

RECEIVED

JAN 29 2002

Department of Water Resources
Southern Region

To: Greg Nelson <gnelson@idahofb.org>
From: Norm Semanko <norm@iwua.org>
Subject: Re: voting in water districts
Cc:
Bcc:
Attached:

Greg --

Water district elections are governed by Idaho Code Section 42-605. The water users of the district elect the water master at the annual meeting each year. I.C. Sec. 42-605(3). Voting is by majority vote of the water users present at the meeting, unless one (1) or more water users requests voting proportionate to the average annual dollar amount and any fraction thereof assessed for each person's water right for the previous five (5) years. I.C. Sec. 42-605(4). In other words, the larger the water right, the more votes you get.

Do you have a specific proposal in mind? It would need to be run by our Legislative Committee and the Committee of Nine (advisory to Water District 1, the largest in the State) would also have a large interest, as would Water District 63 (Boise River) and Water District 65 (Payette), since they have operated under the existing code for years and are members of our association. Attorneys would also get involved.

Any change would have to be worded so as to not adversely impact the other water districts in the state. Voting according to the size of your water right is pretty firmly entrenched, so I don't know how you would get around that. To allow for majority votes among those present at the meeting, maybe you increase the required number to called for weighted voting in the statute from "one (1)" to "two (2)" people. Even then, I am sure there would be some concerns among the other water districts and attorneys. In addition, I don't know if that would solve the perceived problem in Water District 45 or not.

Let me know. Thanks.

-- Norm Semanko

At 03:00 PM 09/27/2001 -0600, you wrote:

>Hi Norm;
>Tom Geary has asked us and Senator Denton Darrington to look into
>changing the way the watermaster is elected. It appears under the
>current statute that one person might be able to simply control a water
>district and Tom indicates water district 45 is an example of this
>happening. Have you been approached with the problem? What is your
>thoughts regarding a possible change of this statute.
>Please let me know
>Greg
>
>
>

WD 45
Must CK.

Albion Id. March 23, 01

Representative Scott Bedke

Dear Scott

In the Albion water district #45, many of our members are very unhappy with the fact that one water user can control the rate of the whole district.

We are suggesting that the State Legislature give this problem to a Committee to be studied this summer and come up with a recommendation that is a little more American, than the process we have of one person controlling the rate and calling all the shots.

This is state law (water law) and the legislature has the authority to change it.

Sincerely Tom Geary
Chairman Albion water
district #45

SECTION J. - WATERMASTER ELECTION, APPOINTMENT AND REMOVAL

Watermasters in Idaho are employed by the state but are elected and compensated directly by water users within water districts. Water districts are created by the Director of IDWR pursuant to Section 42-604, Idaho Code. A water district may be created only after the priorities of appropriation of the water rights have been adjudicated by a court of law.

The watermaster is elected at an annual meeting of the water users which is usually held on the first Monday in March of each year. The users also have the option of holding the meeting on any convenient day between the second Monday in January and the third Monday in March. To schedule the meeting on a day other than the first Monday in March, the water users must adopt a resolution at the annual meeting setting the revised day as the annual meeting date. (Section 42-605(2), Idaho Code).

At the beginning of each annual water meeting, the water users must first choose a meeting chairman and meeting secretary and should determine the manner and method of electing the watermaster. The meeting chairman or secretary from the preceding year should call the meeting to order and preside over the election of meeting officers. Prior to the election of a watermaster, the water users must agree on the compensation to be paid to the watermaster and any watermaster assistants for that year or irrigation season. Fixing the watermaster compensation at an annual meeting is generally accomplished when considering the water district budget.

Votes cast in the election of a watermaster and in connection with other water district matters may be by majority vote of the water users present at the annual meeting unless one or more users request the alternative voting method identified in Section 42-605(4), Idaho Code be used when considering one or more matters at the meeting. The alternative voting procedure is based upon assessments for delivery of stored and natural flow water. Under this alternative procedure, each user with a valid right or rights is entitled to a number of votes equal to the average annual dollar amount assessed for the user's right or rights for the previous five years, or lesser number of years the rights have been assessed. When voting by majority, a corporation or water delivery organization, such as an irrigation district or canal company etc., is considered one person and limited to one vote. Proxy votes are not allowed in a water district election in the absence of the water right owner, except that in the absence of the owner a right may be voted by another person present who has the use of the right for the ensuing season, such as a tenant, lessor or contract purchaser.

In the event a district does not hold a meeting or cannot agree on a watermaster, the Director of IDWR may appoint a watermaster and set a budget for the operation of the district if

Innocence.

Validity of district.
Waters in Boise River.

Application of Section.

On streams whose priorities of appropriation and use have not been adjudicated by the courts having jurisdiction thereof there could be no legal organization of water districts, and no persons claiming to be officers of such districts have any authority to determine priorities and amounts or to interfere with the irrigation works of any user. *Merriss v. United States*, 256 F. 663 (9th Cir. 1916).

Combining Districts.

Where the department of water resources wishes to combine two water districts on the same creek to one and the number of conserved water rights along the creek is unknown, it must first hold a public hearing to hear the relevant claims. If the department decides there are insufficient unadjudicated rights to develop a workable plan for water distribution, it should proceed in an adjudication pursuant to § 42-1406 before combining the two districts. *Nellison v. Higginson*, 95 Idaho 87, 556 P.2d 1048 (1977).

Conflicting Uses.

The mere fact that in 1877 there is a conflict between the use of water in one district and the use of water in another, both districts being on the same stream, is not sufficient to show that there was a conflict when the original district was split into two in 1916. *Nellison v. Higginson*, 95 Idaho 87, 556 P.2d 1048 (1977).

Entitled to Deary Validity.

In action for contribution for expense of watermaster, defendant who had participated in meetings of water district and received benefits for eleven years could not deny liability, although the district had not been incorporated with the formation of such water district. *Owen v. Nampa & Meridian Irrigation Dist.*, 48 Idaho 682, 285 P. 464 (1930).

Innocuity.

In a suit brought by owners of leased farmland, the state was immune from liability for any decision of the director of the Department of Water Resources in taking

measures to protect against failure of a dike, the immunity extended to the flood control district and the chairman, and also to the water district and its watermaster and chairman since there was no evidence they owned, controlled, operated or maintained or managed the dike. *Marty v. State*, 117 Idaho 133, 768 P.2d 624 (1988).

Validity of District.

No particular steps are specified or prescribed to be taken or followed by department of water resources (department of water resources) in creating or designating a water district. *Owen v. Nampa & Meridian Irrigation Dist.*, 48 Idaho 682, 285 P. 464 (1930).

Since §§ 42-607 and 42-1406 assume the existence of constituted rights within a water district, this section must be construed to mean that a water district may be validly created even though not all the users within the district have had their rights adjudicated. *Nellison v. Higginson*, 95 Idaho 87, 556 P.2d 1048 (1977).

The validity of the creation of a water district depends upon the number of unadjudicated constitutional use rights at the time of creation, not at the present. *Nellison v. Higginson*, 95 Idaho 87, 556 P.2d 1048 (1977).

Waters to Boise River.

Decision in case of Farmers Cooperative Ditch Co. v. Riverside Irrigation Dist., 15 Idaho 525, 102 P. 483, together with decree and order of trial court in that case, though not res judicata, constituted an adjudication of the waters in Boise River for the purpose of distribution. *Owen v. Nampa & Meridian Irrigation Dist.*, 48 Idaho 680, 285 P. 464 (1930).

Opinions of Attorney General, State water districts are instrumentalities of the state that exist for the purpose of assisting the Idaho Department of Water Resources in carrying out its duty under this section to provide for the distribution of the public waters of the state in accordance with rights of prior appropriation. OAG 91-7.

The facts of existence of Water District 1 as an administrative and geographic unit is continuous from the date of creation until dissolved by order of the director, and it is active year-round. OAG 91-7.

(2) Each meeting shall be held at some place within the water district, or at some nearby location convenient to a majority of those entitled to vote thereat, which place shall be designated by the director of the department of water resources. The director shall, between January first and February first of each year, notify by regular mail all persons, companies or corporations known by the director to hold rights to the use of the waters of such district, which right has been adjudicated or decreed by the court or is represented by valid permit or license issued by the department of water resources, of the time, date, location and purpose of the annual meeting. At any annual meeting the water users may vote to waive the requirement for notice by mail and provide for notice to be given for future meetings by publication of the time, date, location and purpose of the meeting in a newspaper or newspapers in general circulation in the district. Published notice shall be made once per week for two (2) consecutive weeks with the second notice appearing at least thirty (30) and not more than sixty (60) days prior to the meeting. In water districts whose area includes land in more than four (4) counties the annual meeting shall commence at ten o'clock A.M. instead of two o'clock P.M.; provided, that the water users of any water district may, by resolution adopted at an annual meeting or at a special meeting properly called for that purpose, change the time of day when the meeting shall commence or change the date for annual meetings in subsequent years to any day except Saturday and Sunday between the second Monday of January and the third Monday in March or change both the time and the date, in which case the director of the department of water resources shall send notification at least thirty (30) days prior to said meeting date. At an annual meeting the water users may adopt resolutions to assure or improve the distribution of the waters of the district within state law, and may provide that such resolutions shall continue from year to year.

(3) At the meeting of the water users of a district there shall be elected a watermaster for such water district, who may be authorized to employ such other regular assistants as the water users shall deem necessary, and who, upon appointment by the director of the department of water resources, shall be responsible for distribution of water within said water district, and the water users shall, prior to the election of such watermaster and approval of the employment of assistants, fix the compensation to be paid them during the time actually engaged in the performance of their duties.

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

42-605. District meetings — Watermaster and assistants — Election

— Removal — Oath and bond — Advisory committee. —

(1) There shall be held on the first Monday in March in each year, and, except as provided in subsection (2) of this section, commencing at two o'clock P.M., a meeting of all persons owning or having the use of a water right, in the waters of the stream or water supply comprising such district, which right has been adjudicated or decreed by the court or is represented by valid permit or license issued by the department of water resources.

the previous five (5) years, or such lesser number of years as the right has been assessed. If a right has not previously been assessed, a person present, owning or having the use of the right for the ensuing season shall be entitled to a number of votes equal to the dollar amount and any fraction thereof which the right would have been assessed had it existed and been reasonably used when water was available under the priority of the right during the previous season.

(5) At such meeting the water users shall choose a meeting chairman and meeting secretary and shall determine the manner and method of electing the watermaster. The water users shall, at the annual meeting, provide for the water district treasurer functions in accordance with section 42-619, Idaho Code. Within five (5) days after such meeting the meeting chairman and meeting secretary shall forward a certified copy of the minutes of such meeting to the department of water resources. The meeting chairman, or the meeting secretary, if the meeting chairman is not present, from the immediately preceding annual meeting shall call the meeting to order and preside over the election of officers for the meeting.

(6) At such meeting the water users may choose an advisory committee to be composed of members selected as may be determined at the meeting, which committee shall serve as advisors to the director and the watermaster in matters pertaining to the distribution of water within the district. The advisory committee may be authorized to carry out policies as set forth in resolutions duly adopted by the water users at the annual meeting or at a special meeting. The advisory committee may also serve as the local committee to facilitate the rental of stored water if appointed by the water resource board for such purpose under the provisions of section 42-176b, Idaho Code.

(7) A corporation or a water delivery organization, including, but not limited to a corporation, a water company, an irrigation district, an irrigation company or a canal company, shall be considered a person for the purpose of this section and shall cast its vote by someone to be designated by the corporation.

(8) Should said meeting not be held, or should said watermaster not be elected or the watermaster's compensation not be fixed as above provided, then the director of the department of water resources is authorized to appoint a watermaster and fix the watermaster's compensation.

(9) The director of the department of water resources may remove any watermaster whenever such watermaster fails to perform the watermaster's duty, upon complaint in that respect being made to the director in writing, by one (1) person owning or having the right to the use of a water right in such district, which right has been adjudicated or decreed by the court or is represented by valid permit or license issued by the department of water resources provided, that upon investigation the director, after a hearing with the other water users of said district, which shall be held in the district or at some location convenient to the water users of the district, finds such charge to be true, and the director may appoint a successor for the unexpired term.

(10) Before entering upon the duties of the watermaster's office, said watermaster shall take and subscribe an oath before some officer authorized

by the laws of the state to administer oaths, to faithfully perform the duties of the watermaster's office, as provided in section 42-607, Idaho Code, and of the watermaster of water resources. Upon appointment shall file that oath with the department of water resources. The actions taken by the director of the department of water resources, the actions taken by a watermaster in fulfillment of the duties of his office are covered by the state group surety bond as provided by sections 59-901 through 59-904, Idaho Code.

(11) The director shall call a special meeting of the water users of a district upon receipt of a written request for such meeting from a majority of the members of the advisory committee for a district, a written request from water users representing thirty per cent (30%) or more of the votes cast at the last regular annual meeting, a written request from the watermaster or on the director's own motion if the director determines a meeting is necessary to address matters that cannot be delayed until the next regular annual meeting. Notice of the time, place and purpose of the special meeting shall be given by the director in the manner provided in section 42-605(2), Idaho Code.

(12) The water users may, by resolution, authorize the watermaster to acquire, hold and dispose of such real and personal property, equipment and facilities in the name of the water district as necessary for the proper distribution of water and shall provide that all such real and personal property shall remain in the custody of the watermaster and the watermaster's successor. (1903, § 24, p. 223; ven. R.C., § 3275; am. 1909, § 1, p. 326; am. 1915, ch. 34, § 10, p. 103; C.L., § 3275; C.S., § 5609; am. 1925, ch. 60, § 1, p. 86; am. 1931, ch. 84, § 1, p. 913; am. 1973, ch. 282, § 1, p. 534; am. 1982, ch. 14, § 1, p. 18; am. 1984, ch. 175, § 1, p. 420; am. 1987, ch. 112, § 1, p. 225; am. 1988, ch. 31, § 1, p. 35; am. 1991, ch. 101, § 1, p. 225; am. 1992, ch. 339, § 6, p. 1014.)

Comptroller's notes. Section 2 of S.L. 1989, ch. 305 is compiled herein as § 42-607.
Section 2 of S.L. 1978, ch. 242 is compiled as § 42-607.

Section 2 of S.L. 1982, ch. 34 declared an emergency. Approved February 26, 1982.
Cross ref. Appropriations of watermaster by owners of ditch, canal, or lateral, § 48-901.

Compensation: Allowance and charge against land and canal, § 42-610. Ranges of water district, and district expenses, §§ 42-612 — 42-619.

See, to see, ref. This section is referred to in §§ 42-608, 42-618A, 42-176E.

Cited in: Directors v. United States, 286 F. 903 (9th Cir. 1948).

ALIENS

Incompetency.
Jurisdiction of watermaster.
Liability for watermaster's acts.
Nature of office.
Power of watermaster.
Suit against watermaster.

Voting rights.

Incompetency.
In a suit brought by owners of flooded farmland, the state was immune from liability for any delinquency of the director of the Department of Water Resources in taking measures to protect against failure of a ditch. This immunity extended to the flood control district and the watermaster, and also to the director and the watermaster and chairman since there was no evidence they were controlled, appointed or maintained or managed by the state. 117 Idaho 181, 788 P.2d 834 (1989).

Jurisdiction of Watermaster.

The 1989 amendment to this section defining a water right as "any water right which has been adjudicated by the court or is represented by valid permit or license issued by the department of water resources" (department of water resources) delineates the jurisdiction and control of the watermaster of a water district. DeLoach v. Higginson, 85 Idaho 177,