

TITLE 31
COUNTIES AND COUNTY LAW

CHAPTER 38
ZONING REGULATIONS

31-3805. DELIVERY OF WATER. (1) When either a subdivision within the meaning of [chapter 13, title 50](#), Idaho Code, or a subdivision subject to a more restrictive county or city zoning ordinance is proposed within the state of Idaho, and all or any part of said subdivision would be located within the boundaries of an existing irrigation district or other canal company, ditch association, or like irrigation water delivery entity, hereinafter called "irrigation entity" for the purposes of this chapter, no subdivision plat or amendment to a subdivision plat or any other plat or map recognized by the city or county for the division of land will be accepted, approved, and recorded unless:

(a) The water rights appurtenant and the assessment obligation of the lands in said subdivision which are within the irrigation entity have been transferred from said lands or excluded from an irrigation entity by the owner thereof; or by the person, firm or corporation filing the subdivision plat or amendment to a subdivision plat or any other plat or map recognized by the city or county for the division of land; or

(b) The owner or person, firm or corporation filing the subdivision plat or amendment to a subdivision plat or any other plat or map recognized by the city or county for the division of land has provided for underground tile or other like satisfactory underground conduit for lots of one (1) acre or less, or a suitable system for lots of more than one (1) acre which will deliver water to those landowners within the subdivision who are also within the irrigation entity, with the following appropriate approvals:

(i) For proposed subdivisions within the incorporated limits of a city, the irrigation system must be approved by the city zoning authority or the city council, as provided by city ordinance, with the advice of the irrigation entity charged with the delivery of water to said lands.

(ii) For proposed subdivisions located outside incorporated cities but within a negotiated area of city impact pursuant to [chapter 65, title 67](#), Idaho Code, or within one (1) mile outside the incorporated limits of any city, both city and county zoning authorities and city council and county commissions must approve such irrigation system in accordance with section [50-1306](#), Idaho Code. In addition, the irrigation entity charged with the delivery of water to said lands must be advised regarding the irrigation system.

(iii) For proposed subdivisions located outside an area of city impact in counties with a zoning ordinance, the delivery system must be approved by the appropriate county zoning authority, and the county commission with the advice of the irrigation entity charged with the delivery of water to said lands.

(iv) For proposed subdivisions located outside an area of city impact in counties without a zoning ordinance, such irrigation system must be approved by the board of county commissioners with the

advice of the irrigation entity charged with the delivery of water to said lands.

(2) (a) In the event that the provisions of either subsection (1) (a) or (1) (b) of this section have not been complied with, the assessments of the irrigation entity for operation, maintenance, construction, and other valid charges permitted by statute shall in no way be affected. Any person, firm or corporation or any other person offering such lots in such subdivision for sale, or selling such lot shall, prior to the sale, advise the purchaser in writing as follows:

- (i) That suitable water deliveries have not been provided; and
- (ii) That the purchaser of the lot must remain subject to all assessments levied by the irrigation entity; and
- (iii) That the individual purchaser shall be responsible to pay such legal assessments; and
- (iv) That the assessments are a lien on the land within the irrigation entity; and
- (v) That the purchaser may at a future date petition the appropriate irrigation entity for exclusion from the irrigation district.

(b) A disclosure statement executed by the purchasers and duly acknowledged, containing the representations required in this subsection of this section, shall be obtained by the seller at the time of receipt of the earnest money from the purchaser, and affixed to the proposed sales contract and a copy thereof shall be forwarded to the appropriate irrigation entity.

[31-3805, added 1976, ch. 153, sec. 1, p. 547; am. 1990, ch. 365, sec. 1, p. 997; am. 1996, ch. 51, sec. 1, p. 152; am. 1996, ch. 399, sec. 1, p. 1330; am. 1997, ch. 148, sec. 1, p. 424.]

31-3806. CIVIL ACTION TO ENFORCE. (1) If the owner of the property of the person, firm or corporation filing the subdivision plat or amendment to a subdivision plat or any other plat or map recognized by the city or county for the division of land fails to comply with either subsection (1) or (2) of section [31-3805](#), Idaho Code, prior to sale of the lots in the subdivision to purchasers, the owner of the property, or the person, firm or corporation filing the subdivision plat or amendment to a subdivision plat or any other plat or map recognized by the city or county for the division of land shall be liable to any purchaser for the costs of the lot's exclusion plus all assessments due and owing or the actual cost of installation of an irrigation delivery system not to exceed one thousand five hundred dollars (\$1,500) per lot. The purchaser shall have a right to enforce this obligation in a civil action and the purchaser shall have the right to elect exclusion or installation of the system in such action.

(2) Any person, firm or corporation who shall omit, neglect or refuse to provide the purchaser or the irrigation entity within whose boundaries the land is located, a copy of the disclosure statement required by subsection (2) of section [31-3805](#), Idaho Code:

- (a) Shall be liable to the purchaser as provided in subsection (1) of this section.
- (b) Shall be liable to the irrigation entity for its reasonable expense, including employee time, of locating the purchaser and providing the information required in the form and for advising affected purchasers of the lack of a water delivery system and for any assessments on the property that are past due at the time of discovery of the violation.

The irrigation entity affected shall have a right to claim such expenses in a civil action.

(3) In any civil action filed under subsection (1) or (2) of this section, the prevailing party shall be awarded its reasonable costs and attorney's fees. The purchaser and irrigation entity shall have two (2) years from the date of discovery of the violation to initiate any legal action.

[31-3806, added 1990, ch. 365, sec. 3, p. 998; am. 1996, ch. 51, sec. 2, p. 153; am. 1996, ch. 399, sec. 2, p. 1332; am. 1997, ch. 148, sec. 2, p. 425.]