



State of Idaho

DEPARTMENT OF WATER RESOURCES

2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

WESTERN REGION

March 1, 2007

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

Ruth Raney, Sec.
Big Creek Water District
3498 Raney Rd
New Meadows ID 83654

RE: Annual Water District Meeting Criteria Statutes
Big Creek Water District #78A

Dear Mrs. Raney:

In the review of annual water district meeting schedules in our region, I noted that your district meeting is scheduled for Sunday March 25th. I would ask that you share this letter at the 2007 annual meeting with the district waterusers.

I would draw your attention to Idaho Code (IC) Title 42 Chapter 600 (attached) which addresses water district creation and functions. Specifically, IC §42-605 states that:

Waterusers of a water district may by resolution change the time of day when a meeting shall commence or change the date of the annual meeting to any day except Saturday and Sunday between the second Monday of January and the third Monday of March.....

Although water district functions are locally controlled, the district is still an instrument of the state for the distribution of water. Department staff need to be able to attend the meetings. We would request you change your annual 2008 meeting date to adhere to the meeting criteria as described in IC §42-605 above—Monday thru Friday only.

Should you have any questions, please contact me at the Western Regional Office, phone 334-2190

Sincerely,

A handwritten signature in black ink that reads "John Westra".

John Westra, Manager
Western Region

Enclosure: IC §42-604 & §42-605

Review.

Action of commissioner in determining when water may be first beneficially used and in delivering or refusing to deliver water may be reviewed and controlled in such manner, as facts may require, by appropriate action on part of any person deeming himself aggrieved. *Arkoosh v. Big Wood Canal Co.*, 48 Idaho 383, 283 P. 522 (1929).

Subterranean Waters.

Court may retain jurisdiction of cause involving rights to subterranean waters for two

years and decree administrative provisions concerning such rights, although this section does not expressly relate to subterranean waters not in a defined stream. *Silkey v. Tiegs*, 51 Idaho 344, 5 P.2d 1049 (1931).

Collateral References. 93 C.J.S., Waters, §§ 376-390.

42-602A. Emergency provision. [Repealed.]

Compiler's notes. This section, which comprised I.C., § 42-602A, as added by 1977, ch. 246, § 1, p. 723, was repealed by S.L. 1992, ch. 339, § 3.

42-603. Supervision of water distribution — Rules and regulations. — The director of the department of water resources is authorized to adopt rules and regulations for the distribution of water from the streams, rivers, lakes, ground water and other natural water sources as shall be necessary to carry out the laws in accordance with the priorities of the rights of the users thereof. Promulgation of rules and regulations shall be in accordance with the procedures of chapter 52, title 67, Idaho Code. [1915, ch. 34, § 8, p. 103; reen. C.L., § 3273; C.S., § 5607; I.C.A., § 41-503; am. 1992, ch. 339, § 4, p. 1014.]

Compiler's notes. The name of the department of water administration (formerly the department of reclamation) has been changed to the department of water resources on the authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 20, § 28 (§ 42-1801a).

42-604. Creation of water districts. — The director of the department of water resources shall divide the state into water districts in such manner that each public stream and tributaries, or independent source of water supply, shall constitute a water district: provided, that any stream or water supply, when the distance between the extreme points of diversion thereon is more than forty (40) miles, may be divided into two (2) or more water districts: provided, that any stream tributary to another stream may be constituted into a separate water district when the use of the water therefrom does not affect or conflict with the rights to the use of the water of the main stream: provided, that any stream may be divided into two (2) or more water districts, irrespective of the distance between the extreme points of diversion, where the use of the waters of such stream by appropriators in one district does not affect or conflict with the use of the waters of such stream by appropriators outside such district: provided, that this section shall not apply to streams or water supplies whose priorities of appropriation have not been adjudicated by the courts having jurisdiction thereof.

The director may create, revise the boundaries of, or abolish a water district or combine two (2) or more water districts by entry of an order if such action is required in order to properly administer uses of the water

resource. Copies of rights to the water: judicial review as

Before entering director shall, by water user in the proposed action to hearing to be held within which writ shall not be held and the written after the hearing describing the pre deadline for receipt a week for two circulation withi tion appearing a hearing shall be nearby location.

Each water d: tality of the st governmental f the laws of the reen. R.C., § 3: C.L., § 3274; C 1986, ch. 78, §

Compiler's notes. ch. 78 is compiled Sec. to sec. ref in §§ 42-237a, 42 Cited in: DeRo 173, 505 P.2d 321

Application of se
Combining distri
Conflicting uses.
Estoppel to deny
Immunity.
Validity of distri
Waters in Boise

Application of
On streams "v
tion and use hav
courts having ju
be no legal orga
no persons cla
district have ar
orties and am
irrigation worl
United States,

Combining D
Where the c
wishes to compl

resource. Copies of the order shall be sent by regular mail to all holders of rights to the waters affected by the order. The director's order is subject to judicial review as provided in section 42-1701A, Idaho Code.

Before entering an order creating, modifying, or abolishing a district, the director shall, by regular mail, send notice of the proposed action to each water user in the district or proposed district. The notice shall describe the proposed action to be taken, the reasons therefore, the time and place of a hearing to be held concerning the proposed action, and provide a time period within which written comment on the action will be accepted. The hearing shall not be held sooner than ten (10) days after the mailing of the notice, and the written comment period shall not close sooner than ten (10) days after the hearing. Instead of mailing notice, the director may publish notice describing the proposed action, the time and place for the hearing, and the deadline for receiving written comment. The notice shall be published once a week for two (2) weeks in a newspaper or newspapers having general circulation within the district or proposed district, with the second publication appearing at least ten (10) days before the date set for the hearing. The hearing shall be held within the district or proposed district, or at some nearby location convenient to the affected water users.

Each water district created hereunder shall be considered an instrumentality of the state of Idaho for the purpose of performing the essential governmental function of distribution of water among appropriators under the laws of the state of Idaho. [1903, p. 223, § 23; am. 1907, p. 532, § 2; reen. R.C., § 3274; am. 1909, p. 326, § 1; am. 1915, ch. 34, § 9, p. 103; reen. C.L., § 3274; C.S., § 5608; am. 1927, ch. 63, § 1, p. 78; I.C.A., § 41-504; am. 1986, ch. 78, § 1, p. 236; am. 1992, ch. 339, § 5, p. 1014.]

Compiler's notes. Section 2 of S.L. 1986, ch. 78 is compiled as § 42-1765.

Sec. to sec. ref. This section is referred to in §§ 42-237a, 42-602, 42-613A.

Cited in: *DeRousse v. Higginson*, 95 Idaho 173, 505 P.2d 321 (1973).

ANALYSIS

Application of section.
Combining districts.
Conflicting uses.
Estoppel to deny validity.
Immunity.
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 district, and no persons claiming to be officers of such district have any authority to determine priorities and amounts or to interfere with the irrigation works of any user. *Marsters v. United States*, 236 F. 663 (9th Cir. 1916).

Combining Districts.

Where the department of water resources wishes to combine two water districts on the

same creek into one and the number of uncontested 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 uncontested rights to develop a workable plan for water distribution, it should proceed to an adjudication pursuant to § 42-1406 before combining the two districts. *Nettleton v. Higginson*, 98 Idaho 87, 558 P.2d 1048 (1977).

Conflicting Uses.

The mere fact that in 1977 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. *Nettleton v. Higginson*, 98 Idaho 87, 558 P.2d 1048 (1977).

Estoppel to Deny 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 this section had not been complied with in the formation of such water district. *Owen v. Nampa & Meridian Irrigation Dist.*, 48 Idaho 630, 285 P. 464 (1930).

42-243. Filing of claims of rights established by diversion and use — Form and content of claim.

Cited in: A & B Irrigation Dist. v. Aberdeen-American Falls Ground Water Dist. (In re SRBA Case No. 39576), 141 Idaho 746, 118 P.3d 78 (2005).

CHAPTER 6

DISTRIBUTION OF WATER AMONG APPROPRIATORS

SECTION.

42-605. District meetings — Watermaster and assistants — Election — Removal — Oath and bond — Advisory committee.

42-620. Additional water district expenses

relating to costs of the department of water resources for administration of water rights on the eastern snake river plain.

42-603. Supervision of water distribution — Rules and regulations.

Sec. to sec. ref. This section is referred to in § 42-223.

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.

(2) Such 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, at least twenty-one (21) days prior to the meeting date, send notification by regular mail to 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 fourteen (14) and not more than thirty (30) 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; the time and the date, in which resources shall send notice of meeting date. At an annual meeting to assure or improve the distribution of water in accordance with state law, and may provide therefor each year.

(3) At the meeting of the watermaster for such water district other regular assistants as may be appointed by the watermaster shall be responsible for distribution of the water users shall, prior to the employment of assistants during the time actually employed.

(4) Voting shall be by ballot at each meeting unless one (1) or more persons present by a majority vote procedure which follows: the chairman shall appoint a clerk to count the votes each water user present, owning or having the use of a water right in the stream or water right in the stream or water right which right has been adjudicated by valid permit or license is entitled to a number of votes and any fraction thereof as the previous five (5) years have been assessed. If a right has been owned or having the use of a water right to a number of votes equal to the number of votes which the right would have been used when water was available the previous season.

(5) At such meeting the watermaster shall appoint the meeting secretary and shall be the watermaster. The watermaster shall be the water district treasurer and the meeting secretary shall be the meeting secretary. The watermaster and meeting secretary shall be appointed at the meeting to the department of water resources meeting secretary, if there is no meeting secretary immediately preceding and shall preside over the election.

(6) At such meeting the watermaster shall be composed of members of the water district which committee shall serve in matters pertaining to the distribution of water and an advisory committee may

and use

Idaho 746,

department
resources for
water rights
in the river

provisions.

Elec-

tion. —

, and,

at two

water

district,

entitled

to

elect,

or

vote

of

the

rights

of

water

rights.

At

the

meeting

shall

be

held

on

the

second

Monday

of

January

and

the

third

Monday

in

March

or

change

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 twenty-one (21) 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 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, 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 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