

## Whitney, Rob

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**From:** Whitney, Rob  
**Sent:** Friday, May 17, 2019 2:05 PM  
**To:** Susan Ellis; Steve Neff  
**Cc:** Luke, Tim; Carlson, Joseph; Jones, Doug; Whitney, Rob; Visosky, Steven  
**Subject:** Legal Representation for WD95C Watermaster

Susie,

My name is Rob Whitney and I work for Tim Luke as the Department's Water Distribution Section Manager at IDWR's State office in Boise.

In preparation for attending the WD95C annual meeting, Doug Jones and Joe Carlson contacted me with questions concerning insurance coverage and legal representation for IDWR appointed watermasters. I understand the question related to insurance coverage has been answered sufficiently.

The question concerning legal representation for IDWR appointed watermasters appears to persist. I have included below copies of two emails that were provided to Doug and Joe prior to the meeting. This information was intended to equip them with pertinent statutory references in anticipation of related questions that might be asked or discussed at the annual meeting. Please note that the email below from IDWR's Deputy AG is a response to the question I asked him, but is not a formal legal opinion from the Office of the Attorney General. The email from me (bottom) is a summary of specific sections from Chapter 6 of Title 42 and not complete recitations. The referenced sections characterize the relationship between IDWR, the water district and the watermaster; describe the intent of a selected Advisory Committee (AC); and confine water district budgets, assessments and expenditures to those related to the proper delivery of water within the water district.

IDWR's more pressing question at the moment relates to why Steve Neff or the WD95C AC feel that IDWR is not meeting the needs of the district or the watermaster to provide appropriate direction, instruction and legal representation. If the AC or the watermaster feel this way, perhaps more dialogue would be appropriate to get to the root of this issue. IDWR strives to promote good working relationships with the water districts it creates and supervises. My impression is that Doug Jones, Joe Carlson and Tim Luke have devoted considerable effort in recent years toward that end with WD95C.

I have included Steve Neff in this response and welcome any specific and related feedback or information that might help to clearly identify and ultimately address any underlying concerns. I hope the information provided in this email helps with your immediate questions. Please feel free to contact me directly if you have additional questions or need more information.

Regards,

**ROB WHITNEY**  
**MANAGER, WATER DISTRIBUTION SECTION**  
(208) 287-4924, (208) 859-2003 cell  
[rob.whitney@idwr.idaho.gov](mailto:rob.whitney@idwr.idaho.gov)

**From:** Baxter, Garrick  
**Sent:** Wednesday, May 15, 2019 2:34 PM  
**To:** Whitney, Rob <[Rob.Whitney@idwr.idaho.gov](mailto:Rob.Whitney@idwr.idaho.gov)>  
**Subject:** RE: TLWD 95-C pursuing representation from Norm Semanko

Rob,

Idaho Code prohibits a water district and a watermaster from hiring outside counsel. Idaho Code 67-1406 states, "Notwithstanding any other provision of law to the contrary, no department, agency, office, officers, board, commission, institution or other state entity shall be represented by or obtain its legal advice from an attorney at law other than the attorney general, ... ." There are certain exceptions but none are applicable to water districts or watermasters. Water districts are "instrumentalities of the state of Idaho" and are for the specific purpose of "performing the essential governmental function of distribution of water among appropriators under the laws of the state of Idaho." Idaho Code § 42-604. Authority over the "direction and control of the distribution of water" rests with the Director and is accomplished by watermasters that are to be "supervised by the director." Idaho Code § 42-602. Because water district are state entities and watermasters are under the supervision of the Director, they must be represented by and obtain legal advice from the attorney general's office. Hope this helps. Let me know if you have additional questions.



**Garrick Baxter | Deputy Attorney General**  
Office of the Idaho Attorney General | Water Resources Section  
Ph: (208) 287-4811 | Fax: (208) 287-6700  
322 East Front Street | PO Box 83720 | Boise, ID 83720-0098

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Doug and Joe,

Below are some references from Title 42, Chapter 6, IC (CH6) that may help with your questions.

42-602 – director shall have direction and control of distribution of water from all natural water sources within a water district... distribution shall be accomplished by CH6 watermaster as provided in CH6 and supervised by the director

42-604, last paragraph – CH6 water district considered instrumentality of the state for the purpose of distributing water to appropriators consistent with state law (prior appropriation doctrine)

42-605(6) – water users may choose an advisory committee (AC) to serve as advisors to the director and the watermaster in matters pertaining to distribution of water within the district... AC may be authorized to carry out policies as set forth by resolutions adopted by the water users...

42-605(10) – watermaster bound by oath to faithfully perform the watermaster's duties as provided in IC 42-607, watermaster actions in fulfillment of duties of the office are covered by state group surety bond (IC 59-801 thru 59-804)

42-612(1) – water users must adopt a budget at the annual meeting covering the estimated *expenses of delivering the water* of the district to the water users for the ensuing year...

42-619(8) – water district treasurer shall only disburse monies by written approval of the watermaster for expenses incurred for water district purposes *related to the delivery of water*...

Hope this helps, RW