



## State of Idaho

# DEPARTMENT OF WATER RESOURCES

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JAMES E. RISCH  
Governor

KARL J. DREHER  
Director

October 17, 2006

BOB DUKE  
WATERMASTER  
WATER DISTRICT NO. 34  
PO BOX 53  
MACKAY, ID 83251-0053

**RE: Voting Policy Guidance**

Dear Mr. Duke:

At a meeting of the WD34 Advisory Committee on September 20, 2006, IDWR was asked to provide additional clarification on voting at water district annual meetings as described by Idaho Code § 42-605. The attached memoranda provide clarification on the questions raised at that meeting.

Please feel free contact IDWR if you have any questions.

Sincerely,

Nick Miller  
Water Distribution Section

**Enclosures:**

September 25, 2006 Memorandum from Nick Miller to Phil Rassier, Deputy A G, IDWR

*RE: Guidance on Voting in Water District Elections*

October 16, 2006 Memorandum from John Homan, Deputy A.G., IDWR to Nick Miller

*RE: Guidance on Voting in Water District Elections Under I.C. §42-605*

**c:**

IDWR Eastern Region, Idaho Falls

Loy Pehrson – Rt 1 Box 48, Darlington, ID 83255

Lin Hintze – PO Box 125, Mackay, ID, 83251

Logan Williams – HC 86 Box 4160, Mackay, ID 83251

Alvin Crawford – 3943 W Antelope Rd, Moore, ID 83255

Preston Bell – RT 1 Box 58, Darlington, ID 83231

Keith Hill – 3165 W 3300 N, Mackay, ID 83251

Jay Jensen – 3165 W 3300 N, Moore, ID 83255

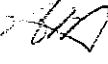
Bob Waddoups – 3474 W 2850 N, Moore, ID 83255

Eric Aikele – 3477 W 2700 N, Moore, ID 83255

Young Harvey Walker – Rt 1 Box 200, Arco, ID 83213

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# Memorandum

**To:** Phil Rassier, Deputy A.G., IDWR  
**From:** Nick Miller   
**Date:** September 25, 2006  
**Re:** Guidance on voting in water district elections

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Concerns have arisen among some water users in Water District 34 (Big Lost River) that the voting practices at annual water district meetings are inconsistent and, in some cases, may not be legal. IDWR has recommended that the WD34 Advisory Committee prepare, or oversee the preparation of, a written policy concerning voting at the annual meeting. IDWR has agreed to review that policy to ensure it is consistent with previous guidance and applicable laws. However, the WD34 Advisory Committee has asked that IDWR provide additional clarification on certain questions upfront to aid in their drafting of the policy and help reduce the need for revisions. As we discussed on the phone, please prepare a memorandum or letter addressing the following questions.

#1. In previous guidance (see the attached 11/20/1992 letter to Kent Foster, and the 01/15/2001 memorandum to Allen Merritt), you addressed the issue of voting by proxy or voting by a representative. You state that only a person that owns or has the use of a water right is allowed to vote for that water right, and that the Department has advised that a proxy vote should not be allowed in the absence of the water right owner. Additionally, you wrote that a power of attorney would only allow another person to vote if that power of attorney granted that person full use of the water right for the ensuing season. Some users have asked whether they could grant a very limited power of attorney to a ranch hand, or another person, that only grants that person the authority to vote at the annual meeting in place of the owner. Can you comment on whether this is possible?

#2. If a water right is held in the name of an individual, can a family member (Husband, Wife, or child) vote for that individual, or does a family member have the same standing as any other person whose name is not on the water right?

#3. If a water right is held in the name of a business entity, who is allowed to vote in the name of the business? What types of documents should the business submit to the credentials committee to designate the authorized voter?

## MEMORANDUM

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

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

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

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

## MEMORANDUM

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

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

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

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

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

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

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

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State of Idaho  
DEPARTMENT OF WATER RESOURCES

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CECIL D. ANDRUS  
GOVERNOR

R. KEITH HIGGINSON  
DIRECTOR

November 20, 1992

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

Dear Kent:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



PHILLIP J. RASSIER  
Deputy Attorney General  
Department of Water Resources

cc: Skip Jones - Eastern Region

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