

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 136

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO WATER; AMENDING SECTION 42-605, IDAHO CODE, TO REVISE VERBIAGE RELATING TO THE REMOVAL OF WATERMASTERS, TO REVISE VERBIAGE RELATING TO OATHS AND TO PROVIDE THAT CERTAIN WATERMASTERS SHALL NOT BE REQUIRED TO TAKE AND FILE ADDITIONAL OATHS; AMENDING SECTION 42-608, IDAHO CODE, TO PROVIDE TERM OF SERVICE PROVISIONS RELATING TO WATERMASTERS, TO PROVIDE FOR THE ASSUMPTION OF DUTIES BY WATERMASTERS, TO REVISE PROVISIONS RELATING TO THE CESSATION OF PERFORMANCE OF SERVICES FOR THE DISTRIBUTION AND CONTROL OF WATER, TO REVISE AND TO PROVIDE FACTORS UNDER WHICH WATERMASTER SERVICES SHALL BE EXTENDED, TO PROVIDE FOR PAYMENT FOR EXTENDED TERMS OF SERVICE AND TO PROVIDE THAT AMOUNTS PAID FOR EXTENDED TERMS OF SERVICE SHALL BE INCLUDED IN THE CALCULATION OF ASSESSMENT AMOUNTS AND RATES FOR THE PURPOSE OF DETERMINING VOTING RIGHTS; AMENDING SECTION 42-615, IDAHO CODE, TO REVISE PROVISIONS RELATING TO PROPOSED BUDGETS FOR SUCCEEDING YEARS; AND AMENDING SECTION 42-619, IDAHO CODE, TO PROVIDE THAT CERTAIN TREASURERS SHALL NOT BE REQUIRED TO TAKE AND FILE ADDITIONAL OATHS, TO REFERENCE A CODE PROVISION SETTING FORTH THE MANNER OF REMOVAL OF WATER DISTRICT TREASURERS AND TO REVISE PROVISIONS RELATING TO THOSE DISTRICTS THAT MAY AUTHORIZE WATERMASTERS TO SERVE AS WATER DISTRICT TREASURERS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-605, Idaho Code, be, and the same is hereby amended to read as follows:

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 meet-

ings 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 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

1 secretary, if the meeting chairman is not present, from the immediately pre-
2 ceding annual meeting shall call the meeting to order and preside over the
3 election of officers for the meeting.

4 (6) At such meeting the water users may choose an advisory committee to
5 be composed of members selected as may be determined at the meeting, which
6 committee shall serve as advisors to the director and the watermaster in mat-
7 ters pertaining to the distribution of water within the district. The advi-
8 sory committee may be authorized to carry out policies as set forth in reso-
9 lutions duly adopted by the water users at the annual meeting or at a special
10 meeting. The advisory committee may also serve as the local committee to fa-
11 cilitate the rental of stored water if appointed by the water resource board
12 for such purpose under the provisions of section 42-1765, Idaho Code.

13 (7) A corporation or a water delivery organization, including, but not
14 limited to a corporation, a water company, an irrigation district, an irri-
15 gation company or a canal company, shall be considered a person for the pur-
16 pose of this section and shall cast its vote by someone to be designated by
17 the corporation.

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

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

33 (10) Before entering upon the duties of the watermaster's office, said
34 watermaster shall take and subscribe to an oath before some officer autho-
35 rized by the laws of the state to administer oaths, to faithfully perform
36 the duties of the watermaster's office, as provided in section 42-607, Idaho
37 Code, and shall file that oath with the department of water resources. Upon
38 appointment by the director of the department of water resources, the ac-
39 tions taken by a watermaster in fulfillment of the duties of his office are
40 covered by the state group surety bond as provided by sections 59-801 through
41 59-804, Idaho Code. A duly appointed watermaster that is reelected in con-
42 secutive years shall not be required to take and file additional oaths with
43 the department of water resources for each consecutive year the watermaster
44 is reelected.

45 (11) The director shall call a special meeting of the water users of a
46 district upon receipt of a written request for such meeting from a majority
47 of the members of the advisory committee for a district, a written request
48 from water users representing thirty percent (30%) or more of the votes cast
49 at the last regular annual meeting, a written request from the watermaster or
50 on the director's own motion if the director determines a meeting is neces-

sary 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 subsection (2) of this section, provided however, that a special meeting notice shall be sent at least fourteen (14) days prior to the meeting date.

(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.

SECTION 2. That Section 42-608, Idaho Code, be, and the same is hereby amended to read as follows:

42-608. WATERMASTER'S TERM OF SERVICE. (1) ~~A watermaster shall not begin work until called upon by one (1) or more owners or managers of ditches or persons controlling ditches or other diversion facilities, in the district, by application in writing to the department of water resources, stating that there is a necessity for the use and control of the waters of such district~~ The director of the department of water resources, upon receipt of a certified copy of the meeting minutes and the oath of the watermaster as provided for in section 42-605, Idaho Code, shall appoint the watermaster to a term of service throughout the year, extending until the annual meeting for the ensuing year, or until a successor is appointed. A full-year appointment of the watermaster by the director shall have no effect on the watermaster's compensation fixed by the water users at the annual water district meeting as provided for in section 42-605, Idaho Code.

(2) ~~In the absence of application or in water districts in which there are five (5) or fewer adjudicated water rights, the watermaster may be called upon to assume the watermaster's duties at any time the department of water resources finds that there is a necessity for the use and control of the waters of the district~~ A watermaster shall not begin work for the distribution and control of water required under section 42-607, Idaho Code, until called upon by one (1) or more owners or managers of ditches or persons controlling ditches or other diversion facilities in the district stating that there is a necessity for the distribution and control of the waters of the district. In the absence of a call by one (1) or more water users, the watermaster may be called upon to assume the watermaster's duties at any time the department of water resources finds that there is a necessity for the distribution and control of the waters of the district.

(3) The watermaster shall not continue performing services for the distribution and control of water after the necessity ~~therefor~~ shall cease, which shall be determined by the department of water resources, and which shall not be after the first of November of each year, unless determined necessary by the ~~director of the~~ department of water resources, or is otherwise provided by a resolution adopted at the annual water users' meeting for ~~said~~ the water district, or upon receipt of a petition requesting an extension of the watermaster's services for the distribution and control of water in any year from the holder of a water right authorizing the diversion or storage of water during the time period for which the extension is sought and upon a de-

1 termination of necessity for the diversion or storage of water. Payment for
 2 watermaster services during the extension shall be the responsibility of the
 3 holders of water rights delivered by the watermaster during the extension.
 4 For the purpose of determining voting rights at a water district meeting,
 5 amounts paid for watermaster services pursuant to this subsection shall be
 6 included in the calculation of annual assessment amounts and assessment
 7 rates under sections 42-605 and 42-605A, Idaho Code.

8 (4) At any annual meeting the water users may, by resolution, provide
 9 that the watermaster shall serve throughout the year, or for a set term dur-
 10 ing each year, for purposes of distribution and control as provided in sec-
 11 tion 42-607, Idaho Code. The department of water resources, upon receipt of
 12 a certified copy of the minutes of said meeting containing such resolution
 13 and upon the receipt of the oath of said watermaster, as provided for in sec-
 14 tion 42-605, Idaho Code, shall immediately issue a certificate of appoint-
 15 ment ordering said watermaster to assume the watermaster's duties at once
 16 and continue the same throughout the year as provided for in said resolution.

17 (5) The director of the department of water resources, upon receipt of
 18 a petition requesting an extension of the watermaster's term of service in
 19 any year from the holder of a water right authorizing the diversion or stor-
 20 age of water during the time period for which the extension is sought and upon
 21 a determination of necessity therefor shall extend the watermaster's term
 22 of service for the period of time determined necessary by the director in
 23 any year. Payment for watermaster services during the extended term of ser-
 24 vice ordered by the director shall be the responsibility of the holders of
 25 water rights delivered by the watermaster during the extended term of ser-
 26 vice. For the purpose of determining voting rights at a water district meet-
 27 ing, amounts paid for watermaster services pursuant to this subsection shall
 28 be included in the calculation of annual assessment amounts and assessment
 29 rates under sections 42-605 and 42-605A, Idaho Code.

30 SECTION 3. That Section 42-615, Idaho Code, be, and the same is hereby
 31 amended to read as follows:

32 42-615. PROPOSED BUDGET FOR SUCCEEDING YEAR. Each watermaster shall,
 33 at least ~~thirty~~ fourteen (~~30~~14) days prior to the annual meeting of the wa-
 34 ter users of the water district, also prepare ~~and file with the department of~~
 35 ~~water resources~~ a proposed budget for the succeeding year, together with a
 36 distribution of the amount of ~~said~~ the budget to the respective water users,
 37 using the actual deliveries for the past irrigation season or seasons, as the
 38 basis for ~~said~~ distribution ~~as hereinabove provided, which said.~~ The pro-
 39 posed budget and distribution shall be submitted to the water users for con-
 40 sideration and approval at the next annual water meeting.

41 SECTION 4. That Section 42-619, Idaho Code, be, and the same is hereby
 42 amended to read as follows:

43 42-619. ALTERNATE PLAN FOR PAYMENT OF DISTRICT EXPENSES. (1) The
 44 county commissioners of any county having determined that providing the ser-
 45 vice of payment of water district expenses by the county treasurer from water
 46 district funds pursuant to section 42-613, Idaho Code, is an undue burden
 47 upon the county and shall no longer be provided, shall notify the director

1 of the department of water resources of this action by December 1 in the year
2 preceding the year for which the action shall first be effective by provid-
3 ing to the director a certified copy of the resolution of the commissioners
4 taking such action.

5 (2) Notice of the action of the county commissioners shall be given to
6 the water users of the district by the department of water resources together
7 with the notice of the annual meeting given pursuant to section 42-605, Idaho
8 Code.

9 (3) At each annual meeting of a district for which the county commis-
10 sioners have taken the action provided for in subsection (1) of this section,
11 the water users shall provide for the election or appointment of a water dis-
12 trict treasurer. If a water district treasurer is not elected at the annual
13 meeting, and one is found to be necessary, the director of the department
14 of water resources shall appoint a water district treasurer. The water dis-
15 trict treasurer shall keep a complete, accurate and permanent record of all
16 moneys received by and disbursed for and on behalf of the district. The water
17 district treasurer shall deposit all moneys of the district in a designated
18 depository approved at the annual meeting, and shall comply with the public
19 depository law as contained in chapter 1, title 57, Idaho Code.

20 (4) Before undertaking the duties of the office, the water district
21 treasurer shall take and subscribe to an oath before an officer authorized by
22 the laws of the state to administer oaths, to faithfully perform the duties
23 of the office, and shall file the oath with the director of the department of
24 water resources. Upon issuance by the director of a certificate confirming
25 the election or appointment of a water district treasurer, the actions taken
26 by the water district treasurer in fulfillment of the duties of the office
27 are covered by the state group surety bond as provided in sections 59-801
28 through 59-804, Idaho Code. A duly appointed treasurer that is reelected in
29 consecutive years shall not be required to take and file additional oaths
30 with the department of water resources for each consecutive year the trea-
31 surer is reelected.

32 (5) The water district treasurer shall serve until a successor is
33 elected or appointed, and qualified. A water district treasurer may be re-
34 moved from office by the director for failure to perform the duties of the
35 office in the manner provided for removal of a watermaster as provided by
36 section 42-605(9), Idaho Code.

37 (6) Compensation for the services of the water district treasurer shall
38 be set at the annual meeting and may be established on a fixed-sum, per diem,
39 or voluntary basis. If a water district treasurer is appointed by the direc-
40 tor in the absence of being elected at the annual meeting, the director shall
41 fix the compensation to be paid, if any.

42 (7) With respect to any district for which the county commissioners
43 have taken the action provided for in subsection (1) of this section, or
44 for which the water users have taken the action provided for in subsection
45 (10) of this section and have notified the county thereof, the county audi-
46 tor shall in the time and manner provided by section 63-1202, Idaho Code,
47 transmit to the water district treasurer of the water district a settlement
48 of all moneys belonging to such district paid into the county treasury and
49 apportioned to such water district on or after the second Monday of the pre-
50 ceding month; provided, however, that in the months of July and January the

1 money may be transmitted no later than the 25th of the month. The treasurer
2 of the water district shall immediately deposit the funds in the designated
3 depository for the district.

4 (8) The treasurer of the water district shall only disburse moneys from
5 the water district account upon submission of a written voucher approved by
6 the watermaster for expenses incurred for water district purposes related
7 to the delivery of water or by a voucher approved by the chairman of the ad-
8 visory committee for activities pursuant to resolutions adopted by the wa-
9 ter users from district funds or funds retained pursuant to section 42-613A,
10 Idaho Code.

11 (9) It shall be the duty of the water district treasurer to prepare a
12 statement of the financial affairs of the district at the end of each fiscal
13 year and to file the statement with the director of the department of water
14 resources. An audit of the financial affairs of the district shall be made as
15 required in section 67-450B, Idaho Code. A certified copy of the audit shall
16 be filed with the director of the department of water resources following the
17 audit.

18 (10) In any water district for which the county commissioners have not
19 taken the action provided for in subsection (1) of this section, the water
20 users may at the annual meeting of the district approve a resolution autho-
21 rizing the election or appointment of a water district treasurer who shall
22 exercise all duties and responsibilities of a treasurer provided for in this
23 section.

24 (11) In water districts with an annual budget of ~~three~~ seven thousand
25 five hundred dollars (\$~~3,07,500~~) or less, the water users may, by resolution
26 adopted at the annual meeting, authorize the watermaster to serve as water
27 district treasurer. Watermasters in water districts with annual budgets in
28 excess of ~~three~~ seven thousand five hundred dollars (\$~~3,07,500~~) shall not be
29 authorized to act as water district treasurer.