

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 42
GROUND WATER RECHARGE

42-4201. JEROME, LINCOLN, GOODING AND TWIN FALLS COUNTIES -- PROJECT TO RECHARGE GROUND WATER BASINS -- DIRECTOR'S AUTHORITY TO ISSUE PERMIT -- LIMITATIONS. (1) The welfare of the people of the state of Idaho is dependent upon the conservation, development, augmentation and optimum use of the water resources of this state. The legislature deems it essential therefore that every effort be made to foster and encourage water projects designed to promote these objectives. The legislature hereby acknowledges that the proposed project to recharge ground water basins in Jerome, Lincoln and Gooding counties by means of the storage of unappropriated waters of the Snake River and its tributaries in underground lava beds within that vicinity represents a unique and innovative endeavor to further water conservation and increase the water available for beneficial use. The legislature approves this undertaking as a pilot effort to bring about maximum realization of our water resource potential and finds, in particular, that this project shall serve the interests of the public and advance the multiple use water policy of this state by:

- (a) sustaining and increasing the flow of springs in the general vicinity of the Hagerman Valley;
- (b) increasing the water available for withdrawal from ground water basins located in Jerome, Gooding and Lincoln counties;
- (c) supplementing the supply of water available for irrigation downstream from the Hagerman Valley;
- (d) providing additional aquatic habitats for migratory fowl and wildlife; and
- (e) increasing and sustaining the flow of the Snake River during the summer months and in times of drought when additional flow is needed for the generation of hydroelectric power and the maintenance of water recreation facilities.

(2) In view of the public betterment to be achieved by the completion of this water project, the legislature hereby declares that the appropriation and underground storage of water by the aquifer recharge district hereinafter created for purposes of ground water recharge shall constitute a beneficial use and hereby authorizes the department of water resources to issue to the aquifer recharge district a permit, pursuant to section 42-203 [42-203A], Idaho Code, for the appropriation and underground storage of the unappropriated waters of the Snake River in Jerome, Lincoln and Gooding counties and its tributaries in Gooding and Lincoln counties. The department of water resources is further authorized to issue to the aquifer recharge district a license confirming the right to appropriate such waters for the beneficial use herein established upon compliance by the district with the requirements specified in chapter 2, title 42, Idaho Code. The rights acquired by the aquifer recharge district pursuant to any permit and license obtained as herein authorized shall be secondary to all prior perfected water rights, including those held by any privately-owned electrical generating company to appropriate waters in the reaches of the Snake River downstream from the Milner diversion for purposes of hydroelectric power generation.

(3) The director of the department of water resources may regulate the amount of water which the aquifer recharge district may appropriate from the Snake River and may reduce such amount, even though there is sufficient water to supply the entire amount originally authorized, but only if the following conditions are met:

(a) the amount of water available for appropriation by the district at the time the reduction is sought exceeds two hundred thousand (200,000) acre feet per year and the reduction, if granted, will not operate to deplete that amount to less than two hundred thousand (200,000) acre feet per year;

(b) the persons or entities seeking the reduction propose to use the water for purposes of surface reservoir storage and appropriation by the district of the entire amount originally authorized will prevent or adversely affect accomplishment of those purposes;

(c) the persons or entities seeking the reduction present substantial and compelling evidence to show that the accomplishment of such purposes will be prevented or adversely affected and the director finds on the basis of such evidence that sufficient justification for the reduction exists.

Even if the foregoing conditions are satisfied and a reduction is granted, such a reduction shall remain in effect only so long as the amount of water available for appropriation by the district exceeds two hundred thousand (200,000) acre feet per year.

The provisions of this subsection shall not apply to appropriation of water by the district from the Big Wood River or the Little Wood River.

(4) To insure that other water rights are not injured by the operations of the aquifer recharge district, the director of the department of water resources shall have the authority to approve, disapprove, or require alterations in the methods employed by the district to achieve ground water recharge. In the event that the director determines that the district's methods of operation are adversely affecting existing water rights or are creating conditions adverse to the beneficial use of water under existing water rights, the director shall order the cessation of operations until such alterations as may be ordered by the director have been accomplished or such adverse effects otherwise have been corrected.

(5) The fee required for an application for a permit to appropriate water as provided in section 42-221, Idaho Code, is hereby waived from the effective date of this act until July 1, 1997, for recharge projects for recharge districts formed under this section.

[42-4201, added 1978, ch. 293, sec. 1, p. 724; am. 1994, ch. 273, sec. 1, p. 849; am. 1995, ch. 338, sec. 1, p. 1117.]

42-4202. AQUIFER RECHARGE DISTRICT -- FORMATION. For purposes of formation of the aquifer recharge district, a petition shall be presented to the department of water resources which shall set forth the object of the organization of the district and the benefits to be provided by the district. The petition shall be accompanied by a map of the proposed district which shall indicate the proposed boundaries of the district, the nature and location of the proposed diversion works and other facilities by means of which water is to be diverted into the recharge area, shall delineate the underground water basin or basins to be affected by the recharge, and shall designate the location of any streams or springs which shall be affected by the recharge. The petition and map shall be accompanied by a statement describing the de-

tails of the contemplated diversion works and facilities and an estimate of the cost of constructing such works and facilities, which statement and estimates shall be certified to by an engineer licensed by the state of Idaho.

The petition shall be signed by no less than fifty (50) percent of the water users located within the proposed boundaries of the district. For purposes of this act, "water users" shall include the following:

(1) Individuals, or entities, exclusive of privately owned electrical generating companies, who are the holders of title or evidence of title to property, but without the boundaries of a municipality, who are the current holders of a right, acquired in accordance with the provisions of chapter 2, title 42, Idaho Code, to appropriate water in an amount equal to or in excess of one (1) cubic foot per second, and who divert water from underground basins within the area of recharge by means of a well or wells, or who divert water from springs or other water courses emerging from such underground basins, or both.

(2) Municipalities which obtain water from underground basins in the area of recharge. A municipality may elect to be included within the proposed district by a majority vote of the members of its city council. The mayor of any municipality so electing may sign the petition on behalf of the municipality, and such municipality shall constitute one water user for purposes of securing the minimum number of signatures required for the petition.

[42-4202, added 1978, ch. 293, sec. 1, p. 727; am. 1979, ch. 8, sec. 1, p. 10; am. 1982, ch. 204, sec. 2, p. 539.]

42-4203. FORMATION OF DISTRICT -- DECLARATION BY DIRECTOR. After receipt of the petition, map and statement, the director shall review and examine the same and may require the submission of such additional or revised data concerning the boundaries of the proposed district, the location and nature of the diversion works and facilities to be constructed, the costs of construction or any other matter relevant to the formation of the district as he may deem necessary. The director shall conduct a hearing on the petition and supporting documents. Notice of the time and place of the hearing shall be published by the director in a newspaper or newspapers published in each of the counties or a newspaper of general circulation therein at least three (3) weeks before the date of the hearing.

Within ninety (90) days after the hearing has been concluded, the director after due consideration of all relevant data and testimony, shall determine whether the proposed district will provide the benefits described, whether the boundaries proposed are proper with respect to the benefits to be provided, and whether the formation of the district will serve the interests of the water users proposed to be benefited. On the basis of his determination, the director shall enter an order either establishing the aquifer recharge district and defining the boundaries thereof to reflect the area to be benefited, or denying the formation of the district. If the director orders formation of the district, he shall cause copies of the order, duly certified, to be filed with the secretary of state and board of county commissioners, county recorder, county assessor and county treasurer of each county in which any part of the district is situated.

[42-4203, added 1978, ch. 293, sec. 1, p. 727; am. 1979, ch. 8, sec. 2, p. 11.]

42-4204. BOARD OF DIRECTORS -- COMPOSITION -- APPOINTMENT OF FIRST BOARD -- ELECTION OF SUBSEQUENT BOARDS. (1) The board of directors of the aquifer recharge district shall consist of five (5) members. Each member shall be a water user, or representative of a water user within the district. The members of the board shall be as follows:

- (a) one (1) member shall be a member of a lateral ditch water user's association, canal company, irrigation district or similar organization;
- (b) one (1) member shall be an owner or operator of a commercial fish hatchery licensed in accordance with the provisions of section 22-4602, Idaho Code;
- (c) one (1) member shall be a farmer or rancher who is an appropriator of groundwater and whose diversion thereof is accomplished primarily through the operation of a well or wells;
- (d) one (1) member shall be a member of the city council of a municipality within the district;
- (e) one (1) member shall be generally representative of the interests of water users within the district.

(2) The first board of directors shall be appointed by the director of the department of water resources. Water users within the district, or groups thereof, may submit to the director, or the director may solicit therefrom, the names of qualified individuals to be considered for appointment to the board.

(3) The term of office of the directors shall be determined by lot so that three (3) members shall serve for a term of two (2) years and two (2) members shall serve for a term of one (1) year. Thereafter, members shall serve two (2) year terms and shall be elected as hereinafter provided.

(4) On the first Tuesday in February following the expiration of the term of those members serving for one (1) year, and on the first Tuesday in February of each year thereafter, an election shall be held in accordance with the provisions of chapter 14, title 34, Idaho Code, at which directors to succeed those whose terms have expired will be elected. Each director so elected shall possess the qualifications required of all members of the board and in addition shall possess the qualifications of the director whom he is to succeed in office.

In any election for director, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that only one (1) qualified candidate has been nominated for a directors position, it shall not be necessary for the candidate to stand for election, and the board of trustees of the district shall declare such candidate elected as director, and the secretary of the district shall immediately make and deliver to such person a certificate of election.

[42-4204, added 1978, ch. 293, sec. 1, p. 728; am. 1982, ch. 204, sec. 3, p. 540; am. 1985, ch. 10, sec. 1, p. 14; am. 1992, ch. 273, sec. 3, p. 846; am. 1995, ch. 118, sec. 76, p. 492.]

42-4205. MUNICIPALITIES -- MANNER OF VOTING FOR DIRECTORS. Each municipality which has elected to be and is included within the district shall be entitled to one (1) vote for each director to be elected and the vote of the majority of the members of the city council of each such municipality shall constitute the vote of the municipality for each director to be elected. The voting shall be conducted at a regular meeting of the city council or a special meeting called by the mayor for that purpose to be held on or within a week prior to the date set for election. The voting results shall be certi-

fied to by the mayor and forwarded to the secretary of the district prior to the date set for canvassing of election returns by the board of directors. The provisions of section 42-4209, Idaho Code, shall not apply to municipalities.

[42-4205, added 1978, ch. 293, sec. 1, p. 729.]

42-4206. WATER USERS OTHER THAN MUNICIPALITIES -- QUALIFICATIONS FOR VOTING. Any water user, as defined in section 42-4202(1), Idaho Code, or a representative thereof, within the district who possesses the qualifications required of electors under the general laws of the state and who resides within a county or portion thereof situated within the district shall be entitled to vote at any election held under the provisions of this chapter.

[42-4206, added 1978, ch. 293, sec. 1, p. 729.]

42-4207. REGISTRATION REQUIRED. Pursuant to the provisions of section 34-1402, Idaho Code, registration shall be required of qualified electors, as defined in section 42-4206, Idaho Code, in any election held in the aquifer recharge district. In addition to the requirements for registration, the election official shall also verify that the elector is a water user, as defined in section 42-4202(1), Idaho Code, or a representative of such a water user, within the district. ("

[42-4207, added 1978, ch. 293, sec. 1, p. 729; am. 1985, ch. 10, sec. 2, p. 15; am. 1995, ch. 118, sec. 77, p. 493.]

42-4208. NOTICE OF ELECTION. The secretary of the district shall give notice of all elections in the district by publication of the notice in accordance with the provisions of section 34-1406, Idaho Code. Notices shall state the time of said election and the location of polling places within the district and the directors to be elected or other question to be voted upon, as the case may be.

[42-4208, added 1978, ch. 293, sec. 1, p. 730; am. 1995, ch. 118, sec. 78, p. 493.]

42-4209. CONDUCT OF ELECTIONS. The election shall be conducted in accordance with the general laws of the state including the provisions of chapter 14, title 34, Idaho Code.

The board of directors shall designate polling places in such number as it may deem necessary. At least ten (10) days before the holding of any election, the board shall appoint three (3) electors to serve as judges of election at each polling place. The judges shall perform the same duties as judges of election under the general laws of the state. Immediately after the election, the judges of election shall forward the official results to the secretary of the district.

[42-4209, added 1978, ch. 293, sec. 1, p. 730; am. 1995, ch. 118, sec. 79, p. 494.]

42-4210. CANVASS OF RETURNS -- DECLARATION OF WINNERS. On the first Monday after each election, or at a time designated by the board of directors, the board shall meet at its usual place of meeting and proceed to canvass the returns. By order entered on its minutes, the board shall declare elected the person or persons having the highest number of votes for each office.

[42-4210, added 1978, ch. 293, sec. 1, p. 730.]

42-4211. BOARD OF DIRECTORS -- OFFICERS -- MEETINGS -- COMPENSATION -- VACANCIES. (1) The board of directors annually shall elect a chairman from their number and shall appoint a secretary and a treasurer to hold office during the pleasure of the board. The treasurer shall on his appointment execute and file with the secretary an official bond in such amount as may be fixed by the board of directors, and shall thereafter from time to time execute and file such further bonds as may be required by the board in amounts fixed by it, which amounts shall be at least fifty percent (50%) of the maximum probable amount of money in the treasurer's hands at any one time. All such official bonds shall be executed by a lawfully qualified surety company.

(2) The board of directors shall hold a regular annual meeting and may hold such special meetings as may be necessary for the proper transaction of business. Special meetings may be held on seventy-two (72) hours' notice of the chairman or a majority of the members. A majority shall constitute a quorum for the transaction of business and the concurrence of a majority of the members shall be necessary to constitute the action of the board. All meetings of the board shall be public and all records of the board shall be open to the inspection of any member water user, or representative thereof during business hours.

(3) The members of the board shall each receive not more than twenty-five dollars (\$25.00) nor less than five dollars (\$5.00) per day for each day spent attending the meetings or while engaged in official business of the board, and actual and necessary travel expenses. The term "actual and necessary expenses" shall include all traveling and lodging expenses necessarily incurred by any director when absent from his residence in the performance of the duties of his office. The board shall fix the compensation to be paid to the other officers of the district.

(4) In case of a vacancy in the office of director occurring otherwise than by the expiration of a term, the remaining members of the board of directors shall fill such vacancy by appointing thereto a qualified water user, member of the district, or representative thereof, possessing the qualifications of the director whose office has become vacant to serve the remainder of the term.

[42-4211, added 1978, ch. 293, sec. 1, p. 730; am. 1985, ch. 10, sec. 3, p. 15.]

42-4212. POWERS AND DUTIES OF THE BOARD OF DIRECTORS. The board shall have the following powers and duties:

(1) to manage and conduct the business and affairs of the districts;

(2) to employ and appoint such agents, officers and employees as may be required and prescribe their duties;

(3) to make and execute all necessary contracts, including contracts for the construction of diversion works and other facilities, contracts for the transportation of water through existing canals or other diversion works owned or operated by a canal company or companies or other entity or entities, and contracts with those persons and/or entities designated in section 42-4223, Idaho Code, for the purposes therein specified;

(4) to construct and operate diversion works, recharge ponding areas and injection wells, subject to such standards and specifications as the director of the department of water resources shall determine;

(5) to obtain from the federal government such permits as may be required for the accomplishment of the purposes of the district;

(6) to enter upon any land and make surveys for purposes of determining the best location for the diversion works and other facilities necessary to accomplish the purposes of the district;

(7) to acquire, either by purchase, condemnation or other legal means, all lands and other property necessary for the construction, use and supply, maintenance, repair and improvement of diversion works and facilities. The power of condemnation shall be limited to the acquisition of land and/or easements for right-of-way purposes only. The appropriation and storage underground of waters by the aquifer recharge district, together with the acquisition of such rights-of-way for the construction, maintenance and improvement of such diversion works and facilities as are necessary to the accomplishment of the purposes of the district is hereby declared to be a public use, subject to the regulation and control of the state in the manner prescribed by law.

(8) to levy assessments for the maintenance and operation of the diversion works and facilities of the district, as well as assessments for the payment of such fees as are charged to the district by any canal company or companies or other entity or entities owning or operating canals or other diversion works used by the district;

(9) to levy assessments for the retirement of indebtedness incurred for purposes of financing construction of the diversion works and facilities of the district and the construction of such capital improvements thereto as are deemed necessary by the board;

(10) to incur indebtedness, the term of which shall not exceed ten (10) years, by contract with a money-lending institution;

(11) to do any and every lawful act necessary to be done that the provisions of this chapter may be carried out.

(12) At such intervals as the director of the department of water resources shall establish, the board of directors shall report to the director, in the form and manner prescribed by him, concerning the operations of the district. The report shall indicate the amount of water being diverted by the district for purposes of recharge, the locations of the points of recharge, the flow of water at those discharge points affected by the recharge and such other information as the director may require.

(13) The board of directors annually shall submit to the director of the department of water resources a financial report setting forth the financial condition of the district. The report shall be in the form prescribed by the director and shall specify the amount of the assessments levied by the district for that year, the outstanding obligations of the district, and such other information as the director may require. The director shall have the authority to conduct an audit of the financial transactions and operations of the district.

[42-4212, added 1978, ch. 293, sec. 1, p. 731; am. 1982, ch. 204, sec. 4, p. 541.]

42-4213. LEGAL TITLE TO PROPERTY. The legal title to all property acquired under the provisions of this chapter shall immediately, and by operation of law, vest in the aquifer recharge district and shall be held by the district in trust for, and is hereby dedicated and set apart to, the uses and purposes set forth in this chapter. The board of directors is hereby autho-

rized and empowered to hold, use, acquire, manage, occupy and possess said property as herein provided.

[42-4213, added 1978, ch. 293, sec. 1, p. 733.]

42-4214. CONVEYANCE OF PROPERTY -- ACTIONS. The board is hereby authorized and empowered to take conveyance of or other assurances for all property acquired by it under the provisions of this chapter in the name of the district for the purposes herein expressed. The board may institute and maintain any and all actions and proceedings, and suits at law and in equity necessary or proper to [in] order to carry out the provisions of this chapter, or to enforce, maintain, protect or preserve any and all rights created by this chapter or acquired in pursuance thereof. In all courts, actions, suits or proceedings the board may sue, appear and defend, in person or by attorneys and in the name of the aquifer recharge district.

[42-4214, added 1978, ch. 293, sec. 1, p. 733.]

42-4215. LEVY OF ASSESSMENTS. The secretary of the board of directors shall be the assessor of the district, and on or before August 1 of each year shall prepare an assessment book containing a full and accurate list of all water users within the district.

At a regular meeting of the board between August 1 and November 1 of each year, the board of directors shall determine the amount necessary to be raised for the maintenance and operation of the works and facilities of the district and the payment of such fees as may be charged to the district for the use of canals or other diversion works owned or operated by a canal company or companies or other entity or entities, and shall levy assessments against the water users in the district sufficient to raise such amount. Moneys received in payment of such assessments shall be deposited in a separate fund to be known as the maintenance and operation fund. The board also may levy assessments against the water users in the district for the repayment of indebtedness incurred by the board on behalf of the district, as provided in section 42-4216, Idaho Code. Money received in payment of such assessments shall be deposited in a separate fund to be known as the debt retirement fund. The board of directors may, in addition, determine the amount necessary to pay the expenses of making the assessment book, giving notice of assessments and making collections thereof and may levy assessments against the water users in the district sufficient to raise such amount. Moneys received in payment of such assessments shall be deposited in a separate fund to be known as the assessment expense fund.

Each water user shall pay a proportionate share of the total of all amounts to be raised for the purposes aforementioned, which share shall be based on the ratio which the quantity of water such water user is authorized to appropriate under his water right or rights bears to the total quantity of water authorized for appropriation under the water rights of all water users in the district; provided, however, that the combined annual assessment against each water user shall not exceed ten dollars (\$10.00) per second foot of water the water user is entitled to appropriate under his water right or rights.

[42-4215, added 1978, ch. 293, sec. 1, p. 733.]

42-4216. POWER TO INCUR INDEBTEDNESS -- ASSESSMENTS TO SECURE REPAYMENT. In order to secure funds for the construction of diversion works and facilities of the district, or the construction of any capital improvements

thereto, the board of directors may, by resolution duly adopted and entered upon the minutes, incur indebtedness by contract with a money-lending institution; provided, however, that the term of such indebtedness shall not exceed ten (10) years. To secure the repayment of any indebtedness so incurred, the board shall levy assessments over the term of the indebtedness in amounts sufficient to repay the interest and principal as it falls due. Such assessments shall be levied in the manner and shall be subject to the limitations set forth in section 42-4215, Idaho Code.

[42-4216, added 1978, ch. 293, sec. 1, p. 734.]

42-4217. LENDING INSTITUTIONS -- RIGHT TO COMPEL ASSESSMENTS -- ALTERNATIVE REMEDY. If in any year the board of directors fails to levy assessments for the repayment of indebtedness in amounts sufficient to meet a payment or payments falling due, the lender may bring an action in the district court of any county in which the district is situated to compel the board to levy assessments in amounts sufficient to insure the payment thereof; provided, however, that the board may not be compelled to increase assessments for the repayment of indebtedness if the maximum annual assessment limitation specified in section 42-4215, Idaho Code, will be exceeded thereby. In the event that the maximum annual assessment limitation has been reached and the assessments for repayment of indebtedness nevertheless will be insufficient to meet a payment of [or] payments falling due, the lender may, in the alternative, seek an order requiring that moneys received by the district in payment of assessments for all purposes be first expended for the repayment of that portion of the indebtedness falling due.

[42-4217, added 1978, ch. 293, sec. 1, p. 735.]

42-4218. LIEN OF ASSESSMENT. From and after January 1 of any year, all assessments, other than those levied against municipalities, shall be liens against the property of water users to which the water rights used to determine assessments are appurtenant. Such liens shall not be removed until the assessments are paid or the property is sold for the payment thereof.

[42-4218, added 1978, ch. 293, sec. 1, p. 735.]

42-4219. PAYMENT OF ASSESSMENTS -- WHEN DELINQUENT -- INTEREST AND PENALTIES. Assessments shall be due and payable on or before December 31 of each year. On or before the first day of December, the treasurer of the district shall publish a notice for a period of not less than two (2) weeks in a newspaper published or having general circulation in each of the counties in which any part of the district is situated setting forth the date by which assessments must be paid and the times and places at which payment may be made.

Assessments unpaid on December 31 shall be delinquent and shall bear interest at the rate of eight percent (8%) per annum until paid. Delinquent assessments, in addition, shall be subject to a penalty in the amount of fifty cents (\$.50) per second foot of water the water user is entitled to appropriate under the water right or rights forming the basis of his assessment.

The maximum annual assessment limitation specified in section 42-4215, Idaho Code, shall apply only to the amount of the assessment itself, and the interest and penalty herein prescribed shall be collectible along with the amount of the delinquent assessment, notwithstanding that the assessment itself is at the maximum specified in that section.

[42-4219, added 1978, ch. 293, sec. 1, p. 735.]

42-4220. ENTRY OF DELINQUENT ASSESSMENTS -- FILING OF DELINQUENCY LIST. On or before the 15th day of January of each year the treasurer shall enter the amount of all delinquent assessments upon the assessment book, which entry shall be considered to be dated as of the first day of January. Such entry shall have the force and effect of a sale to the treasurer of the district as grantee in trust for the district of all property to which a lien has attached as a result of such unpaid assessments.

The treasurer shall compile a list of such delinquency entries which shall contain the names of the persons or entities to whom the assessments were directed and the amount of such delinquent assessments together with the amount of the penalties to be added thereto. A certified copy of the delinquency list shall be filed with the county recorder of each county in which the properties affected by such delinquent assessments are located.

[42-4220, added 1978, ch. 293, sec. 1, p. 736.]

42-4221. REDEMPTION AND SALE OF PROPERTY SUBJECT TO DELINQUENT ASSESSMENTS. The manner in which property subject to a lien for nonpayment of assessments may be redeemed, and if not redeemed, shall be sold as provided in sections 43-712, 43-715 through 43-721, 43-724 and 43-726, Idaho Code, to the extent that the provisions thereof are in keeping with the provisions of this chapter.

[42-4221, added 1978, ch. 293, sec. 1, p. 736.]

42-4222. MUNICIPALITIES -- SPECIAL TAX TO PROCURE FUNDS FOR PAYMENT OF ASSESSMENTS. Municipalities shall be solely liable for payment of the assessments levied against them, but in order that sufficient funds shall be available therefore, municipalities within the district are hereby empowered and directed to levy a special tax upon all the taxable property within the municipality in an amount equal to the assessment.

Assessments against municipalities unpaid on the date specified in section 42-4219, Idaho Code, shall become delinquent, shall bear interest and shall be subject to the penalty as therein provided, but the provisions of sections 42-4220 and 42-4221, Idaho Code, shall not apply thereto. The board of directors may proceed in any other manner authorized by law for the collection of any such delinquent assessments.

[42-4222, added 1978, ch. 293, sec. 1, p. 736.]

42-4223. CONTRACTS TO RECEIVE BENEFITS. Any privately owned electrical generating company, or any person or entity who has acquired or is in the process of acquiring a right to appropriate water downstream from the boundaries of the district may enter into a contract with the board of directors of the aquifer recharge district for the receipt of benefits from the district. The consideration to be paid by any company, person or entity so contracting shall be as specified in the contract. Approval of any such contract by the director of the department of water resources shall be required before the contract shall become effective.

A contract executed and approved as herein provided may be used by the department of water resources as the basis for issuance of a permit to the electrical generating company or downstream appropriator for the appropriation and storage of such water as shall become available thereto as a result of the functioning of the district. Water appropriated under any such permit shall be deemed to be stored water and the use and manner of appropriation thereof shall be subject to all applicable limitations and restrictions im-

posed by law, including the provisions of subsection (3) of section 42-4201 or subsection (3) of section 42-234, Idaho Code.

Prior to the formation of the aquifer recharge district, any such electrical generating company or downstream appropriator may file with the director of the department of water resources a letter of intent to enter into such a contract.

[42-4223, added 1978, ch. 293, sec. 1, p. 736; am. 1982, ch. 204, sec. 5, p. 542; am. 2009, ch. 242, sec. 3, p. 744.]

42-4224. WATER USERS SUBJECT TO INCLUSION WITHIN THE DISTRICT. (1) All water users, as defined in section 42-4202(1), Idaho Code, included within the district and who have not obtained exclusion as hereinafter provided, shall remain within and be subject to assessment by the district, notwithstanding the absence of their signatures on the petition for formation of the district, and notwithstanding any change in the ownership or control of the property of the water user, whether by way of transfer, exchange, conveyance, assignment, lease, or otherwise, to which the water right or rights used to determine assessments are appurtenant. Municipal water users, as defined in section 42-4202(2), Idaho Code, included within the district shall remain at their election, within and be subject to assessment by the district unless excluded in the manner hereinafter provided.

(2) Any water user, as defined in section 42-4202(1), Idaho Code, who has obtained exclusion from the district, but who nevertheless is benefited by the district, shall remain excluded; provided, however, that any person or entity succeeding the water user in the ownership or control of property, whether by way of transfer, exchange, conveyance, assignment, lease, or otherwise, to which is appurtenant a water right that, barring the exclusion, would have been used to determine assessments, shall be deemed included within and subject to assessment by the district.

(3) Any individual or entity whose permit to appropriate water was acquired after the formation of the district, but who qualifies as a water user under section 42-4202(1), Idaho Code, in all other respects, shall be deemed included within and subject to assessment by the district if benefited either directly or indirectly by the district.

[42-4224, added 1978, ch. 293, sec. 1, p. 737.]

42-4225. EXCLUSION FROM THE DISTRICT -- PROCEDURE -- GROUNDS FOR EXCLUSION. After the formation of the district, any water user included within the district may file with the board of directors a petition in writing praying for exclusion from the district. All water users seeking exclusion as are united in interest or to which the same state of facts apply may unite in the same petition. The grounds for exclusion and the time limitations for filing any petition hereunder shall be as follows:

(1) The water user will not be benefited by the functioning of the district. A petition alleging this ground for exclusion must be filed within ninety (90) days after the formal appointment of the first board of directors by the department of water resources. Any such petition filed after the ninety (90) day period has elapsed shall not be accepted or considered.

(2) The water user has not benefited by the functioning of the district. A petition alleging this ground for exclusion shall be filed no earlier than five (5) years after the declaration of the formation of the district by the director of the department of water resources.

A petition alleging either of the foregoing grounds for exclusion shall be acknowledged by all the petitioners and shall state in detail the reasons why it is claimed that the petitioners should be excluded from the district.

Immediately after their formal appointment, the board of directors shall cause notice of the deadline for filing petitions under the provisions of subsection (1) of this section and a copy of the order of formation of the district and a map indicating the boundaries of the district to be posted in three (3) public places in each county in which a part of the district is situated. In addition, the board shall publish notice of the deadline and the locations at which the order of formation and map of the district may be inspected for at least four (4) successive weeks in a newspaper published or having general circulation in each of the counties in which any part of the district is situated.

[42-4225, added 1978, ch. 293, sec. 1, p. 738.]

42-4226. HEARING -- NOTICE -- ENTRY OF ORDER. (1) The petition shall be heard by the board of directors within sixty (60) days of filing of the petition and if no hearing is held within that time the petitioner or petitioners shall be deemed excluded from the district. If, prior to the date set for the hearing, the board issues an order excluding the petitioner or petitioners, no hearing need be held. The board shall give each petitioner notice of the time and place of the hearing in writing not less than fifteen (15) days prior to the hearing. It shall be sufficient to mail such notice by certified or registered mail to each petitioner's mailing address as indicated on the petition.

(2) At the hearing, if any, the petitioner or petitioners must establish by competent evidence the allegations of the petition. The chairman of the board is hereby empowered to administer oaths for the purpose of the hearing. If the allegations of the petition are established the board shall enter an order excluding the petitioner or petitioners, or any of them, from the district, which order shall reflect the nature of any outstanding and/or continuing liabilities to which the petitioner so excluded shall remain subject under the provisions of section 42-4228, Idaho Code.

[42-4226, added 1978, ch. 293, sec. 1, p. 738.]

42-4227. APPEAL. An appeal shall lie from a decision of the board of directors denying the petition or any part thereof to the district court of the county where the water user or water users are located. The appeal shall be taken in the same manner as appeals are taken from the board of county commissioners. If the district court excludes the water user or water users, or any of them, the time of exclusion shall date from the time of the hearing before the board of directors. The order of the district court excluding a water user or water users shall reflect the nature of any outstanding and/or continuing liabilities to which each water user so excluded shall remain subject under the provisions of section 42-4228, Idaho Code.

[42-4227, added 1978, ch. 293, sec. 1, p. 739.]

42-4228. EFFECT OF EXCLUSION ON LIABILITY FOR ASSESSMENTS. Any water user excluded from the district on the grounds specified in section 42-4225(1), Idaho Code, shall not be subject to assessment by the district for any purpose. Any water user excluded from the district on the grounds specified in section 42-4225(2), Idaho Code, shall not be subject to assessment for maintenance and operation of the works and facilities

of the district or for assessment expenses after the entry of the order of exclusion, or in case of appeal, the effective date of exclusion, but shall remain subject to the following liabilities until discharged:

(1) Such excluded water user shall remain liable for payment of assessments previously levied and unpaid at the time of the entry of the order of exclusion, or in case of appeal, the effective date of exclusion;

(2) Such excluded water user, notwithstanding his exclusion, shall remain liable to pay his proportionate share, such share to be computed as specified in section 42-4215, Idaho Code, of any indebtedness of the district already incurred and outstanding at the time of the entry of the order of exclusion, or in case of appeal, the effective date of exclusion, but such water user shall not be liable upon any indebtedness incurred thereafter.

Any water user, as defined in section 42-4202(1), Idaho Code, who, after exclusion, remains subject to either or both of the liabilities specified herein shall, in addition, remain subject to the provisions of sections 42-4218, 42-4219, 42-4220 and 42-4221, Idaho Code, until such liabilities have been discharged. Any municipal water user, as defined in section 42-4202(2), Idaho Code, who, after exclusion, remains subject to either or both of the liabilities specified herein, shall, in addition, remain subject to the provisions of section 42-4222, Idaho Code, until such liabilities have been discharged.

Upon the discharge of any liability, the district shall issue to the water user its certificate of full payment executed by the chairman of the board and the secretary of the district, and acknowledged so that the certificate may be recorded in the records of the county wherein the property of the water user affected by such liability and the discharge thereof is situate.

[42-4228, added 1978, ch. 293, sec. 1, p. 739.]

42-4229. COSTS. On appeal, costs shall be taxed as in other civil cases. Costs of recording the order of exclusion shall be borne by petitioners when the order is entered by the board of directors and by the aquifer recharge district when entered by the district court.

[42-4229, added 1978, ch. 293, sec. 1, p. 740.]

42-4230. EXCLUSION TO BE RECORDED. The decision and order of the board of directors, or of the district court in case of appeal, excluding the petitioner or petitioners from the district shall be filed for record in the recorder's office of the counties within which the district is situated.

[42-4230, added 1978, ch. 293, sec. 1, p. 740.]

42-4231. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

[42-4231, added 1978, ch. 293, sec. 1, p. 740.]