

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 6
DISTRIBUTION OF WATER AMONG APPROPRIATORS

42-602. DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES TO SUPERVISE WATER DISTRIBUTION WITHIN WATER DISTRICTS. The director of the department of water resources shall have direction and control of the distribution of water from all natural water sources within a water district to the canals, ditches, pumps and other facilities diverting therefrom. Distribution of water within water districts created pursuant to section 42-604, Idaho Code, shall be accomplished by watermasters as provided in this chapter and supervised by the director.

The director of the department of water resources shall distribute water in water districts in accordance with the prior appropriation doctrine. The provisions of chapter 6, title 42, Idaho Code, shall apply only to distribution of water within a water district.

[(42-602) First paragraph: 1915, ch. 34, sec. 4, p. 103; second paragraph: 1903, p. 223, sec. 32; reen. R.C., sec. 3283; am. 1915, ch. 34, sec. 17, p. 112; reen. C.L., sec. 3270; C.S., sec. 5606; I.C.A., sec. 41-502; am. 1992, ch. 339, sec. 2, p. 1015; am. 1994, ch. 450, sec. 1, p. 1435.]

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.

[(42-603) 1915, ch. 34, sec. 8, p. 103; reen. C.L., sec. 3273; C.S., sec. 5607; I.C.A., sec. 41-503; am. 1992, ch. 339, sec. 4, p. 1015.]

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 re-

source. 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.

[(42-604) 1903, p. 223, sec. 23; am. 1907, p. 532, sec. 2; reen. R.C., sec. 3274; am. 1909, p. 326, sec. 1; am. 1915, ch. 34, sec. 9, p. 103; reen. C.L., sec. 3274; C.S., sec. 5608; am. 1927, ch. 63, sec. 1, p. 78; I.C.A., sec. 41-504; am. 1986, ch. 78, sec. 1, p. 236; am. 1992, ch. 339, sec. 5, p. 1016.]

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 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. Notwithstanding any personnel classification assigned to the watermaster and assistants pursuant to the provisions of chapter 53, title 67, Idaho Code, 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 advi-

sory 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 42-1765, 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 to 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 shall file that oath with the department of water resources. Upon appointment 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 59-801 through 59-804, Idaho Code. A duly appointed watermaster that is reelected in consecutive years shall not be required to take and file additional oaths with the department of water resources for each consecutive year the watermaster is reelected. If a duly elected or appointed watermaster resigns, dies or is physically unable to perform his duties during the remainder of the elected or appointed watermaster term of service, then the director of the department of water resources is authorized to appoint a successor for the unexpired term as provided in paragraphs (a) and (b) of this subsection.

(a) If a water district advisory committee has been chosen as provided in subsection (6) of this section, the water district advisory committee shall meet to either nominate a successor watermaster or request a special meeting as provided in subsection (11) of this section to elect a new watermaster. Upon receipt of a nomination from a majority of the members of the water district advisory committee, the director of the department of water resources is authorized to appoint the nominated successor watermaster for the unexpired term.

(b) If a water district advisory committee has not been chosen, the director of the department of water resources is authorized to appoint a temporary successor watermaster. The temporary appointment extends through the unexpired term unless a special meeting is requested as

provided in subsection (11) of this section and water users elect a new watermaster.

(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 percent (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 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, administration of the water district and enhancement of water supplies, and shall provide that all such real and personal property shall remain in the custody of the watermaster and the watermaster's successor.

(13) The water users may, by resolution, authorize the watermaster to develop, coordinate or provide, through contract or by other means, for weather modification projects involving cloud seeding that are designed to increase the water supplies of the water district by enhancing natural precipitation and which conform to state water planning objectives.

[(42-605) 1903, sec. 24, p. 223; reen. R.C., sec. 3275; am. 1909, sec. 1, p. 326; am. 1915, ch. 34, sec. 10, p. 103; C.L., sec. 3275; C.S., sec. 5609; am. 1925, ch. 60, sec. 1, p. 86; am. 1931, ch. 94, sec. 1, p. 160; I.C.A., sec. 41-505; am. 1947, ch. 9, sec. 1, p. 9; am. 1969, ch. 305, sec. 1, p. 913; am. 1973, ch. 262, sec. 1, p. 534; am. 1982, ch. 14, sec. 1, p. 19; am. 1984, ch. 175, sec. 1, p. 421; am. 1987, ch. 112, sec. 1, p. 225; am. 1988, ch. 31, sec. 1, p. 39; am. 1991, ch. 101, sec. 1, p. 225; am. 1992, ch. 339, sec. 6, p. 1017; am. 2006, ch. 146, sec. 1, p. 458; am. 2011, ch. 176, sec. 1, p. 498; am. 2013, ch. 42, sec. 1, p. 87; am. 2013, ch. 327, sec. 1, p. 856; am. 2015, ch. 82, sec. 1, p. 204.]

42-605A. NONCONSUMPTIVE WATER RIGHTS -- ASSESSMENTS -- VOTING. (1) Notwithstanding other provisions of this chapter, the setting of annual water district assessments and the voting of permitted, licensed and decreed water rights administered by the watermaster solely for nonconsumptive purposes shall be determined in accordance with the provisions of this section. For purposes of this chapter, a water right is nonconsumptive if so designated by provisions of the permit or license issued by the department of water resources, or otherwise so designated by the director, or by decree of the court allowing use of the right to continue when the diversion of earlier priority water rights from the same source has been reduced or stopped by action of the watermaster.

(2) A nonconsumptive water right is subject to the provisions of this section if water is taken into man-made facilities for beneficial use whether or not the water leaves the river or stream channel. Instream flow water rights held in the name of governmental entities or agencies for the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, transportation and navigation values, and water quality

shall be exempt from the payment of assessments and the rights shall not be voted. The procedure for collection and payment of the assessments shall be the same as used for consumptive water rights under this chapter.

(3) In preparing the next year's budget, the watermaster shall determine an assessment for the ensuing year for each water right used solely for nonconsumptive purposes. The assessment shall be sufficient to pay the additional costs and expenses for watermaster services for data collection, water measurement, delivery of water, and record keeping directly attributable to delivery of the water right.

(4) The assessment shall not become final until adopted as part of the water district budget at the annual meeting of water users in accordance with section 42-612, Idaho Code. The assessment shall not exceed an amount necessary to pay for watermaster services associated with the nonconsumptive right. Nothing in this section shall affect the right, under section 42-612, Idaho Code, of the water users at the annual meeting to provide by resolution for a minimum charge for watermaster services, except as to those instream flow rights exempt from the payment of assessments under this section.

(5) The holder of a water right assessed under the provisions of this section who desires to contest the amount of an assessment for a nonconsumptive water right shall file a written petition with the director of the department of water resources stating the grounds for contesting the assessment and requesting a hearing. The petition must be filed with the director within thirty (30) days after the billing is mailed to the holder of the water right as provided in section 42-613 or 42-618, Idaho Code. The hearing before the director and any judicial review thereof shall be in accordance with the provisions of section 42-1701A, Idaho Code. The filing of a petition under this section shall not relieve the holder of a nonconsumptive water right from the obligation to pay the assessment when due and payable. The amount of any excessive or deficient assessment determined by a final order of the director shall be credited or collected in the succeeding year in the manner provided under section 42-606, Idaho Code.

(6) At water district meetings, each person present holding a water right used solely for nonconsumptive purposes shall be entitled to a number of votes equal to the average dollar amount and any fraction thereof assessed in accordance with subsection (3) of this section for that person's qualifying nonconsumptive water right for the previous five (5) years, or such lesser number of years as the right has been assessed in accordance with subsection (3) of this section. If a nonconsumptive right has not been assessed in previous years using subsection (3) of this section, 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 is assessed under subsection (3) of this section for the ensuing season.

[42-605A, added 1991, ch. 101, sec. 2, p. 227; am. 1992, ch. 339, sec. 7, p. 1019.]

42-606. REPORTS OF WATERMASTERS. All watermasters shall make an annual report to the department of water resources prior to the expiration of the watermaster's appointment for the current year. This report shall show the total amount of water delivered by the watermaster during the preceding 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. Such report shall also include

records of stream flow the watermaster used or made in the process of distributing water supplies. The director may ask for other information deemed necessary in assuring proper distribution of water supplies within the district. The reports of watermasters to the department of water resources shall be filed and kept in the office of the department.

[(42-606) 1903, p. 223, sec. 25; reen. R.C., sec. 3276; am. 1915, ch. 34, sec. 11, p. 103; reen. C.L., sec. 3276; C.S., sec. 5610; I.C.A., sec. 41-506; am. 1992, ch. 339, sec. 8, p. 1021.]

42-607. DISTRIBUTION OF WATER. It shall be the duty of said watermaster to distribute the waters of the public stream, streams or water supply, comprising a water district, among the several ditches taking water therefrom according to the prior rights of each respectively, in whole or in part, and to shut and fasten, or cause to be shut or fastened, under the direction of the department of water resources, the headgates of the ditches or other facilities for diversion of water from such stream, streams or water supply, when in times of scarcity of water it is necessary so to do in order to supply the prior rights of others in such stream or water supply; provided, that any person or corporation claiming the right to the use of the waters of the stream or water supply comprising a water district, but not owning or having the use of an adjudicated or decreed right therein, or right therein evidenced by permit or license issued by the department of water resources, shall, for the purposes of distribution during the scarcity of water, be held to have a right subsequent to any adjudicated, decreed, permit, or licensed right in such stream or water supply, and the watermaster shall close all headgates of ditches or other diversions having no adjudicated, decreed, permit or licensed right if necessary to supply adjudicated, decreed, permit or licensed right in such stream or water supply. So long as a duly elected watermaster is charged with the administration of the waters within a water district, no water user within such district can adversely possess the right of any other water user.

[(42-607) 1903, sec. 26; p. 223; reen. R.C., sec. 3277; am. 1909, sec. 1, p. 326; am. 1915, ch. 34, sec. 12, p. 103; C.L., sec. 3277; C.S., sec. 5611; am. 1927, ch. 63, sec. 2, p. 78; I.C.A., sec. 41-507; am. 1969, ch. 305, sec. 2, p. 913; am. 1973, ch. 262, sec. 2, p. 534; am. 1992, ch. 339, sec. 9, p. 1021.]

42-608. WATERMASTER'S TERM OF SERVICE. (1) 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) 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 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 department of water resources, or is otherwise provided by a resolution adopted at the annual water users' meeting for 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 determination of necessity for the diversion or storage of water. Payment for watermaster services during the extension shall be the responsibility of the holders of water rights delivered by the watermaster during the extension. For the purpose of determining voting rights at a water district meeting, amounts paid for watermaster services pursuant to this subsection shall be included in the calculation of annual assessment amounts and assessment rates under sections 42-605 and 42-605A, Idaho Code.

(4) At any annual meeting the water users may, by resolution, provide that the watermaster shall serve throughout the year, or for a set term during each year, for purposes of distribution and control as provided in section 42-607, Idaho Code.

[(42-608) 1903, p. 223, sec. 27; reen. R.C., sec. 3278; am. 1909, p. 326, sec. 1; am. 1915, ch. 34, sec. 13, p. 103; reen. C.L., sec. 3278; C.S., sec. 5612; am. 1927, ch. 63, sec. 3, p. 78; I.C.A., sec. 41-508; am. 1939, ch. 199, sec. 1, p. 378; am. 1991, ch. 101, sec. 3, p. 228; am. 1992, ch. 339, sec. 10, p. 1022; am. 2011, ch. 176, sec. 2, p. 501.]

42-609. WATERMASTER'S ASSISTANTS -- EMPLOYMENT IN EMERGENCY -- OATH AND COMPENSATION. A watermaster shall have power, in case of emergency, with the approval of the director of the department of water resources, to employ suitable assistants in addition to those who may have been approved at the annual meeting of the water users of the district to aid the watermaster in the discharge of the watermaster's duties, who shall take the same oath as the watermaster, and shall obey the watermaster's instructions, and shall be entitled to a salary as set by the water users in their adopted budget and approved by the director of the department of water resources, or if no budget is adopted, then as set by the director of the department of water resources, to be paid in the same manner as provided for the payment of watermasters.

[(42-609) 1903, p. 223, sec. 28; reen. R.C., sec. 3279; am. 1915, ch. 34, sec. 14, p. 103; reen. C.L., sec. 3279; C.S., sec. 5613; am. 1927, ch. 63, sec. 4, p. 78; I.C.A., sec. 41-509; am. 1980, ch. 277, sec. 1, p. 721; am. 1992, ch. 339, sec. 11, p. 1023.]

42-610. COMPENSATION OF WATERMASTERS -- ALLOTMENT AND CHARGE AGAINST LAND -- CHARGE AGAINST CANAL. Watermasters herein provided for shall make up a sworn statement which shall be approved by the department of water resources, and shall show the number of days said watermaster has devoted to the distribution of such water, and the number of days the watermaster's assistant or assistants have devoted to the same purpose, and such statement shall also show the volume of water, stated in cubic feet per second, the

watermaster has by virtue of the allotment of said waters delivered to each user each day. The pay for the services of said watermaster and the watermaster's assistants shall be a charge against the land of the users to which said water was so delivered, the expense for said services being first divided between all classes as to priority of allotment or decree, in the proportion which the number of days such water is received by all users in the same class of priority of allotment or decree bears to the whole number of days said watermaster is engaged in distributing said water; the amount charged to each user in the same class of priority of allotment or decree bearing the same proportion to the amount charged to all users in the same class of priority of allotment or decree as the volume of water delivered to each user bears to the whole amount delivered to all of like class of priority of allotment or decree, by the said watermaster and the watermaster's assistants. This statement, which shall show the proper distribution of the said expenses among the various users, shall be filed with the auditor and recorder of the county or counties in which the said water was delivered, unless such county or counties have elected to not provide county services for the collection of assessments and payment of district expenses as provided in section 42-619, Idaho Code: provided, that in counties which have not so elected to decline providing the services, when any portion of the allotted waters is distributed by said watermaster to the canal of any duly organized canal company, the amount of the expense chargeable for such services shall be a charge against such canal and the account of such charge to be paid by the county in the manner herein provided shall be charged as a tax against such canal, which tax shall be collected in the manner provided by law for the collection of other taxes, and no canal in this state shall be exempt from the payment of such tax, whether the water right be decreed or undecreed, or whether the water so distributed to said canal be the natural flow of the stream, or stored water, or whatever may be its source, nature or description.

[(42-610) 1903, p. 223, sec. 29; am. 1907, p. 482, sec. 1; reen. R.C., sec. 3280; am. 1915, ch. 34, sec. 15, p. 110; reen. C.L., sec. 3280; C.S., sec. 5614; am. 1925, ch. 60, sec. 2, p. 86; am. 1927, ch. 81, sec. 1, p. 99; I.C.A., sec. 41-510; am. 1992, ch. 339, sec. 12, p. 1023.]

42-612. BUDGET OF WATER DISTRICT -- ADOPTION AND CONTENTS -- DEBT OF WATER USER. (1) At any annual meeting the water users must adopt a budget covering the estimated expenses of delivering the water of the district for the ensuing year, and by resolution determine that the budget shall be collected. The compensation of the watermaster and the watermaster's assistants and any other expenses of delivering the water of the district to the users thereof, including the costs of the advisory committee in implementing resolutions adopted by the water users of the district for activities other than the payment of the salary and operating expenses of the watermaster and assistants, shall be paid in the manner hereinafter, in this section, provided.

(2) To the extent possible, funding for advisory committee expenses associated with implementing resolutions adopted by the water users for other than the payment of the salary and operating expenses of the watermaster and assistants shall come from funds available pursuant to section 42-613A, Idaho Code. If funds available pursuant to section 42-613A, Idaho Code, are not sufficient to cover expenses incurred in implementing resolutions adopted by the water users, then such expenses shall come from assessments.

(3) The budget shall show the aggregate amount to be collected from all the water users in the district, and the amount to be paid by each ditch, canal company, irrigation district or other water user. For the purpose of computing the respective amounts to be paid by each water user, the water delivered to the various ditches, canal companies, irrigation districts or other users during the past season or seasons, not exceeding five (5) seasons, shall be used as a basis.

(4) Upon the adoption of the budget the amount payable by each ditch, canal company, irrigation district or other water user, as shown by the budget, shall become the debt of each respectively and shall become due and payable as hereinafter provided. Other provisions of chapter 6, title 42, Idaho Code, notwithstanding, water users may at the annual meeting by resolution provide for an annual minimum charge not to exceed two hundred fifty dollars (\$250) per water user for watermaster services. The minimum charge is applicable whenever the prorated charge against any ditch, canal company, irrigation district or other water user is less than the minimum charge.

(5) Other provisions of chapter 6, title 42, Idaho Code, notwithstanding, water users at the annual meeting may provide, by resolution, that the respective amounts owed by each water user as shown in the adopted budget shall constitute a final determination of the amount due for that year without the need to carry forward any water user debits or credits to the following year.

[(42-612) C.S., sec. 5615-A, 1st par., as added by 1927, ch. 39, sec. 1, p. 51; I.C.A., sec. 41-512; am. 1933, ch. 217, sec. 1, p. 462; am. 1980, ch. 139, sec. 1, p. 305; am. 1992, ch. 339, sec. 13, p. 1024; am. 1998, ch. 179, sec. 1, p. 665; am. 2000, ch. 83, sec. 1, p. 174; am. 2014, ch. 65, sec. 1, p. 168; am. 2015, ch. 82, sec. 2, p. 207.]

42-613. BUDGET -- COLLECTION -- PAYMENT OF DISTRICT EXPENSES. Said budget when approved shall be filed with the secretary of said meeting and thereupon the watermaster shall immediately prepare and file a certified copy thereof with the director of the department of water resources and a certified copy with the county auditor of such county or counties designated at said water users' meeting. If more than one (1) county is designated then said budget shall show the amount to be collected in each county and the water users from which each county shall make collection. Each auditor of the county or counties so designated, shall immediately make up a roll showing the amount of said budget to be collected by the county and the ditch, canal company, irrigation district or other water user from whom the same shall be collected and the respective amounts from each. When said roll is completed, the county auditor shall deliver the same to the county treasurer for collection. Said county treasurer shall thereupon mail a notice to each ditch, canal company, irrigation district or other water user of the amount payable by each such water user, for the distribution of water and other expenses of said district for the ensuing year, which amount shall be due and payable on the date so fixed by resolution of said year and if not so paid, shall bear a penalty not to exceed ten percent (10%) of the amount owed and interest of one percent (1%) per month, which both shall be fixed by resolution, from said date until paid. It is hereby declared the duty of the respective county auditors and treasurers to perform the services herein required.

The county treasurer, upon receipt of said roll, shall open a special account to be known as "Water District Funds" and shall credit to said

account all moneys received from the water users of said district. The compensation of the watermaster and his assistants and any other charges against said water district shall be paid from the funds of said account in the same manner as bills against the county are paid.

[(42-613) C.S., sec. 5615-A, 2d & 3d par., as added by 1927, ch. 39, sec. 1, p. 51; I.C.A., sec. 41-513; am. 1992, ch. 339, sec. 14, p. 1025; am. 2000, ch. 83, sec. 2, p. 174.]

42-613A. PROCEEDS FROM THE LEASE OF STORED WATER -- DISTRICT RETENTION -- CONTROL AND USE BY ADVISORY COMMITTEE. The advisory committee of a water district created pursuant to section 42-604, Idaho Code, and chosen pursuant to section 42-605(6), Idaho Code, when appointed by the water resource board to facilitate the rental of stored water in the district pursuant to section 42-1765, Idaho Code, shall be authorized to manage and retain in a special account the proceeds accruing within the district from the rental of storage water leased under the provisions of section 42-1765, Idaho Code. Notwithstanding the supervisory responsibilities of the director of the department of water resources over the activity of watermasters delivering water within water districts, the account shall be under the exclusive control of the advisory committee of the water district when such committee has been appointed by the water resource board to facilitate the rental of stored water in the district within which the leased water is stored.

All proceeds from the lease of stored water which are retained by the advisory committee of any district under this section shall be used in accordance with the resolutions duly adopted by the water users of the district solely for one or more of the following public purposes:

- (1) Expenses of the district.
- (2) Improvements to the district's facilities, including a reasonable reserve for future improvements.
- (3) Educational projects designed to increase public awareness in the area of water distribution, water rights and water conservation.
- (4) Other public projects designed to assist in the adjudication, conservation or more efficient distribution of water.

All funds retained by an advisory committee pursuant to this section shall be deposited by the water district treasurer pursuant to the public depository law.

[42-613A, added 1986, ch. 78, sec. 3, p. 237; am. 1992, ch. 339, sec. 15, p. 1025.]

42-615. PROPOSED BUDGET FOR SUCCEEDING YEAR. Each watermaster shall, at least fourteen (14) days prior to the annual meeting of the water users of the water district, also prepare a proposed budget for the succeeding year, together with a distribution of the amount of the budget to the respective water users, using the actual deliveries for the past irrigation season or seasons, as the basis for distribution. The proposed budget and distribution shall be submitted to the water users for consideration and approval at the next annual water meeting.

[(42-615) C.S., sec. 5615-A, 5th par., as added by 1927, ch. 39, sec. 1, p. 51; I.C.A., sec. 41-515; am. 1992, ch. 339, sec. 17, p. 1026; am. 2011, ch. 176, sec. 3, p. 502.]

42-616. BUDGET -- ACTION TO COLLECT CHARGES -- ATTORNEY'S FEES. The county treasurer or water district treasurer of a water district shall

have the right to collect any charges due and unpaid, by civil action, said action to be brought in any court of competent jurisdiction, in the name of the county treasurer or water district treasurer to whom such charges are payable, and in addition to the amount found due, together with interest and costs, may also recover such sum as the court may adjudge reasonable as attorney's fees in said action.

[(42-616) C.S., sec. 5615-A, 6th par., as added by 1927, ch. 39, sec. 1, p. 51; I.C.A., sec. 41-516; am. 1992, ch. 339, sec. 18, p. 1026.]

42-617. TIME FOR COLLECTION OF BUDGET -- WATER NOT DELIVERED UNTIL CHARGES PAID -- FILING OF RESOLUTIONS AND COPIES -- COLLECTION AT TIME FIXED. At any annual meeting of the water users at which a budget has been adopted, covering the estimated expenses of said district for the ensuing year, as provided in section 42-612, Idaho Code, said water users may by resolution fix a date different than that fixed by said section 42-613, Idaho Code, upon which the amount payable by each ditch, canal company, irrigation district or other water user shall become due and payable, and said amount shall become due and payable from each such user on the date so fixed by said resolution, and if not paid when due shall bear a penalty from said date until paid not to exceed ten percent (10%) of the amount owed and interest of one percent (1%) per month, which both shall be fixed by resolution. Said water users at said meeting may also by resolution provide that no ditch, canal company, irrigation district or other water user shall have the right to demand and receive or to continue to receive any water and the watermaster shall not deliver water to any such user until the amount due and payable from such user, as shown by the budget adopted at said meeting, has been paid.

All resolutions adopted under the provisions of this section shall be filed with the secretary of said meeting and thereupon he shall immediately prepare and file a certified copy thereof with the director of the department of water resources and a certified copy with the county auditor of such county or counties as designated at said water users' meeting.

At the same time the county auditor delivers the roll to the county treasurer for collection, as provided in said section 42-613, Idaho Code, he shall also deliver to said treasurer a copy of any resolutions filed in his office, under the provisions of this section. The county treasurer shall collect said roll in the manner provided in said section 42-613, Idaho Code, or the watermaster may collect the assessment as provided in section 42-618, Idaho Code: provided, that if said water users at their annual meeting have by resolution provided for a time of payment of the amount due from each user, as shown in said budget, other than the time fixed in said section 42-613, Idaho Code, the said county treasurer or said watermaster shall collect the same at the time fixed in said resolution: and, provided further, that if said water users have by resolution provided that no water shall be delivered to any water user until the amount due from such user has been paid, the notice, to be mailed by said county treasurer or watermaster, shall also state the substance of said resolution.

[(42-617) C.S., sec. 5615-B, as added by 1929, ch. 87, sec. 1, p. 140; I.C.A., sec. 41-517; am. 1992, ch. 339, sec. 19, p. 1027; am. 2000, ch. 83, sec. 3, p. 175.]

42-618. ALTERNATE PLAN OF COLLECTING EXPENSES IN WATER DISTRICTS. In water districts the water users, instead of following the provisions of sections 42-612, 42-613, 42-615, 42-616, and 42-617, Idaho Code, may, at any an-

nual meeting, authorize the watermaster to collect his compensation and that of his assistants, and other expenses of delivering the water of said district to the users thereof, directly from the water users, canal companies, and irrigation districts. When so authorized the watermaster shall collect such compensation and expenses directly from the water users and shall turn the collected funds over to the water district treasurer for deposit and disbursement in accordance with section 42-619, Idaho Code. The water users in such water districts may also, at any annual meeting, authorize the watermaster to withhold water deliveries or suspend water deliveries in the event delivery has commenced, from those users who have not paid their pro rata share of the cost of operating the district as levied until such time as said pro rata share of the cost is paid. Said water district shall have the right to collect any charges due and unpaid, by civil action, said action to be brought in any court of competent jurisdiction, in the name of the watermaster to whom such charges are payable, and in addition to the amount found due, together with interest and costs, may also recover such sum as the court may adjudge reasonable as attorney's fees in said action.

[42-618, added 1947, ch. 11, sec. 1, p. 51; am. 1969, ch. 305, sec. 3, p. 913; am. 1992, ch. 339, sec. 20, p. 1027.]

42-619. ALTERNATE PLAN FOR PAYMENT OF DISTRICT EXPENSES. (1) The county commissioners of any county having determined that providing the service of payment of water district expenses by the county treasurer from water district funds pursuant to section 42-613, Idaho Code, is an undue burden upon the county and shall no longer be provided, shall notify the director of the department of water resources of this action by December 1 in the year preceding the year for which the action shall first be effective by providing to the director a certified copy of the resolution of the commissioners taking such action.

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

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

(4) Before undertaking the duties of the office, the water district treasurer shall take and subscribe to an oath before an officer authorized by the laws of the state to administer oaths, to faithfully perform the duties of the office, and shall file the oath with the director of the department of water resources. Upon issuance by the director of a certificate confirming the election or appointment of a water district treasurer, the actions taken by the water district treasurer in fulfillment of the duties of the office are covered by the state group surety bond as provided in sections 59-801 through 59-804, Idaho Code. A duly appointed treasurer that is reelected

in consecutive years shall not be required to take and file additional oaths with the department of water resources for each consecutive year the treasurer is reelected.

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

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

(7) With respect to any district for which the county commissioners have taken the action provided for in subsection (1) of this section, or for which the water users have taken the action provided for in subsection (10) of this section and have notified the county thereof, the county auditor shall in the time and manner provided by section 63-1202, Idaho Code, transmit to the water district treasurer of the water district a settlement of all moneys belonging to such district paid into the county treasury and apportioned to such water district on or after the second Monday of the preceding month; provided, however, that in the months of July and January the money may be transmitted no later than the 25th of the month. The treasurer of the water district shall immediately deposit the funds in the designated depository for the district.

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

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

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

(11) In water districts with an annual budget of seven thousand five hundred dollars (\$7,500) or less, the water users may, by resolution adopted at the annual meeting, authorize the watermaster to serve as water district treasurer. Watermasters in water districts with annual budgets in excess of seven thousand five hundred dollars (\$7,500) shall not be authorized to act as water district treasurer.

[42-619, added 1989, ch. 286, sec. 2, p. 710; am. 1992, ch. 339, sec. 21, p. 1028; am. 1993, ch. 387, sec. 11, p. 1426; am. 1996, ch. 322, sec. 36, p. 1064; am. 2011, ch. 176, sec. 4, p. 502.]