisions of Idaho Code sections 42-612 through 42-617. Section 42-611, however, which directs the Watermaster to bill the county commissioners for his compensation, continues to be in effect even if the Water District chooses to use the alternate plan of collection. Since the alternate plan allowed by section 42-618 does not address how Watermaster compensation or other District expenses are to be paid, we requested an Attorney General's Opinion to clarify this section. Attorney General Opinion No. 91-7, dated August 5, 1991 states that:

"..if a Water District only elects to proceed under Idaho Code 42-618, the county treasurer retains authority to hold and disburse the funds of the Water District and not the Watermaster."

We conclude that the county treasury should continue to be the depository for District funds even though the District may elect to allow the Watermaster to collect assessments directly.

Our audit showed that Water District 1 had apparently elected to allow the Watermaster to collect assessments directly from the water users in accordance with Idaho

Code 42-618. However, the Watermaster deposited these funds in several bank and investment accounts outside of a designated county treasury as required by Idaho Code. The Watermaster also did not issue any billings to the county commissioners for his compensation as directed by section 42-611, because he already held all funds of the District. All Water District expenses were paid from accounts controlled by the Watermaster.

The District apparently assumed that Code Section 42-618, which authorized the Watermaster to collect assessments directly, also allowed him to hold and disburse Water District funds. However, the Attorney General's opinion states that the Watermaster was authorized only to collect assessments directly from water users and not to hold District funds outside of the control of the county treasurer.

The requirements for holding and disbursing Water District funds was changed effective July 1, 1989 when Idaho Code section 42-611 was repealed and section 42-619, entitled "Alternate Plan for Payment of District Expenses" was added. This new section allows Water Districts to create a treasurer position to handle the financial affairs of the District. This new section requires the Water District Treasurer to adhere to the requirements of the Public Depository Law and related laws detailing the types of investments that can be made with public funds.

Therefore, beginning in fiscal year 1990, Idaho Code provided four alternative methods for Water Districts to collect and disburse assessment funds:

- 1) The County Auditor/Treasurer may collect and disburse funds.
- 2) The County Auditor/Treasurer may collect and the Water District Treasurer may hold and disburse funds.
- 3) The Watermaster may collect and the County Auditor/Treasurer may hold and disburse funds.
- 4) The Watermaster may collect and the Water District Treasurer may hold and disburse funds.

The Attorney General's opinion stated that Idaho law does not permit the Watermaster to act as treasurer for Water District 1. Since the District Treasurer has an oversight authority over the Watermaster, that office is

#### **RECOMMENDATION # 1**

incompatible with the office of Watermaster. As such, Water District 1's present practice of allowing the Watermaster to also serve as treasurer is not permissible.

We recommend that Water District 1 create a Treasurer position in accordance with Idaho Code 42-619. The District has elected to proceed under the alternate procedures for collecting assessments which provides for a Water District Treasurer. The District Treasurer must maintain the funds of the District in compliance with the Public Depository Law and keep the financial books and records of the District.

We further recommend that the District not continue with the present arrangement until the next annual meeting. Instead the officers of Water District 1 or the Director of Water Resources should arrange for the election or appointment of a Treasurer.

## <u>Investments made by Water District 1 are not allowed by IDAHO CODE.</u>

Idaho Code 42-619, effective July 1, 1989, allows Water Districts to appoint a treasurer to perform the accounting and financial duties of the District. The duly appointed Water District Treasurer is directed to perform these duties in accordance with the Public Depository Law (Title 57, Chapter 1). Idaho Code, Section 57-127 empowers depositing entities to invest surplus funds in investments permitted by section 67-1210. Investments are generally limited to government bonds and other insured investments. Prior to 1989, the County Treasurer was required to provide payment and accounting services to Water Districts. The Public Depository Law and related sections also apply to county funds as well as any other funds held by the county.

Our examination of Water District 1 disclosed that District funds were not deposited in a county treasury or other allowable depository as required by Idaho Code (see finding #1 concerning this issue). The District established several commercial bank and investment accounts using assessment funds and water bank lease funds. As of February 28, 1988, the District had nearly \$600,000 invested in mutual funds, equity stocks, and other unsecured investments not allowed by Idaho Code. Mutual fund investments valued at nearly \$400,000 at February 1988 declined in market value during the following two years by \$49,770. Interest and dividends earned on these mutual funds during this same period were \$52,671. In summary, these investments gained less than \$3,000 during the two-year period. The remaining \$200,000 was invested in equity stocks as directed by a local advisory committee of the District.

We requested an Attorney General's Opinion concerning the issue of investment of District funds. Opinion No. 91-7 issued on August 5, 1991 states that:

"... Water District 1 is not authorized to invest any District funds, whether generated from water users assessments or water bank activities, in equity securities such as common stocks, corporate bonds or mutual funds."

Therefore, Water District 1 has not complied with Idaho Code by making high risk investments with public funds. As a result, the District has essentially lost the interest

earnings that these funds could have generated over a two-year period.

#### **RECOMMENDATION #2**

We recommend that Water District 1 liquidate its investments in mutual funds and other high risk investments within a prudent time frame and adhere to Idaho Code concerning investments of public funds in the future.

# The Watermaster has not issued the annual report timely as required by Idaho Code.

Idaho Code 42-614 specifically directs that:

"...on or before the first day of February next thereafter, the watermaster of each district, ...shall prepare a complete report showing the total amount of water delivered during the preceding irrigation season within his district, the amount delivered to each ditch, canal company, irrigation district or other water user, the total expense of delivery and all other expenses of said district...".

This report is then to be filed with the Secretary of the Water District and the Department of Water Resources.

The annual reports of the District due on February 1, 1987, 1988, 1989, and 1990 have not been prepared on time or filed with the Department of Water Resources as of November 1990. The Watermaster indicated that annual reports cannot be completed by February 1st of the following year due to the size of the Water District's operation and the magnitude of adjustments resulting from corrected data that is not received until after the report due date.

The Watermaster also indicated that the calculations and information showing the deliveries are generally completed by mid-year but that the formal financial information of the District, the printing and binding, and the submission of the four missing reports to the Department has not been done. (This audit report is providing the Watermaster with formalized financial information intended for these annual reports).

The importance of issuing these reports timely is critical to Water District 1 which operates a "Water Supply Bank." The information used to prepare the annual report is also used by the members of the District to determine the amount of water leased from the "Water Supply Bank." We believe that the date the report is issued was intended to establish the timing of when lease payments to water owners are due. However, these lease payments have not been paid by the February 1 intended due date (see Finding #4 for information concerning delayed Water Bank payments).

**RECOMMENDATION #3** 

We recommend that the Watermaster of Water District 1 prepare the annual report timely and in accordance with Idaho Code 42-614 or seek amendment of the date to one attainable on a regular basis.

#### Water Bank lease payments have not been paid timely.

Water banks are organizations that provide owners of water rights (lessors) a means of leasing their rights to others without violating various requirements and conditions of water use within Idaho Code. The organization and activities of water banks is detailed in Idaho Code 42-1761 through 42-1766 which directs the Water Resource Board to adopt rules and regulations governing this activity. The Board in turn can contract with local committees, such as the Committee of Nine in Water District 1, to act as an intermediary to assist in the rental of water within a District.

The Committee of Nine has agreed to act for the Water Resource Board and assist in the rental of water in Water District 1. The Committee of Nine has adopted "Water Supply Bank" rules in accordance with Idaho Code 42-1765. These rules are intended to provide a process consistent with Idaho Code and the regulatory authority of the Water Resource Board. These rules address various definitions, management procedures, and priorities associated with the operation of the water supply bank.

Rule 8, "Lease Payments and Water Cost" in effect during the audit period, addresses the timing and amounts to be paid to lessors. Payments to lessors are considered "... due and payable once the Watermaster has calculated the actual water used within Water District 1 for the annual report." The annual report of the Watermaster is to be completed by February 1st of each year as required by Idaho Code 42-614. However, the Watermaster has not issued this report timely as required by Code. (see finding #3 concerning the delays in issuing Water District 1 annual reports). We conclude that if the annual report were completed by the date specified in law, then the data necessary to calculate lease payments would also be available on this date. Lease payments, however, have not been paid by February 1 of each year.

We believe that the cash position of the District has affected the ability to make lease payments timely. In some cases the District had not collected for all of the stored water delivered during the year. In addition, the District's cash position was adversely affected by a decision to delay assessments for one year. The Committee of Nine directed the Watermaster not to bill or collect assessments for 1988. This change was intended to allow assessments to be calculated on actual

data rather than estimates. The Committee of Nine then authorized the Watermaster to use water bank funds to finance District expenses for 1988 and to repay water bank funds with assessment funds collected in the following year. The use of water bank funds for this purpose may not be allowed by Idaho Code (see finding #5 concerning the use of water bank funds). This caused the District's cash position to decline significantly because no assessments were collected during fiscal year 1989.

The Water Bank rules allow the Watermaster to make partial payments to lessors prior to compiling the data for the annual report. The final payments, however, were withheld past the intended due date and the amounts unpaid grew larger each year. For example, the final payment to lessors for 1987 of \$30,520 was not made until June 22, 1988, nearly five months after the official due date. The final pay-out for 1988 of \$134,069 was not made until six months after the due date. As of February 28, 1990, no partial or final payment for 1989 had been made. We estimate that the amount due lessors on this date was at least \$275,000.

The available cash in the District at February 28, 1990 was approximately \$42,000, significantly short of the estimated \$275,000 due lessors on this same date. The District would have had to liquidate common stocks and other investments to make this payment on time. The District would likely not have done so since the amount owed nearly equalled the District's cash reserves due to the change in the assessment timing.

We recommend that the District pay water bank lessors by February 1st of each year as directed by established water bank rules. The Committee of Nine established new water bank rules for 1991 that require water bank lease receipts to be held in a separate account in accordance with Idaho Code. The interest earned on these funds is to accrue to the benefit of the lessors. This new rule will likely cause the District further cash flow problems.

We further recommend that the District improve its cash flow by collecting assessments in advance rather than after the water year or by some other means to allow lease payments to be made timely.

**RECOMMENDATION #4** 

Funds generated by water banking activities have not been accounted for or used in accordance with Idaho Code.

Idaho Code section 42-1765, amended in 1986, authorizes local committees to "...market stored water between consenting owners and consenting buyers..", a responsibility delegated by the Water Resource Board. This section also allows local committees to establish the rental rates and the portion of the proceeds to be retained by the District. Any proceeds retained by the District shall be used for public purposes as stated in Idaho Code section 42-613A. This section provides that funds retained by the Water District from water banking activities be held in a special account and not used to reduce assessments to water users or paid to water users in any event.

Our examination of the water bank function within Water District 1 identified the following activities that do not comply with Idaho Code:

- 1) Funds retained by the District from water banking activities have been deposited in commercial and investment accounts rather than with the county treasurer or other authorized depository as required by Idaho Code (see Finding #1 for further information).
- 2) Retained funds have been invested in common stocks and other equity investments not allowed for public funds (see finding #2 for further information).
- Retained funds have been intermingled with general water assessment funds of the District and not kept in a separate account as directed by Idaho Code 42-613Å.

The Committee of Nine in 1988 directed the Watermaster to use retained funds to finance the Water District operations so that general water assessments could be billed after the water year rather than in advance. We requested an Attorney General's opinion to clarify the allowable uses for water bank funds listed in Idaho Code 42-613A. Opinion No. 91-7 issued on August 5, 1991 states:

"The statute [I.C. 42-613A] requires that funds in the special account shall not be

used to reduce assessments to the water users nor paid to water users in any event. This requirement places a clear duty upon the Water District to ensure that the rental pool funds are not intermingled with the normal operating funds of the District."

Therefore, the District has not complied with Idaho Code 42-613A by intermigling these funds with the general operation funds of the District.

The Committee of Nine also exceeded its authority by directing the use and disposition of retained water bank funds. This local committee drafted "Water Bank Rules" pursuant to Idaho code 42-1765 and established a 5 member committee to set policies for the disbursement of funds generated by the water bank. These rules were adopted by the District at its annual meeting and authorized the Watermaster to disburse and invest funds generated through the lease of stored water. We believe the Committee of Nine exceeded its authority when it directed the District and Watermaster in matters concerning water bank funds. Attorney General's Opinion No 91-7 concluded the following on the issue of authority:

"Idaho Code 42-1765 does not vest in the local committee of a Water District, here the Committee of Nine, any responsibilities regarding the collection, investment, or disbursement of water bank funds. The statute specifically requires the <u>Water District</u> to retain authority over the funds and to administer the funds in accordance with Idaho Code 42-613A." (emphasis added)

We find that the rule-making authority of the Committee of Nine, through the Water Resource Board, is limited by Idaho Code 42-1765 to the "...management, delivery, and use of water to and from the water bank...", and not the financial activities of the water bank. The Committee of Nine is not authorized to direct the use of water bank funds and should not have instructed the Watermaster to act in financial matters outside of his authority. The use and disposition of all water bank funds is controlled by the District which must follow the requirements of Idaho Code.

#### **RECOMMENDATION # 5**

#### We recommend that Water District 1:

- (1) Deposit all water bank funds with the county treasurer or other authorized depository in accordance with Idaho Code. (see Finding #1 for further information)
- (2) Establish a separate account within the authorized depository for funds retained by the District from water banking activities.
- (3) Liquidate unauthorized investments in common stocks and other equity investments in a timely but prudent fashion. All future investments of District funds, which includes water bank funds, should conform to the requirements established in Idaho Code for public funds (see Finding #2 for further information).
- (4) Instruct the Committee of Nine to draft new policies concerning the operations of the water bank that conform to the requirements and authorities granted to local committees by Idaho Code. All matters concerning the use and disposition of water bank funds should be clearly addressed in the annual meeting minutes of the District and conform to the requirements of Idaho Code.

## Idaho Code sections governing the establishment and financial activities of Water Districts are unclear.

Title 42, chapter 6 of the Idaho Code governs the operations and activities of Water Districts. These sections identify the responsible parties within the State who are authorized to establish Water District policies and collect, disburse and account for assessments and other operating funds of Water Districts. Recent amendments and new sections allow variations in the accounting procedures which are confusing and difficult to interpret. This situation has resulted in Water District 1 misinterpreting the requirements of the law, as determined by Attorney General's Opinion #91-7, and is the primary cause for several of the findings in this report.

We believe that the organization and authority of Water Districts is not clearly defined by code. Although Water Districts are clearly defined by Idaho Code as "... an instrumentality of the state..", the code is silent as to the internal organization of these Districts. Water Districts have only a chairman and secretary as authorized officials of the District who preside over the annual The duties of these officials are limited to distributing the approved budget and maintaining minutes of the meeting. Water Districts also elect a Watermaster at the annual meeting who must be approved by the Director of the Department of Water Resources. The Watermaster's duties are limited to distributing the waters within the District during the year. No individual or group is identified by code as having the responsibility for the day-to-day activities and financial matters of the District.

Changes to the code in 1989 have further confused the Water Districts are now issue of organization. authorized to appoint a treasurer to hold and disburse the funds of the District. However, no administrative controls or oversight of this individual's daily activities is provided by code. (Code does provide that the Director of the Department of Water Resources receive interim reports and that the books and records be audited periodically). The Watermaster is clearly not the individual intended to oversee the activities of the treasurer. Attorney General's Opinion 91-7 states that "... the treasurer's duties necessarily involve oversight of the expenditures of the Watermaster..". As such, the treasurer and Watermaster are positions that cannot direct the activities of the other or manage the entirety of the District.

The actual management of Water District 1 has been partially assumed by the Committee of Nine, a local advisory committee, elected by the members of the The duties authorized by code for local committees are limited to assisting in the marketing of stored water from water banks. These committees are not authorized by Idaho Code, Department of Water Resources regulations, or Water Resource Board policies, to exert any control over the daily operations of Water Districts. However, the Committee of Nine in Water District 1 has directed the Watermaster, who has also assumed the duties of Water District treasurer, in many of the daily activities of the District. Watermaster has also assumed much of the daily management of the District including investment and financial issues.

We believe the Watermaster's intentions have clearly been to serve the best interests of the water users of the District who are represented by the Committee of Nine. However, the Watermaster is not an agent of a water company or water users, but rather a "...ministerial officer.." of the State as determined by case law. We that Water Districts should believe administrative board to oversee the daily activities since the Watermaster is not intended for this purpose. This board would be responsible to the members of the District for administering District funds and representing the District in other activities during the year. This board would not have any authority over the Watermaster or the distribution of the waters of the District. The Committee of Nine has generally been acting in this capacity. However, this local committee lacks the legal authority to make decisions for the District or obligate the District in contract negotiations or other matters.

#### **RECOMMENDATION #6**

We recommend that the membership of Water District 1, the Water Resource Board, or the Department of Water Resources seek legislation to amend and add Idaho Code sections to clarify the management and organization issues of Water Districts in the State. Such amendments should address the issues of financial management as well as authority to direct the activities of the District.

# ACCOUNTANT'S OPINION and FINANCIAL STATEMENTS



#### OFFICE OF THE LEGISLATIVE AUDITOR

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Larry R. Kirk, CPA
Deputy Legislative Auditor

September 23, 1991

Independent Auditor's Report on Fairness of Financial Statements

Joint Finance - Appropriations Committee of the Idaho State Legislature State Capitol Building Statehouse Mail

Senators and Representatives:

We have audited the balance sheet of Water District 1 as of February 28, 1988, 1989 and 1990, and the related statements of revenue and expenditures and changes in financial position for the years then ended. These statements are the representations of the District's management. Our responsibility is to express an opinion on these statements based on our audit.

We conducted our audit in accordance with generally accepted government auditing standards for financial audits. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly the financial position of Water District 1 as of February 28, 1988, 1989 and 1990, and the results of its operations and the changes in its financial position for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

Very truly yours,

Based upon an examination for which fieldwork was complete November 27, 1990.

Bruce Balderston, CPA Legislative Auditor STATE OF IDAHO
WATER DISTRICT 1
STATEMENT OF CHANGES IN FINANCIAL POSITION
FOR THE FISCAL YEARS ENDED FEBRUARY 28, 1988, 1989 AND 1990

Financial Resources Were Provided By:	Fiscal Year	Fiscal Year	Fiscal Year
	1990	1989	1988
Excess (definiciency) of support and revenues over expenses  Non-cash expense - Depreciation  Decrease (Increase) in marketable securities  Decrease (Increase) funds held by I.D.W.R.  Decrease (Increase) in Assmts Receivable  Decrease (Increase) in Other Receivable  Total Financial Resources Provided	\$33, 204	(\$21,606)	(\$62, 272)
	992	225	0
	261, 818	61,139	(111, 048)
	(27, 092)	(6,064)	(4, 863)
	(260, 396)	(269,932)	28, 784
	1, 595	(1,595)	4, 758
	\$10, 121	(\$237,833)	(\$144, 641)
Financial Resources Were Used For: Additions to Property and Equipment Decrease (Increase) in A/P & Accrued Liability Total Financial Resources Used	\$0 24,626 \$24,626 (\$14,505)	\$3,833 (273,787) (\$269,954)	\$1,126 (33,265) (\$32,139) (\$112,502)
Increases (Decrease) in Cash Cash - Beginning of Year Cash - End of Year	56, 338	24, 217 \$56, 338	136, 719 \$24, 217

STATE OF IDAHO
WATER DISTRICT 1
STATEMENT OF REVENUES AND EXPENDITURES
FOR THE FISCAL YEARS ENDED FEBRUARY 28

(Memo) FOR THE FISCAL YEARS ENDED FEBRUARY 28, 1988, 1989 AND 1990 (Prior Period) FY 87 FY 88 FY 89 FY 90 REVENUES: \$653, 569 \$271, 572 \$329, 468 \$517,089 Water assessments 0 8,275 31, 111 Excess Storage / Mitigation Sales 0 683, 335 470, 215 297,026 Water Rental 30,005 2, 294 47,602 49, 439 Miscellaneous Interest & Dividends : 8,842 5,213 2,138 Checking and CD 84, 355 21, 452 30, 294 36,093 41,306 19,351 17, 213 investment accounts 1, 151 4, 176 (25, 678)(24,093)Gain (loss) on Securities \$741, 369 \$1,019,382 \$872,773 \$888, 338 Total Revenues . . . . . PERSONNEL COSTS \$47,874 \$53, 983 \$52,116 \$55, 583 Total Wages and Expenses 11,527 15,888 14.884 16, 146 Total Benefits \$59, 401 \$69,871 \$67,000 \$71,730 Total Personnel Costs OPERATING EXPENSES \$0 \$199,000 \$15,000 \$68,650 Rental Pool - Refunds to Lessees 495, 281 387,077 308,823 239,008 Rental Pool - Payments to Suppliers 177, 252 131,933 180,015 147, 330 Dept of Water Resources 154, 912 210,716 153,076 106, 253 Improvement Expenses 0 0 129, 565 1.088 Adjudication payments 47, 127 43, 905 33, 413 70, 596 Legal Fees 0 2,045 3, 353 2,876 D.B. Fitzpatrick Invest. Services 13,678 0 0 76,620 USGS and EG&G Contract 6, 299 1,490 3,519 4.274 Watermaster Travel 4, 524 9,609 8.686 10, 455 Committee of Nine expenses 2, 147 1.079 0 1,078 Bookshelf bindery 0 50 150 100 Petty cash 2.110 1,891 1,237 2.400 Postage 1.839 1,088 745 1.459 State Ins. Fund (net of dividend) 1.792 2,566 0 1.505 Audit fees 0 15,046 16,413 16, 414 Storage space rental 1,303 3, 549 3,751 305 Misc Office expenses 500 739 930 480 Other Misc expenses 0 225 992 Depreciation expense \$908, 764 \$827, 379 \$1,011,783 \$783,405 Total Expenditures \$968, 165 \$1,081,654 \$894, 379 \$855, 134 TOTAL DISBURSEMENTS . . . . . . . . . . . . . . (226, 796)(62, 272)(21,606)33, 204 Excess (deficit) of Rev. over Exp. 897,657 670,861 586, 983 608, 589 Fund Balance Beginning of Year \$670,861 \$608,589 \$586,983 \$620, 187 Fund Balance End of Year

STATE OF IDAHO
WATER DISTRICT 1
STATEMENT OF CHANGES IN FINANCIAL POSITION
FOR THE FISCAL YEARS ENDED FEBRUARY 28, 1988, 1989 AND 1990

Financial Resources Were Provided By:	Fiscal Year	Fiscal Year	Fiscal Year
	1990	1989	1988
Excess (definiciency) of support and revenues over expenses Non-cash expense - Depreciation Decrease (Increase) in marketable securities Decrease (Increase) funds held by Dept. Decrease (Increase) in Assmts Receivable Decrease (Increase) in Other Receivable Total Financial Resources Provided	\$33, 204	(\$21,606)	(\$62,272)
	992	225	0
	261, 818	61,139	(111,048)
	(27, 092)	(6,064)	(4,863)
	(260, 396)	(269,932)	28,784
	1, 595	(1,595)	4,758
	\$10, 121	(\$237,833)	(\$144,641)
Financial Resources Were Used For: Additions to Property and Equipment Decrease (Increase) in A/P & Accrued Liability Total Financial Resources Used	\$0	\$3,833	\$1, 126
	24,626	(273,787)	(33, 265)
	\$24,626	(\$269,954)	(\$32, 139)
Increases (Decrease) in Cash	(\$14, 505)	\$32, 121	(\$112, 502)
Cash - Beginning of Year	56, 338	24, 217	136, 719
Cash - End of Year	\$41,833	\$56, 338	\$24, 217

STATE OF IDAHO
WATER DISTRICT 1
BUDGET TO ACTUAL COMPARISON
FOR THE FISCAL YEARS ENDED FEBRUA

FOR THE FISCAL YEARS ENDED FEBRUARY 28, 1988, 1989 AND 1990

FOR THE FISCAL YEARS ENDED FEBRUARY E	0, 2000, 000			FY 89		FY 88			
		FY 90		budget	actual	variance	budget	actual	variance
PERSONNEL COSTS	\$92,400	\$71, 730	(\$20,670)	\$82,240	\$67,000	(\$15, 240)	\$78,290	\$69,871	(\$8,419)
OPERATING EXPENSES  Dept. of Water Resources Legal Fees Watermaster Travel Committee of Nine Expenses Bookshelf Bindery State Insurance Fund (net of dividen Audit Fees Misc. Office Expenses	205,000 36,000 1,500 2,500 2,200 2,400 2,700 3,400	180, 015 70, 596 4, 274 10, 455 1, 078 1, 459 1, 505 2, 122	(24, 985) 34, 596 2, 774 7, 955 (1, 122) (941) (1, 195) (1, 278)	161, 700 40,000 2,000 15,000 2,000 2,350 2,600 10,500	147, 330 33, 413 3, 519 8, 686 0 745 0 7, 231	(14, 370) (6, 587) 1, 519 (6, 314) (2, 000) (1, 605) (2, 600) (3, 269)	149,000 40,000 2,500 15,000 2,200 2,000 1,700 17,500	131, 933 43, 905 1, 490 9, 609 1, 079 1, 088 2, 566 6, 229	(17, 067) 3, 905 (1, 010) (5, 391) (1, 121) (912) 866 (11, 271)
Total Expenditures	\$255,700	\$271,504	\$15,804	\$236, 150	\$200, 924	(\$35, 226)	\$229,900	\$197,899	(\$32,001)
TOTAL DISBURSEMENTS	\$348,100	\$343, 234	(\$4,866)	\$318,390	\$267, 924	(\$50, 466)	\$308,190	\$267,770	(\$40, 420)

# NOTES TO STATEMENTS

NOTE #1 - <u>SUMMARY</u> <u>OF SIGNIFICANT</u> <u>ACCOUNTING POLICIES</u>

The financial statements of Water District 1 have been prepared using the accrual basis of accounting. The significant accounting policies followed are described below to enhance the usefulness of the financial statements to the reader.

#### Cash and Cash Equivalents

Cash equivalents are identified as short-term, highly liquid investments. Cash and cash equivalents for the Water District 1 include cash in checking accounts, cash in savings accounts and cash in money market funds.

#### Marketable Securities

Marketable Securities are carried at the lower of aggregate cost or market of the portfolio. Dividend and interest income are accrued as earned. (See Note 4.)

#### Fixed Assets and Depreciation

Investments in property and equipment are recorded at cost. Depreciation is calculated based on the straight line method over five years with no residual value.

NOTE #2 -ASSESSMENTS RECEIVABLE

Assessments receivable are the accumulated amounts of unpaid assessments billed to water users as of February 28 of each year. Assessments are based on the District's annual budgeted costs and billed in advance. However, beginning in fiscal year 1988, the District changed its procedures and began billing assessments at the end of the water year rather than in advance. As such, the amount of receivables has grown dramatically and now represents the total current assessments billed plus prior outstanding amounts. The District has not incurred any bad debts and does not recognize any allowance for uncollectible accounts due to strict collection policies and the legally enforceable nature of these assessments.

# NOTE #3 - <u>FUNDS</u> <u>HELD BY DEPARTMENT</u> <u>OF WATER RESOURCES</u>

NOTE #4 - MARKETABLE SECURITIES

The increase in receivables from 1989 to 1990 resulted primarily from increases in the District's budgeted costs and final adjustments resulting from the change in assessment procedures.

The Department of Water Resources provides the Water District with office space, administrative support and personnel. The District pays the Department monthly for these services in advance based on an estimate of the costs and balance of prior advance payments. The balance of funds held by the Department represents excess advance funds to be applied to future periods.

The District had surplus funds invested with the following firms at February 28, 1990:

Shearson-Lehman Income Fund
D. B. Fitzpatrick, Invest Advisor

\$74,494
200,000

Total \$274,494

The Shearson-Lehman Income Fund is recognized at market value. The District invested \$108,000 in this Fund during FY 88 which has declined in market value by \$33,506.

The investment with D. B. Fitzpatrick, Investment Advisor is recognized at cost. This account was established in 1986 and was intended as a long term "rainy day" fund for future improvements in the water delivery system of the District. All interest and dividends are reinvested and the day-to-day investment decisions are made by the investment advisor. This investment is recognized in the financial statements at its initial investment value of \$200,000 rather than at lower of cost or market because of the District's intentions for this investment and for simplicity of presentation. The market value of this investment at February 28, 1990 was \$234,814.

NOTE #5 -ADJUDICATION PAYABLE

The District's Committee of Nine adopted a resolution to reimburse users who were current

NOTE #6 -PREPAID WATER LEASES

NOTE #7 - WATER BANK SUPPLIERS PAYABLE

NOTE #8 -EXCESS STORAGE SALES

NOTE #9 -<u>GAIN (LOSS)</u> <u>ON SECURITIES</u>

NOTE #10 -PERSONNEL COSTS on their assessments one-half of one year's water assessment to assist in covering costs related to the Snake River Basin Adjudication. The balance payable under this resolution was \$129,565 at February 28, 1989.

Prepaid water leases represents the amounts paid to the District for stored water to be delivered during the next water year.

The Water Bank provides owners of water who have amounts surplus to their needs a way of leasing to individuals and others who have a need for additional water. The District retains a portion of the proceeds for improvements to the water delivery system and other projects. This payable represents the amounts owed to suppliers for leases collected during the year.

All water deliveries of the District are accounted for as being either a fulfillment of a water right or as a sale of stored water. Excess storage sales represent the amount of water delivered to users in excess of their water right. These sales are accounted for in much the same way as Water Bank leases.

This amount represents the recognized gain or loss on the sale of securities and the write-down to lower of cost or market on those investments held at year-end.

The District contracts with several individuals to perform the various tasks of diverting and measuring water flows. Salary and reimbursement rates for travel are negotiated by the Watermaster and approved by the District at

#### NOTE #11 -<u>RETIREMENT PLAN</u>

the annual meeting. Benefit costs include only general payroll expenses, such as social security and income tax withholdings.

Full-time employees of the District participate in the Public Employee Retirement System of Idaho (PERSI), a cost-sharing multiple-employer public employee retirement system. The payroll for District employees covered by the system for the year ended February 28, 1990 was approximately \$170,000.

After five years of credited service, employees who have reached the minimum retirement age are entitled to a retirement benefit, payable monthly for life. The retirement allowance is based on 1-2/3% of the average of the highest consecutive five years of monthly salary multiplied by the months of credited service. Benefits vest on reaching five years of service and are established by the state statute.

Contribut	ion .
<b>Employer</b>	<b>Employee</b>
8.89%	5.34%
	,

The "pension benefit obligation" is a standardized disclosure measure of the present value of pension benefits, adjusted for the effects of projected salary increases and step-rate benefits, estimated to be payable in the future as a result of employee service to date. The measure, which is the actuarial present value of projected credited benefits, is intended to help users assess the System's funding status on a going-concern basis, assess progress made in accumulating sufficient assets to pay benefits when due, and make comparisons among PERSI and employers. not make does System The measurements of assets and pension benefit obligation for individual employers. The pension benefit obligation at June 30, 1990, for the System as a whole, determined through an actuarial valuation performed as of that date, was \$2,116 The System's net assets available for benefits on that date (valued at market) were \$1,521 million, leaving the unfunded pension benefit obligation of \$595 million.

#### NOTE #12 -<u>D.B. FITZPATRICK</u> INVESTMENT SERVICES

NOTE #13 -STORAGE SPACE RENTAL

NOTE #14 -<u>EXHIBIT D -</u> <u>BUDGET TO ACTUAL</u> <u>COMPARISON</u> The Committee of Nine established an investment account with D.B. Fitzpatrick in 1986 for the purpose of long term capital growth for future District improvements. The day to day investment decisions are made by D.B. Fitzpatrick and no funds have been added to or withdrawn from the account since 1987.

The District rents an enclosed storage area for various equipment, vehicles and supplies. A portion of the space is sublet to U. S. Geological Survey in exchange for stream gauging services performed by the U.S.G.S.

Costs associated with water banking activities and other noncash transactions are not included in the annual budget of Water District 1. As such, the following costs shown on the Statement of Revenues and Expenditures are not shown on the Budget to Actual Comparison exhibit:

	FY 90	FY 89	FY 88
Rental Pool Refunds	\$ 68,650	\$ 15,000	\$199,000
Rental Pool Payments	239,008	308,823	387,077
Improvement Expenses	106,253	153,076	210,716
Adjudication Payments	1,088	129,565	0
Investment Services	2,876	3,353	2,045
USGS Contracts	76,620	0	0
Storage Space	16,414	16,413	15,046
Depreciation	992	<u>225</u>	0
Total	\$ <u>551,901</u>	\$ <u>626,455</u>	\$ <u>813,884</u>



#### OFFICE OF THE LEGISLATIVE AUDITOR

Bruce Balderston, CPA Legislative Auditor State Capitol Building Boise. Idaho 83720 Telephone (208) 334-3540

Larry R. Kirk, CPA
Deputy Legislative Auditor

September 23, 1991

#### Independent Auditor's Report on Compliance

Joint Finance - Appropriations Committee of the Idaho State Legislature State Capital Building Statehouse Mail

#### Senators and Representatives:

We have audited the accrual basis statements of Water District 1 for the years ended February 28, 1988, 1989 and 1990 and have issued our report thereon dated September 23, 1991. These accrual basis statements are the responsibility of the District's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted governmental auditing standards contained in Government Auditing Standards issued by the U.S. General Accounting Office. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the accrual basis statements are free of material misstatements, including misstatements resulting from noncompliance with laws and regulations. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the accrual basis statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

The management of Water District 1 is also responsible for the District's compliance with laws and regulations. In connection with the audit referred to above, we selected and tested transactions and records to determine the District's compliance with those laws and regulations for which noncompliance could have a material effect on the District's accrual basis statements.

The results of our tests indicate that for the transactions and records tested, except for those issues identified in the Findings and Recommendations Section of this report, Water District 1 complied with those laws and regulations for which noncompliance could have a material effect on the accrual statements. With respect to the transactions and records that were not tested by us, nothing came to our attention to indicate that the District had not complied with laws and regulations.

Very truly yours,

Bruce Balderston, CPA Legislative Auditor



#### OFFICE OF THE LEGISLATIVE AUDITOR

Bruce Baldersion, CPA Legislative Auditor State Capitol Building Boise, Idaho 83720 Telephone (208) 334-3540

Larry R. Kirk, CPA
Deputy Legislative Auditor

September 23, 1991

#### Independent Auditor's Report on Internal Controls

Joint Finance - Appropriations Committee of the Idaho State Legislature State Capitol Building Statehouse Mail

Senators and Representatives:

We have audited the financial statements of Water District 1 for the years ended February 28, 1988, 1989 and 1990 and have issued our report thereon dated September 23, 1991. These accrual basis statements are the responsibility of the District's management. Our responsibility is to express an opinion on these accrual basis statements based on our audit.

We conducted our audit in accordance with generally accepted governmental auditing standards for financial and compliance audits contained in Government Auditing Standards issued by the U.S. General Accounting Office. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the accrual basis statements are free of material misstatements. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the accrual basis statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall accrual basis statement presentation. Also, as part of our audit we considered the internal control structure of the District to the extent we considered necessary to understand the structure as required by those standards.

For the purpose of this report, we have classified the significant internal accounting controls included in the internal control structure in the following categories:

Organizational Controls
Control Over the Handling and Recording of Cash Receipts
Control Over Authorizing and Recording Expenditures
Payroll and Personnel Controls
Control Over the Purchase and Recording of Property and Equipment
Petty Cash Account Controls

We considered all of the control categories listed above and determined that relevant policies and procedures have been placed in operation. We also performed an assessment of the control risk for all of the categories listed above to determine if it would be efficient to evaluate their effectiveness and reduce the control risk below the maximum level. We determined the operating effectiveness of relevant policies and procedures in order to assess the control risk. The purpose of considering and assessing the internal control structure was to determine the nature, timing and extent of auditing procedures necessary

Joint Finance - Appropriations Committee of the Idaho State Legislature Page 2

for expressing an opinion on the accrual basis statements of Water District 1 and not to provide assurance on the internal control structure.

The management of the District is responsible for establishing and maintaining the internal control structure. In fulfilling that responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of the control structure. The objectives of the internal control structure are to provide management with the ability to record, process, summarize, and report financial data consistent with the assertions embodied in the financial statements.

Our consideration and related assessment of the internal control structure made for the limited purpose described in the fourth paragraph would not necessarily disclose all material weaknesses in the structure. Accordingly, we do not express an opinion on the internal control structure of Water District 1 taken as a whole or on any of the categories of controls identified in the third paragraph.

However, we identified no certain matters involving the internal control structure and its operation except those in the Findings and Recommendations Section of this report that we consider to be reportable conditions under standards established by the American Institute of Certified Public Accountants. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control structure that, in our judgment, could adversely affect the organization's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements.

A material weakness is a reportable condition in which the design or operation of one or more of the internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

Our consideration of the internal control structure would not necessarily disclose all matters in the internal control structure that might be reportable conditions and, accordingly, would not necessarily disclose all reportable conditions that are also considered to be material weaknesses as defined above.

These conditions were considered in determining the nature, timing, and extent of the audit tests to be applied in our audit of the accrual basis statements, and this report does not affect our reports on these statements dated September 23, 1991.

This report is intended solely for the use of management and the Joint Finance - Appropriations Committee and should not be used for any other purpose. This restriction is not intended to limit the distribution of this report, which, upon acceptance by the Joint Finance - Appropriations Committee, is a matter of public record.

Very truly yours,

Bruce Balderston, CPA Legislative Auditor

# APPENDIX - A

**PURPOSE** 

**HISTORY** 

STATUTORY AUTHORITY

**FUNDING** 

Water District 1 is responsible to the Department of Water Resources and water right holders of the District to make proper distribution of available water supplies within the District as appropriated.

Water Districts were established in 1903 by the Legislature with the duty of directing and controlling the distributions of water within each District assigned to the State Reclamation Engineer (later changed to the Department of Water Resources). The Upper Snake River drainage was designated as District 1. IDAHO CODE was amended in 1986 to clarify the status of the Districts in that each shall be ..."considered an instrumentality of the State of Idaho...".

In 1919 a group of nine water users from District 1 met with the State Reclamation Engineer to request the creation of a permanent Watermaster system. This group became known as the Committee of Nine and represented the collective interests of the various members of the District. The primary purpose of the Committee was to assure that proper distributions of available water supplies were made.

Beginning in 1979, the Committee of Nine could assist in the marketing of stored water from water banks as authorized by the Water Resource Board. Water Banks are a system which allows owners of water a means of "renting" amounts surplus to their needs to others without violating various requirements of Idaho Code.

The statutory authority for the District is found in IDAHO CODE, Title 42, Chapter 6.

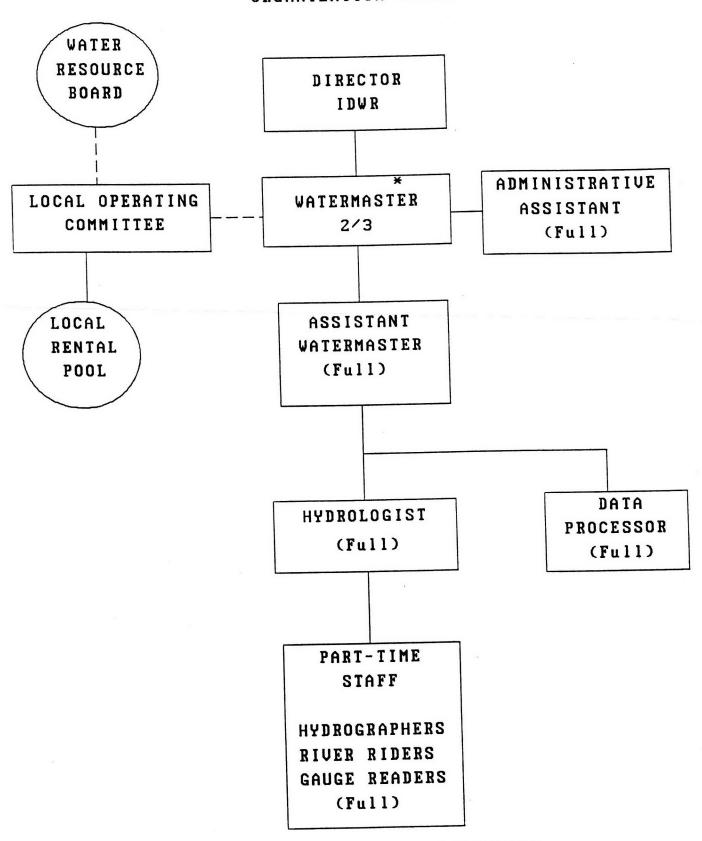
The District operates primarily on assessments from water users based on the actual costs incurred by the District for delivery of water. Individual assessments are calculated based on the amount of water delivered to each user. Additional funds are derived from interest in-

#### **ORGANIZATION**

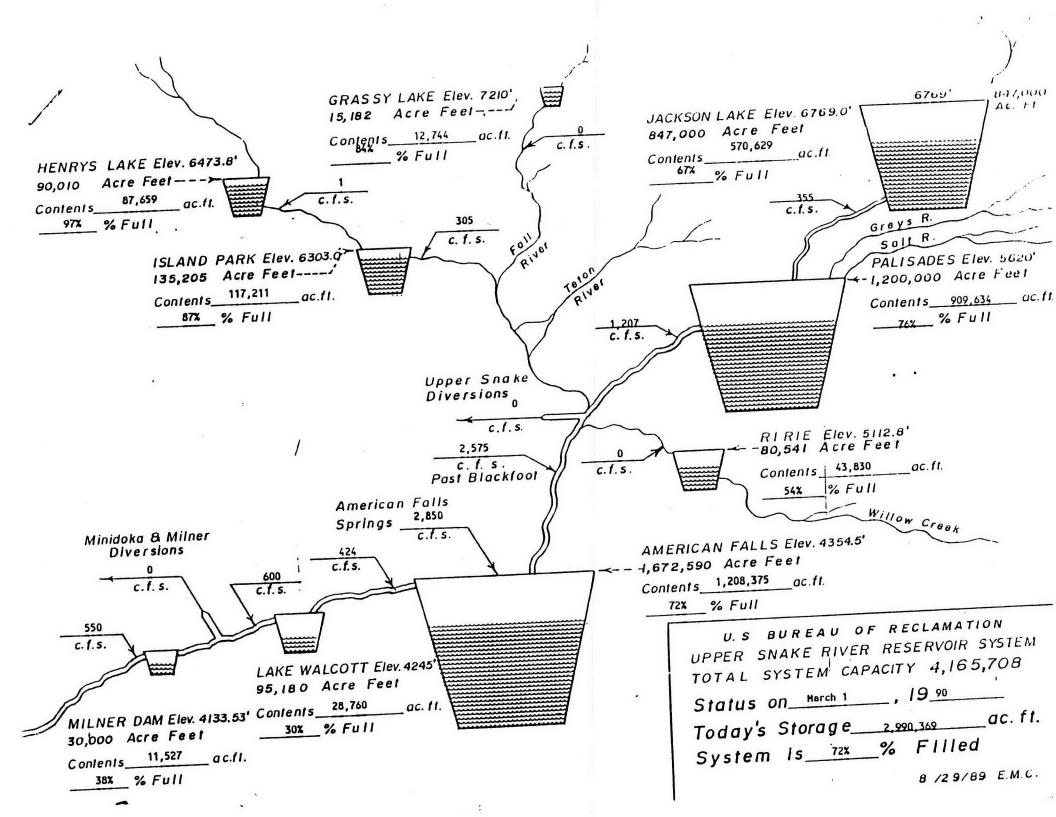
come, incidental sales, and Water Banking activities.

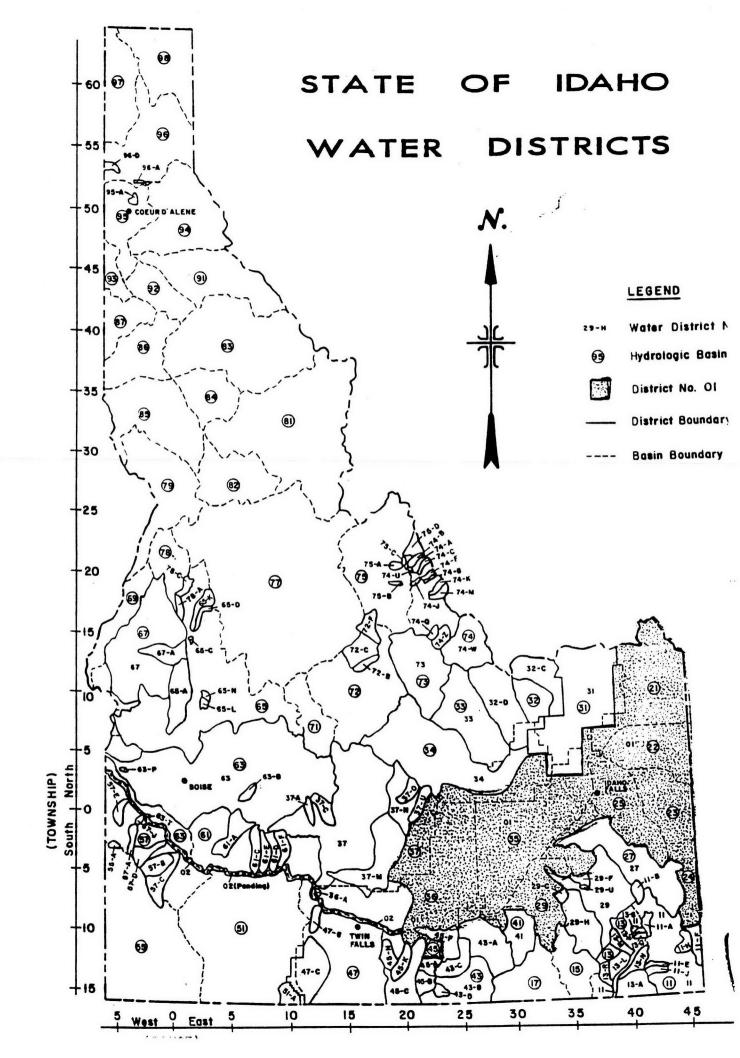
The District is governed by the Department of Water Resources which confirms the selection of a Watermaster by the members of the District. The District meets annually at which time the members select a Watermaster, adopt various resolutions governing the activities of the District and Water Supply Bank and elect the local advisory committee members known as the Committee of Nine. The Committee of Nine is responsible for assisting the Water Resource Board in the operations of the Water Supply Bank and to advise the Watermaster on the general operations of the District.

# STATE OF IDAHO WATER DISTRICT NO. 1 ORGANIZATION CHART



<sup>.</sup> OHE-THIRD OF THE WATERMASTER SALARY IS PAID BY THE DEPT. OF WATER RESOURCES.





# APPENDIX - B

LARRY ECHOHAWK

CENEY GENERAL



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720-1000



\*ELEPHONE 208) 334-2400

TELECOPIER 208) 334-2530

TELECOPIER 208) 334-2690

#### ATTORNEY GENERAL OPINION NO. 91-7

TO: Bruce Balderston, CPA
Legislative Auditor
Statehouse
Boise, Idaho 83720-1000

Per Request for Attorney General's Opinion

#### **OUESTIONS PRESENTED:**

- 1. Define: (a) the nature of Water District 1, (b) its term of existence, and (c) the existence of officers capable of transacting business for the district.
- 2. Does Water District 1 have responsibility and control over all water bank funds and if so, are these funds subject to the same requirements imposed on other district funds?
- 3. Does the Committee of Nine, which is the advisory committee for Water District 1, have any control over the use and distribution of any retained water bank funds?
- 4. Does the watermaster for Water District 1 have authority to invest regular water district funds or water bank funds in common stocks, corporate bonds, mutual funds and other types of equity securities?

#### CONCLUSIONS:

- 1. (a) Water District 1 is an instrumentality of the state established by a predecessor of the Director (Director) of the Department of Water Resources, pursuant to Idaho Code § 42-604, for the purpose of assisting the Department in carrying out its responsibility to distribute the public waters of the state in accordance with the rights of prior appropriation.
  - (b) The term of existence of Water District 1 as an

administrative and geographic unit is continuous from its date of creation until dissolved by order of the Director. Water District 1 is active year-round.

(c) The current officers of Water District 1 are the chairman and secretary whose primary duties are (1) presiding over the annual meeting of the district, (2) transmitting a certified copy of the budget to the Idaho Department of Water Resources (IDWR) and the county auditor in some circumstances, and (3) preparing, maintaining and transmitting the minutes of the meeting to the IDWR. The daily business activities of the district are transacted by a watermaster elected by the water users and appointed by the Director. The watermaster of Water District 1 presently serves as treasurer.

Idaho law provides four alternative methods for the collection and disbursement of water district funds: (1) the county auditor and treasurer may collect and disburse the assessments; (2) the county auditor and treasurer may collect the assessments, and the water district treasurer may hold and disburse the water district funds; (3) the watermaster may collect the assessments, and the county treasurer may hold and disburse the assessments; (4) the watermaster may collect the funds, and the water district treasurer may hold and disburse the assessments. Idaho law does not permit the watermaster to act as treasurer for a water district. Thus, Water District 1's present practice of allowing the watermaster to also serve as treasurer is not permissible.

- water bank funds associated with the operation of the Upper Snake Rental Pool. The funds are of two types, monies held for the benefit of persons leasing water into the rental pool, and monies assessed by the district as an administrative charge on water rented from the Upper Snake Rental Pool. New rules provide that the district must assess a 10% surcharge which is transferred to the IDWR as reimbursement for its costs. The district retains the remainder of any assessment. Water bank funds must be handled in the same manner as other district funds, but must be maintained in a separate bank account. Water bank funds retained by the district can only be used to pay for the district expenses, improvements and projects authorized by Idaho Code § 42-613A and must not be paid to water users or used to reduce assessments to water users.
  - 3. Idaho Code § 42-1765 does not vest in the local committee of a water district, here the Committee of Nine, any responsibilities regarding the collection, investment, or disbursement of water bank funds. The water district retains authority over water bank funds.

4. The watermaster of Water District 1 should not have custody of the funds of Water District 1. Assuming Water District 1 has elected to follow Idaho Code § 42-619, a district treasurer should be elected to have custody of Water District 1 funds and to make disbursements from these funds. The district treasurer is prohibited by the provisions of the Public Depository Law, chapter 1, Title 57, Idaho Code, from investing any district funds in common stocks, corporate bonds, mutual funds and other types of equity securities.

#### INTRODUCTION

Water District 1 includes all of the area of the state served by water from the Snake River from the Wyoming border to the Milner diversion dam near Twin Falls. The issues you seek guidance on arose in the course of your performance of an audit of Water District 1 requested by state legislators for fiscal years 1988, 1989 and 1990. The issues raised involve the proper handling of funds generated (1) by the assessment of water users to pay for watermaster services, and (2) by an administrative rental pool charge on each acre foot of stored water rented from the Upper Snake Rental Pool.

#### ANALYSIS:

#### Question No. 1

The first question asks us to define the nature of Water District 1, its term of existence and the existence of officers capable of transacting business for the district. Your letter states that you are informed by the watermaster that Water District 1 and its officers are active only one day per year at the annual meeting in March, except for the watermaster who also serves as the treasurer for the district.

The existence and operation of state water districts, such as Water District 1, are governed by the provisions of chapter 6, Title 42, Idaho Code, first enacted in 1903. Act of March 11, 1903, 1903 Idaho Sess. Laws 223. State water districts are instrumentalities of the state that exist for the purpose of assisting the IDWR in carrying out its duty under Idaho Code § 42-604 to provide for the distribution of the public waters of the state in accordance with rights of prior appropriation. Idaho Code § 42-602 imposes upon the IDWR a duty

The public waters distributed by Water District 1 provide water for approximately 1.3 million acres of irrigated farm land in the Snake River Plain. Water District 1 is the largest water district in Idaho and is sometimes cited as the largest district of its kind in the country. Records for diversions from the area that became Water District 1 and on file with the IDWR commence

to exercise immediate direction and control over the distribution of water from all of the streams to the canals and ditches diverting therefrom. The doctrine of prior appropriation provides that as between appropriators, "the first in time is first in right." Idaho Code § 42-106.

Idaho Code § 42-604 directs the IDWR to create water districts for each public stream and its tributaries, or other independent source of water supply within the state. The statutory requirement applies only to streams or other water supplies for which the relative dates of priority of appropriation have been determined by court decree. There are currently 108 state water districts in Idaho of which 84 are active in 1991. Once established, a district remains in existence as an administrative and geographic unit until dissolved by a subsequent order of the Director. Depending upon the water distribution needs of the water users, a water district may be active year-round or only during the irrigation season. According to IDWR records, Water District 1 has been active year-round since 1919.

After a water district is established by the IDWR, Idaho Code § 42-605(1) provides that the district shall hold an annual meeting for the purpose of conducting its business. Unless otherwise set by the district, the time for the annual meeting is the first Monday in March of each year. The affected water users consist of all persons owning or having the use of decreed, licensed or permitted water rights in the waters of the stream or water supply comprising the district.

Idaho Code § 42-605(4) requires the water users at the annual meeting to choose a chairman and secretary. The primary duties of the chairman and secretary are to preside over the meeting, to send a certified copy of the approved budget to the county auditor<sup>2</sup> and IDWR, to keep the minutes of the annual meeting and to forward a certified copy of the minutes to the IDWR. Idaho Code §§ 42-605 and 42-613.

Idaho Code § 42-605(3) also requires the water users to elect a watermaster at the annual meeting. The watermaster must subscribe an oath to faithfully perform the duties of the office. The primary duties of a watermaster are to make reports about the distribution of water to the IDWR, to deliver the water in accordance with the prior rights, and to prepare the annual

in 1912.

<sup>&</sup>lt;sup>2</sup> This duty to send the approved budget to the county auditor does not apply to those water districts that elect to proceed under some alternative procedures in Idaho Code §§ 42-618 and 42-619.

budget for the water district. Idaho Code §§ 42-606, 42-607 and 42-615. Although a watermaster generally serves only during an irrigation season, Idaho Code § 42-608 authorizes the water users to employ a watermaster throughout the year. Water district records on file with the IDWR indicate that the watermaster for Water District 1 has served on a year-round basis since 1919.

The Idaho Supreme Court has held that a watermaster is a public administrative officer who holds office until a successor is elected or appointed and qualified. Big Wood Canal Co. v. Chapman, 45 Idaho 380, 263 P. 45 (1927). A watermaster does not serve as an agent of the water users, but is a ministerial officer. Bailey v. Idaho Irrigation Co., 39 Idaho 354, 227 P. 1055 (1924).

The last part of your first question asks us to define the officers capable of transacting business for Water District 1. We take your question to mean all the ordinary types of transactions of an operating water district, such as disbursements for expenses and payment of salaries.

Idaho Code § 42-613, previously codified as Idaho Code § 41-513, states the general procedure for adoption of a water district budget, collection of the monies and payment of the expenses. The basic procedure is for the secretary of the water district to prepare a certified copy of the annual budget approved at the annual meeting and to send the certified copy to the county auditor. The county auditor then prepares an assessment roll and delivers it to the county treasurer who collects the assessments and deposits the funds collected into a special account. The county treasurer pays the expenses of the water district, including the salary of the watermaster and assistant watermasters, in accordance with the procedures for payment of bills by the county. The basic concept is for the water district to use existing county officers as its fiscal agents.

In 1947, the Idaho Legislature enacted an optional procedure for the collection of the district budget for water districts

The requirement for an annual budget began in 1927, See Act of February 19, 1927, ch. 39, 1927 Idaho Sess. Laws 51.

Idaho Code § 42-611, repealed in 1989, specifically required the presentment of the bill for watermaster services at a regular meeting of the board of county commissioners.

The distribution of water on an organized basis began with the Act of March 11, 1903, 1903 Idaho Sess. Laws 223. We are not concerned with the initial collection and disbursement procedures of that act, however, because Water District 1 did not come into existence until 1919.

whose area includes land in more than four counties. Act of January 31, 1947, ch. 11, 1947 Idaho Sess. Laws 11, now codified at Idaho Code § 42-618. In 1969, this alternative procedure became available to all water districts with the enactment of the Act of March 27, 1969, ch. 305, 1969 Idaho Sess. Laws 913.

The relevant language of Idaho Code § 42-618 is as follows:

In water districts the water users, instead of following the provisions of sections 42-612, 42-613, 42-614, 42-615, 42-616, and 42-617, may, at any annual meeting, authorize the watermaster 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 district. When so authorized the watermaster shall collect such compensation and expenses directly from the water users. (Emphasis added).

Idaho Code § 42-618 is ambiguous when read in the context of the balance of the chapter. First, this section could be interpreted to mean that the watermaster, if so authorized under Idaho Code § 42-618, has the authority to collect, hold and disburse the assessments collected from water users. position interprets the phrase "instead of following the provisions of Idaho Code sections 42-612, 42-613, 42-614, 42-615, 42-616, and 42-617" in Idaho Code § 42-618 as an expression of legislative intent to eliminate completely the application of those enumerated sections to water districts that elect to comply with the alternative procedure provided by Idaho Code § 42-618. This position also interprets Idaho Code § 42-618 as authority for the watermaster to collect the monies from the water users directly, to hold the funds, and to disburse the funds, including disbursement to his assistants and to himself. The argument is that, if the watermaster receives his compensation from someone other than himself, the watermaster is not receiving his compensation "directly." This is the current administrative interpretation of the statute by Water District 1 and represents a possible interpretation of an anomalous statute.

Second, as you suggest in your letter, this section may be interpreted as only authorizing the watermaster to collect the assessments of the water district; the county treasurer would still retain the authority to hold and disburse the water district funds in accordance with the general procedures for payment of bills by the county. Since Idaho Code § 42-613 distinguished between collection of assessments and disbursements of district funds, an amendment that only addresses collection could be interpreted as only changing the law regarding collection of assessments. This interpretation of Idaho Code

§ 42-618 is supported by the plain meaning of that section.

Since Idaho Code § 42-618 is ambiguous, we may review extrinsic evidence, such as existing administrative interpretation of statutes, to determine the legislative intent for enactment of that provision. While a long-standing administrative interpretation of a statute is entitled to great weight and will be followed unless there are cogent reasons for holding otherwise, Kopp v. State, 100 Idaho 160, 595 P.2d 309 (1979), we must also consider the consequences of this interpretation. State ex rel. Evans v. Click, 102 Idaho 443, If the first 447-448, 631 P.2d 614, 618-619 (1981). interpretation, which is the one made by Water District 1, were correct, then Water District 1 would not have to comply with the provisions of the enumerated sections regarding deposit of monies with the county treasurer. The logic of this interpretation would also mean, however, that Water District 1 would not be required to adopt an annual budget as provided in Idaho Code § 42-612;6 that the adoption of the budget would not cause the amount allocated to each ditch, canal company, irrigation district or other water user to become a debt thereof as provided in Idaho Code § 42-612; and that Water District 1 would not have specific authority to impose a minimum annual charge per water user.

We conclude that the Legislature did not intend to strip a water district of the powers stated in Idaho Code §§ 42-612, 42-613, 42-614, 42-615, 42-616, and 42-617 simply because a district elects to use the alternative collection procedures of Idaho Code § 42-618. Indeed, this conclusion is bolstered by the fact that Water District 1 has generally complied with the procedures set forth in these enumerated sections, except for the collection procedures of those sections, and that the county treasurer continues to collect the assessments in the counties of Madison, Teton and Fremont for Water District 1. This inconsistent administrative practice undermines the argument that there is a long-standing administrative interpretation of Idaho Code § 42-618.

The first interpretation, which concludes that Idaho Code § 42-618 authorizes the collection, holding and disbursement of assessments by the watermaster, would also be in conflict with Idaho Code § 42-611, which was not repealed until 1989. See Act of April 4, 1989, ch. 286, 1989 Idaho Sess. Laws 710. Idaho Code § 42-611 required the watermaster and his assistants to present a bill for their services to the board of county commissioners. The board then orders a warrant to be issued to the watermaster and assistants. The first interpretation ignores the

<sup>&</sup>lt;sup>6</sup> Of course, a water district would not be prohibited from adopting an annual budget.

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requirements of Idaho Code § 42-611 and would allow the watermaster to disburse the funds to himself in contravention of this section. The election of a water district to proceed under Idaho Code § 42-618 does not excuse compliance with Idaho Code § 42-611 because Idaho Code § 42-618 did not make reference to Idaho Code § 42-611.8

Idaho Code § 42-618 merely replaced the procedures for collection of monies stated in the enumerated sections with the alternative collection procedures provided by Idaho Code § 42-618. The enumerated sections otherwise remained in effect. Thus, if a water district only elects to proceed under Idaho Code § 42-618, the county treasurer retains the authority to hold and disburse the funds of the water district and not the watermaster.

This interpretation also preserves the division of responsibility that exists under the older and newer statutes between the watermaster and the designated treasurer. In 1989, the Legislature enacted Idaho Code § 42-619, an alternative procedure for the holding and disbursement of water district funds. In water districts for which the county commissioners

The above legal interpretation of these sections by Water District 1 differs from the actual practice. An agreement between the IDWR and the Committee of Nine regarding watermaster services became effective on March 4, 1979. The practice under this agreement, as we understand it, is for the watermaster of Water District 1 to transmit the monies he collects from the water users to the IDWR. The IDWR then issues checks for the salaries of the watermaster and his assistants. Accordingly, the watermaster has not been issuing the check for his own salary. Finally, the present practice of the IDWR issuing the salary checks to the watermaster further undermines the argument in favor of the interpretation that the watermaster must receive his compensation "directly" without any intervening actors.

We note that the last sentence of Idaho Code § 42-613 is in many respects duplicative of Idaho Code § 42-611. That last sentence of Idaho Code § 42-613 requires payment of the watermaster and his assistants "in the same manner as bills against the county are paid." Idaho Code § 42-611 provides a specific procedure for presentment to the board of county commissioners and for payment of the watermaster and his assistants. Idaho Code § 42-618 is somewhat anomalous because it lists Idaho Code § 42-613 but does not list Idaho Code § 42-611, even though all of Idaho Code § 42-611 and a portion of Idaho Code § 42-613 concern the same subject—payment of the watermaster and his assistants. The rationale for drafting Idaho Code § 42-618 in this manner is unknown. The existence of this duplication, however, does not change our conclusion.

elect to discontinue the county treasurer's duty to hold and disburse district funds, the water users are required to elect or appoint a treasurer. The statute imposes upon the district treasurer a duty to keep a complete, accurate and permanent record of all funds received by and disbursed for and on behalf of the district. The treasurer is required to deposit all funds of the district in a designated depository approved at the annual meeting, and must comply with the Public Depository Law, chapter 1, Title 57, Idaho Code. The statute also authorizes any water district to elect or appoint a treasurer to exercise the duties provided for in Idaho Code § 42-619 even if the county commissioners have not determined to stop providing the bill paying service for the district. Idaho Code § 42-619(3) and (10).

Under the original disbursement procedure, the county treasurer held and disbursed the funds of the water district. Idaho Code § 42-613. Similarly, under the more recent amendments in 1989, the treasurer of the water district holds and disburses the funds. Idaho Code § 42-619. The county auditor and treasurer collect the water district assessments unless the water district elects to use the alternative procedures of Idaho Code § 42-618; in that case, the watermaster collects the assessments.

Based upon the foregoing review of the applicable statutes, we conclude that the water districts have four options regarding the collection and disbursement of water district funds: (1) the county auditor and treasurer may collect and disburse the assessments as provided in Idaho Code § 42-613; (2) the county auditor and treasurer may collect the assessments in accordance with the provisions of Idaho Code §§ 42-601 through 42-617, and the water district treasurer may hold and disburse the water district funds in accordance with Idaho Code § 41-619; (3) the watermaster may collect the assessments as provided in Idaho Code § 42-618, and the county treasurer may hold and disburse the assessments as provided in Idaho Code § 42-618; or (4) the watermaster may collect the assessments as provided in Idaho Code § 42-618, and the water district treasurer may hold and disburse the assessments as provided in Idaho Code § 42-618, and the water district treasurer may hold and disburse the assessments as provided in Idaho Code § 42-618, and the water district treasurer may hold and disburse the assessments as provided in Idaho Code § 42-619.

Although Water District 1 has apparently elected to proceed in accordance with the alternative procedures of Idaho Code §§ 42-618 and 42-619 described above, we are aware of no formal action adopting these procedures. Further, we note that Water District 1 has not implemented the provisions of Idaho Code § 42-619. For example, the local procedures for Water District 1 do not provide for a water district treasurer. Rather, the management of the monies received is vested in the watermaster with authority to disburse and invest funds. See Rule 4.3 of Water District 1 Rental Pool Procedures, approved by the Committee of Nine on May 29, 1991 and the Idaho Water

Resource Board on May 31, 1991. Since the treasurer's duties necessarily involve oversight of the expenditures of the watermaster, if the watermaster also acts as the treasurer, he holds an office incompatible with his office as watermaster.9

We recognize that our conclusions differ from current and past practices of Water District 1 and that a very real problem is how to proceed during the remainder of the present water year in light of this opinion. The next annual meeting of Water District 1 will occur in March, 1992. We recommend against continuing with the present arrangements until the next annual meeting because of the problems we have identified. Instead, the officers of Water District 1 or the Director should arrange for the election or appointment of a treasurer.

#### Question No. 2

Your second question asks whether Water District 1 has responsibility and control over all water supply bank funds, and if so, whether these funds are subject to the same requirements imposed on other water district funds? The records of the IDWR show that Water District 1 has operated a "rental pool" to facilitate the rental of storage water in the Upper Snake River

<sup>9</sup> We are not aware of an Idaho Supreme Court decision that specifically adopts the common law doctrine of incompatibility of office as a part of our law, although other states have developed considerable case law on this doctrine. See People ex rel. Chapman v. Rapsey, 16 Cal.2d 636, 107 P.2d 388 (1940); Township of Belleville v. Fornarotto, 228 N.J. Super. 412, 549 A.2d 1267 (1988); 63A Am.Jur.2d Public Officers and Employees § 65 at 717-718 (1984). If the question were presented to the Idaho Supreme Court, we believe it would apply the doctrine to the present situation for two reasons: First, it is a part of the common law, and the Idaho legislature adopted the common law as the rule of decision in the courts of this state when not "repugnant to, or inconsistent with, the constitution or laws of the United States . . . " Idaho Code § 73-116. Second, the Idaho Supreme Court would have the same policy concern that resulted in the creation of this common law doctrine in other states. These other states have generally applied the doctrine to prevent one person from holding an office that has a fiscal accounting function with respect to another office which is held by the same The obvious purpose of this prohibition is to protect the public monies, and the prohibition reduces the risk of improper use of public funds. Here, one person holds the offices of watermaster and of treasurer for Water District 1. Since the office of treasurer has a fiscal accounting function over the watermaster, the present administration of Water District 1 presents the precise situation that resulted in the initial creation of this common law doctrine.

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Basin since the early 1930's. In 1979, the Legislature provided a statutory basis for the rental pool operation by enacting Idaho Code §§ 42-1761 to 42-1766.

These code provisions created the water supply bank to be operated by the Idaho Water Resource Board (Board). The Legislature directed the Board to adopt rules and regulations governing the management, control, delivery and use and distribution of water to and from the water supply bank. Idaho Code § 42-1762.

Idaho Code § 42-1765 authorizes the Board to appoint local committees to facilitate the rental of stored water. The statute provides that a local committee shall have the authority to market stored water between consenting owners and consenting renters under rules and regulations adopted by the Board. The Board adopted rules and regulations implementing its water supply bank authority in October, 1980. IDAPA 37.D, Water Supply Bank Rules and Regulations (1980). The Board adopted amendments to the Water Supply Bank Rules and Regulations on March 22, 1991. Pursuant to Idaho Code § 67-5204 the amended rules went into effect twenty days after being filed with the IDWR.

Rule 6 of the Board's current rules governs the appointment of local committees to facilitate the rental of stored water. The rule requires the local committee to adopt procedures governing the rental of stored water in a manner consistent with the Board's rules. The procedures must include provisions determining the price for water placed into the bank, the price of water rented out of the bank, and a provision determining the amount of the administrative rental pool charge to be paid to the local committee by persons renting water from the bank. IDAPA 37.D.6.1.2,3 and 4.11

The Board by resolution renewed the appointment of the Committee of Nine as the local committee for Water District 1 for a five-year term on May 24, 1988. Previous Board rules did not address how the local committee is to manage the moneys generated by collection of the administrative rental pool charge. Rule 6,1,11 of the newly amended rules requires that local committee procedures provide for the "Management of rental pool

<sup>10</sup> Idaho Code §§ 42-1761 through 1766.

II IDAPA 37.D.6.2 requires the local committee procedures to require a 10% surcharge for credit to the revolving development account and the water management account established by Idaho Code §§ 42-1752 & 42-1760. Therefore, the total price for water rented from the water bank is the sum of (1) the price paid to the lessor of the water, (2) the 10% surcharge paid to the IDWR, (3) the amount retained by the local committee.

funds as public funds pursuant to the Public Depository Law, chapter 1, Title 57, Idaho Code."

The Legislature in 1986 amended Idaho Code § 42-1765 to restrict how funds generated from the administrative charge may be used. The amendment provides that, "[a]ny proceeds retained by a district shall be used exclusively for public purposes as set forth in section 42-613A, Idaho Code." Idaho Code § 42-613A provides as follows:

42-613A. Proceeds from the lease of stored water — District retention — Control and use. Each water district created pursuant to section 42-604, Idaho Code, shall be authorized to retain in a special account the proceeds from the rental of storage water leased under the provisions of section 42-1765, Idaho Code. The account shall not be used to reduce assessments to water users nor shall it be paid to water users in any event. Notwithstanding the supervisory responsibilities of the department of water resources over the activity of water districts, the account shall be under the exclusive control of the water district within which the leased water is stored.

All proceeds from the lease of stored water which are retained by any district under this section shall be used solely for one or more of the following public purposes:

(1) Expenses of the district.

(2) Improvements to the district's facilities, including a reasonable reserve for future improvements.

(3) Educational projects designed to increase public awareness in the area of water distribution, water rights and water conservation.

(4) Other public projects designed to assist in the adjudication, conservation or more efficient distribution of water.

Idaho Code § 42-613A authorizes a water district to maintain a special account to retain the proceeds generated from its rental pool operation. The statute emphasizes that the account shall be "under the exclusive control of the water district." The Legislature could not have been more specific in its intent. The clearly expressed intent of the Legislature must be given effect. Ottesen on Behalf of Edwards v. Board of Comm'rs of Madison County, 107 Idaho 1099, 695 P.2d 1238 (1985). We interpret the language of the statute to require that the funds generated by the district's operation of a rental pool must be maintained by the water district in the same manner as other water district funds are maintained but that use of the funds is limited as provided in the statute.

The statute requires that funds in the special account "shall not be used to reduce assessments to water users nor . . . paid to water users in any event." This requirement places a clear duty upon the water district to ensure that the rental pool funds are not intermingled with the normal operating funds of the district. All funds from the rental of water, other than the administrative charge, are held in trust to be paid to the owners of the water placed into the rental pool. Based upon the specific wording of the statute we conclude that Water District 1 does have responsibility and control over all water bank funds.

#### Question No. 3

The third question asks whether the Committee of Nine has any control over the use and distribution of retained water bank funds? As previously discussed, the Committee of Nine is the advisory committee for Water District 1.12 The Committee of Nine is the entity approved by the Water Resource Board to serve as the local committee under Idaho Code § 42-1765.

Idaho Code § 42-1765 describes the role of the local committees in administration of the water bank. Idaho Code § 42-1765 states:

The water resource board may appoint local committees to facilitate the rental of stored water. The committee shall have the authority to market stored water between consenting owners and consenting renters under rules and regulations adopted by the board. . . .

In exercising its authority under this section, the local rental committee shall determine, in advance,

<sup>12</sup> The Committee of Nine is elected annually by the water users at the annual Water District 1 meeting. The Committee of Nine functions as an executive body representing the interests of the water users throughout the year. The makeup of the Committee is structured so as to provide representation for both stored and natural flow water users throughout the several reaches of the approximately 300-mile stretch of the Snake River from the Wyoming border to Milner Dam. The initial establishment of the Committee of Nine in the spring of 1919 grew out of the need to provide organizational continuity to the complex task of distributing storage and natural flow water rights over the great distance encompassed by the district and to provide for the systematic collection of hydrographic information on the river. See 1919 Annual Report For Water District No. 36. Commissioner of Reclamation at the time, W. G. Swendsen, approved of the establishment of the Committee of Nine. He also approved of the recommendation of the Committee that the district thereafter be operated on a year-round basis.

at the annual meeting of water users each year, that portion of the proceeds for the year from the lease of stored water to be paid to consenting contract holders of the storage water rights as reimbursement for their costs and that portion to be retained by the district in which the committee is located. Any proceeds retained by a district shall be used exclusively for public purposes as set forth in section 42-613A, Idaho Code. (Emphasis added.)

Idaho Code § 42-1765 does not vest in the local committee of a water district, here the Committee of Nine, any responsibilities regarding the collection, investment, or disbursement of water bank funds. The statute specifically requires the water district to retain authority over the funds and to administer the funds in accordance with Idaho Code § 42-613A.

#### Question No. 4

The fourth question asks whether the watermaster for Water District 1 is allowed to invest water assessment funds or water bank funds in common stocks, corporate bonds, mutual funds and other types of equity securities? It is apparent that since a water district is defined as an instrumentality of the state by Idaho Code § 42-604, the officers of such districts are subject to the general provisions of law governing the management of funds which come into their possession. This last question involves two issues: [1] What is the role of the watermaster in the management of the funds? [2] What are the authorized types of investments for these funds?

As explained earlier, Water District 1 has elected to proceed under the alternate procedures of Idaho Code § 42-619, which provides for a water district treasurer. The district treasurer has authority to "keep a complete, accurate and permanent record of all moneys received by and disbursed for and on behalf of the district." Idaho Code § 42-619(3). Since the district treasurer has an oversight authority regarding expenditures of the watermaster, that office is incompatible with the office of watermaster. One person cannot hold both positions. Supra, at note 9. Therefore, the watermaster has no authority to invest the funds of Water District 1.

Idaho Code § 42-619 requires that the water district treasurer comply with the provisions of the Public Depository Law, chapter 1, Title 57, Idaho Code, (the Act). The Act is designed to safeguard and protect the public moneys of all governmental entities having the power to levy taxes or assessments. The investment of public funds must be made in accordance with the Act even though interest so earned is less

than what might be earned by more speculative investments. Oversmith v. Highway Dist. No. 2, 37 Idaho 752, 218 P. 361 (1923). Statutes governing the general powers of governmental entities must be construed in pari materia with the provisions of the Public Depository Law. See Id.

Idaho Code § 57-105 defines "'[p]ublic moneys' . . . [as] all moneys coming into the hands of any treasurer of a depositing unit . . . . " Therefore, the monies received by Water District 1 as water user assessments or as payments into the water bank are "public monies under the provisions of the Public Depository Law." The district treasurer for Water District 1 must deposit in a designated depository all public monies of \$1,000 or more on See Idaho Code § 57-127 (Supp. 1990). A designated depository in which public moneys may be authorized for deposit includes "any national bank, state bank, trust company, federal savings and loan association, state savings and loan association, federal credit union or state credit union, located in the state Idaho Code § 57-110 (Supp. 1990). In most instances, the designated depository must be within the boundaries of the See Idaho Code §§ 57-128 and 57-130 (Supp. depositing unit. The statute contains an exception providing that upon appropriate approval the treasurer may invest surplus or idle funds of the depositing unit in investments permitted by Idaho Section 67-1210 lists the types of investment Code § 67-1210. vehicles authorized for use by the state treasurer in investing idle moneys in the state treasury. The list includes numerous types of obligation type securities issued by federal, state and local governmental entities and public corporations. The list does not, however, include common stocks, corporate bonds, mutual funds or other types of equity securities.

Consequently, Water District 1 is not authorized to invest any district funds, whether generated from water user assessments or water bank activities, in equity securities such as common stocks, corporate bonds or mutual funds.

#### **AUTHORITIES CONSIDERED:**

#### Idaho Statutes

Act of March 11, 1903, 1903 Idaho Sess. Laws 223.

Act of February 19, 1927, ch. 39, 1927 Idaho Sess. Laws 51.

Act of January 31, 1947, ch. 11, 1947 Idaho Sess. L. 11.

Act of March 27, 1969, ch. 305, 1969 Idaho Sess. Laws 913.

Act of April, 4, 1989, ch. 286, 1989 Idaho Sess. Laws 710.

Idaho Code § 42-106.

Idaho Code §§ 42-601 through 619.

Idaho Code § 42-1752.

Idaho Code § 42-1760.

Idaho Code §§ 42-1761 through 42-1766.

Idaho Code § 57-105.

Idaho Code § 57-110 (Supp. 1990).

Idaho Code § 57-127 (Supp. 1990).

Idaho Code § 57-128 (Supp. 1990).

Idaho Code § 57-130 (Supp. 1990).

Idaho Code § 67-1210.

Idaho Code § 67-5204.

Idaho Code § 73-116.

Chapter 1, Title 57, Idaho Code.

#### Idaho Cases

Bailey v. Idaho Irrigation Co., 39 Idaho 354, 227 P. 1055
(1924).

Big Wood Canal Co. v. Chapman, 45 Idaho 380, 263 P. 45
(1927).

Kopp v. State, 100 Idaho 160, 595 P.2d 309 (1979).

Ottesen on Behalf of Edwards v. Board of Comm'rs of Madison County, 107 Idaho 1099, 695 P.2d 1238 (1985).

Oversmith v. Highway Dist. No. 2, 37 Idaho 752, 218 P. 361
(1923).

State ex rel. Evans v. Click, 102 Idaho 443, 631 P.2d 614, (1981).

#### Cases from other Jurisdictions

People ex rel. Chapman v. Rapsey, 16 Cal.2d 636, 107 P.2d 388 (1940).
Township of Belleville v. Fornarotto, 228 N.J. Super. 412, 549 A.2d 1267 (1988).

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#### Other Authorities

IDAPA 37.D Water Supply Bank Rules and Regulations. Rule 4.3 of Water District 1 Rental Pool Procedures. 63A Am.Jur.2d Public Officers and Employees § 65 (1984). 1919 Annual Report For Water District No. 36.

DATED this 5th day of August, 1991.

LARRY ECHOHAWK Attorney General State of Idaho

LARRY ECHOHAWK

Analysis By:

David J. Barber Deputy Attorney General Natural Resources Division

Phillip J. Rassier
Deputy Attorney General
Idaho Department of Water Resources



# State of Idaho DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON DIRECTOR

September 17, 1991

Reed Murdock, Treasurer Water District 01 1052 W. Highway 39 Blackfoot, ID 83

RE: Appointment as Water District 01 Treasurer

Dear Reed:

I am pleased to appoint you as Treasurer for Water District 01 for the remainder of the 1991 water district year. You are to serve under this appointment until the water district annual meeting in March 1992 and either you or a successor are elected by the water district members.

Your salary, to be paid from Water District 01 funds, is \$25 per day plus reimbursement for mileage at the state approved rate.

This appointment is made pursuant to Section 42-619, Idaho Code which provides for the Treasurer to "keep a complete, accurate and permanent record of all moneys received by and disbursed for and on behalf of the district".

Enclosed is your certificate of appointment. If I or members of my staff can be of assistance to you in this new duty, please give me a call.

Sincerely,

R. KEITH HIGGINSON

Director

Enc.

cc: Ron Carlson
Paul Berggren

# STATE OF IDAHO

### DEPARTMENT OF WATER RESOURCES

## CERTIFICATE OF APPOINTMENT

This is to certify that I have this day appointed	REED D.	MURDOCK		as
Treasurer	of	Water	District 01	for
1991 Water District Year			_ or until his successor is appo	inted and qualified
under the provisions of Section42-61	9	, Idaho Code, at such rate of compensation as established b		• •
applicable law.				

# BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

County of Bingham ) ss Official OATH
I do solemnly swear (or affirm) that I will support the Constitution of the United States, the
Constitution and laws of the State of Idaho, specifically including the provisions of Section
42-605 and 42-607, Idaho Code and that I will faithfully discharge all the duties of the office
of Treasurer of Water District 01 according
to the best of my ability. So help me God.
Reed D. Murdock
SUBSCRIBED AND SWORN to before me this 14th day of Sept., 1991.
Eline P. Margund
NOTARY PUBLIC Prefam Co. Ide
Commission Expires 5-36-92

STATE OF IDAHO



Department of Water Resources

September 6, 1991

R. Keith Higginson Director Idaho Dept. of Water Resources 1301 North Orchard Street Boise, Idaho 83706-2237

Dear Keith:

The Committee of Nine has recognized for a long time that the water distribution statutes are inconsistent and need to be re-codified. However, we believe the distribution system on the Upper Snake has worked extremely well and I believe that those who would make significant changes in the system are certainly in the minority.

With the recent Attorney General's opinion this recodification of these statutes is imperative. In the mean time we are doing everything within our power as advisors to the watermaster to comply with the opinion. I am writing to advise you that the Water District liquidated all of its remaining investments in equities on August 28, 1991. We elected Reed Murdock to act as Treasurer for the rest of the year. We anticipate that he will be paid at the same rate as the Upper Valley Committee of Nine or \$25 per day plus mileage.

We appreciated your meeting with us and I hope that we will be able to work together to get the necessary legislation early in the next legislative session.

Very truly yours,

Paul Berggren Chairman,

Committee of Nine

PRB/dr