

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 51
GROUND WATER MANAGEMENT DISTRICTS

42-5101. LEGISLATIVE INTENT. The legislature hereby declares that the welfare of the people of Idaho is dependent upon the effective management of the ground water resources of this state. The legislature further declares that a need exists for the creation of special districts to provide for financing of repair or abandonment of wells in aquifers which have experienced or are experiencing declines in water level or water pressures because of flow, leakage, and waste from improper construction, maintenance and operation of wells drilled into the aquifer. Creation of these special districts may be initiated upon petition submitted by those owning the rights to use the ground water from any aquifers or parts of an aquifer that has been designated as a critical ground water area pursuant to section 42-233a, Idaho Code, or as a ground water management area pursuant to section 42-233b, Idaho Code.

[42-5101, added 1987, ch. 349, sec. 1, p. 765.]

42-5102. GROUND WATER MANAGEMENT DISTRICT FORMATION. For purposes of formation of a ground water management 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, which shall include territory only within the boundaries of a critical ground water area or ground water management area designated by the director of the department of water resources.

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

(1) Individuals, or entities, who are the current holders of a right, acquired in accordance with the provisions of chapter 2, title 42, Idaho Code, or chapter 14, title 42, Idaho Code, to appropriate water and to divert water from the aquifer by means of a well or wells, or who divert water from springs or other water courses emerging from such aquifer, or both.

(2) Cities which obtain water from the aquifer. A city may elect to be included within the proposed district by a majority vote of the members of its city council. The mayor of any city so electing may sign the petition on behalf of the city, and such city shall constitute one (1) water user for purposes of securing the minimum number of signatures required for the petition.

(3) Federal, state, or county government agencies which obtain water from the aquifer.

[42-5102, added 1987, ch. 349, sec. 1, p. 765.]

42-5103. FORMATION OF DISTRICT -- DECLARATION BY DIRECTOR. After receipt of the petition and map, 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 costs of repairs or aban-

donment of improperly constructed wells 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 interest of the water users proposed to be benefited. On the basis of his determination, the director shall enter an order either establishing the ground water management 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 the 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.

[42-5103, added 1987, ch. 349, sec. 1, p. 766.]

42-5104. BOARD OF DIRECTORS -- COMPOSITION -- APPOINTMENT OF FIRST BOARD -- ELECTION OF SUBSEQUENT BOARDS. (1) The board of directors of the ground water management district shall consist of three (3) members. Each member shall be a water user, or representative of a water user 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 one (1) member shall serve for a term of three (3) years, one (1) member shall serve for a term of two (2) years, and one (1) member shall serve for a term of one (1) year. Thereafter, members shall serve a three (3) year term and shall be elected as hereinafter provided. If a vacancy occurs, the director shall appoint a successor to serve the remainder of the term.

(4) On the first Tuesday in February following the expiration of the term of the member serving for one (1) year, and on the first Tuesday in February of each year thereafter, an election shall be held at which a director to succeed the one whose term has expired will be elected. Each director so elected shall be a water user or a representative of a water user within the district.

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 directors 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.

[42-5104, added 1987, ch. 349, sec. 1, p. 766; am. 1995, ch. 118, sec. 83, p. 498.]

42-5105. CITIES -- MANNER OF VOTING FOR DIRECTORS. Each city which has elected to be and is included within the district shall be entitled to one (1) vote and the vote of the majority of the members of the city council of each such city shall constitute the vote of the city. 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 certified 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 42-5107, Idaho Code, shall not apply to cities or other government agencies.

[42-5105, added 1987, ch. 349, sec. 1, p. 767.]

42-5106. WATER USERS OTHER THAN CITIES -- QUALIFICATIONS FOR VOTING. Any water user, as defined in subsection (1) of section 42-5102, Idaho Code, or a representative thereof, within the district who possesses the qualifications required of electors under the general laws of the state shall be entitled to vote at any election held under the provisions of this chapter. A representative of a water user shall be so designated by written proxy signed by the water user except that the vote of a federal, state, or county government may be cast by an elected or appointed official of the agency, or his designee.

[42-5106, added 1987, ch. 349, sec. 1, p. 767.]

42-5107. 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 ground water management district. In addition to the requirements specified in section 34-1402, Idaho Code, the election official shall also verify that the elector is a water user, as defined in subsection (1) of section 42-5102, Idaho Code, or a representative of such water user, within the district.

[42-5107, added 1987, ch. 349, sec. 1, p. 767; am. 1995, ch. 118, sec. 84, p. 498.]

42-5108. 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 the 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.

[42-5108, added 1987, ch. 349, sec. 1, p. 767; am. 1995, ch. 118, sec. 85, p. 499.]

42-5109. 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.

[42-5109, added 1987, ch. 349, sec. 1, p. 768; am. 1995, ch. 118, sec. 86, p. 499.]

42-5110. 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.

[42-5110, added 1987, ch. 349, sec. 1, p. 768.]

42-5111. 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 at 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 (1) 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.

[42-5111, added 1987, ch. 349, sec. 1, p. 768.]

42-5112. POWERS AND DUTIES OF BOARD OF DIRECTORS. The board shall have the following powers and duties:

- (1) To manage and conduct the business and affairs of the district;
- (2) To employ and appoint such agents, officers and employees as may be required to perform the duties as set out in this chapter and prescribe their duties;

(3) To incur indebtedness, for the purpose of financing repair or abandonment of wells in the district, the term of which shall not exceed ten (10) years, by contract with a money-lending institution, including the Idaho water resource board;

(4) To levy assessments for the retirement of indebtedness incurred for purposes of financing repair or abandonment of wells in the district and for the cost of operating the district, including participating in state and/or federal aquifer monitoring programs;

(5) To contract with owners of wells in the district which require repair or abandonment as ordered by the director of the Idaho department of water resources to effectuate repair or abandonment of such wells. The contracts may include financial participation in repair or abandonment, as necessary, to meet minimum well construction standards adopted by the Idaho water resource board, as follows:

(a) Repair of wells which owners intend to continue to use: grants of up to fifty percent (50%) of total cost of repair; loans at interest rates and terms determined by the board of directors of up to one hundred percent (100%) of total cost of repair;

(b) Abandonment of wells which owners do not intend to continue to use: grants or loans of up to one hundred percent (100%) of total cost; total cost of repair or abandonment includes all costs, including technical evaluation, design and inspections;

(6) To contract with the director of the department of water resources to evaluate proposed contracts with well owners to evaluate the repairs or other work proposed and the costs of the proposed work;

(7) To adopt rules, in accordance with the administrative procedure act, chapter 52, title 67, Idaho Code, for determining the percentage of the total repair or abandonment cost that the district will grant or loan, the maximum amounts of grants and loans and their terms, a procedure for determining which water users will be given the financial assistance offered by the district, and a limitation on the total indebtedness of the district. For the purposes of chapter 52, title 67, Idaho Code, the district shall be considered an agency. Among the factors to be considered by the board of directors in the adopted rules shall be the following:

(a) Characteristics of the well to be repaired or abandoned; i.e., location, depth, diameter, depth to water or water pressure in the well, rate of leakage above and below land surface, and the purpose of the well;

(b) Financial ability of the owner;

(c) Estimated relative impact of the repair or abandonment on water levels or pressures in the aquifer and in surrounding wells;

(d) Total number and estimated total cost of repairs to be made in the district as compared to the repayment capability from allowable annual assessments to be collected by the district; and

(e) Orders and recommendations of the director of the Idaho department of water resources;

(8) To accept gifts and grants or to enter into cost share agreements with any person, corporation, association or governmental agency in furtherance of the purposes of this chapter;

(9) To enter upon any land to make inventories, surveys, and monitoring or construction inspections in furtherance of the purposes of this chapter;

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

(11) 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;

(12) 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 the 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.

(13) To adopt and implement a plan for the repair of leaking artesian wells within the district.

[42-5112, added 1987, ch. 349, sec. 1, p. 769; am. 1995, ch. 294, sec. 2, p. 1037.]

42-5113. 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 payment of the annual payment on any and all indebtedness of the district for the following year. 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 for the cost of contracts with state or federal agencies for monitoring programs, or evaluation of proposed contracts, and may levy assessments against the water users in the district sufficient to raise such amount. Money received in payment of such assessments shall be deposited in a separate fund to be known as the operating 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 one hundred dollars (\$100) per second foot of water the water user is entitled to appropriate under his water right or rights, except, that the district may establish a ten dollar (\$10.00) minimum assessment for any water user.

[42-5113, added 1987, ch. 349, sec. 1, p. 770.]

42-5114. POWER TO INCUR INDEBTEDNESS -- ASSESSMENTS TO SECURE REPAYMENT. In order to secure funds for the repair or abandonment of wells in the district, 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 42-5113, Idaho Code, and may only be levied if the indebtedness has been approved at the election contained in sections 42-5115 through 42-5119, Idaho Code.

[42-5114, added 1987, ch. 349, sec. 1, p. 771.]

42-5115. ELECTION FOR INDEBTEDNESS -- REFERENDUM PETITION. Whenever the board shall by resolution adopted by a two-thirds (2/3) majority of the said board, determine that the interest of said district and the public interest or necessity demand the reconstruction, rehabilitation, replacement and improvement of any well or other related structures and works together with all necessary appurtenances related thereto, in order to preserve, restore, protect and maintain rights of storage, diversion and delivery of water necessary and appurtenant to the purposes for which such district and other like similarly situated districts were organized and shall set forth the amount of obligation or contract indebtedness proposed to be issued by the district under the provisions of this chapter, said board shall be required to order the submission of the proposition of issuing such contract indebtedness for the purposes set forth in said resolution to the vote of the qualified electors of the district as defined in section 42-5107, Idaho Code, at an election to be held, subject to the provisions of section 34-106, Idaho Code, for that purpose only if within fifteen (15) days after the passage of such resolution a referendum petition signed by legal voters equal in number to not less than ten per cent (10%) of the electors of the district, based upon the aggregate vote cast at the general election of officers of the district next preceding the filing of such referendum petition, shall be filed with the secretary of the district requesting that an election upon the issuance of such contract indebtedness be held and conducted under the provisions of this section. The resolution, in addition to such declaration of public interest or necessity, shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the reconstruction, rehabilitation, replacement or improvement as the case may be, the amount of principal of the indebtedness to be incurred therefor, and the sources of the revenues and assessments pledged to the payment of the indebtedness. The election upon the assessments shall be held at the same time as and shall be combined with any such election required to be held upon the indebtedness question pursuant to a referendum petition.

Any such election required to be held hereunder shall be called by resolution, which resolution shall also fix the date upon which such election shall be held, subject to the provisions of section 34-106, Idaho Code, the manner of holding the same and the method of voting for or against the incurring of the indebtedness. Such resolution shall also fix the compensation to be paid the officers of the election and shall designate the precincts and polling places and shall appoint for each polling place, from each precinct from the electors thereof, the officers of such election, which officers shall consist of three (3) judges, one (1) of whom shall act as clerk, who shall constitute a board of election for each polling place. The description of precincts may be made by reference to any order or orders of the board of county commissioners of the county or counties in which the district or any part thereof is situated, or by reference to any previous order, or resolution of the board or by detailed description of such precincts. Precincts established by the boards of the various counties may

be consolidated for elections held hereunder. The resolution calling the election shall prescribe an official notice of election in accordance with the provisions of section 34-1406, Idaho Code.

The respective election boards shall conduct the election in their respective precincts in the manner prescribed by law for the holding of district elections to the extent the same shall apply and shall make their returns to the secretary of the district. At any regular or special meeting of the board held within ten (10) days following the date of such election, the returns thereof shall be canvassed and the results thereof declared.

In the event that no referendum petition is filed, or if so filed, if it shall appear from said returns that a two-thirds (2/3) majority of the qualified electors of the district who shall have voted on any proposition submitted hereunder at such election voted in favor of such proposition, the district shall thereupon be authorized to incur such indebtedness or obligations, or enter into such contracts, all for the purpose or purposes and object or objects provided for in the proposition submitted hereunder or in the resolution therefor, and in the amount so provided. Submission of the proposition of incurring such obligation or other indebtedness at such an election shall not prevent or prohibit submission of the same or other propositions at subsequent election or elections called for such purpose.

[42-5115, added 1987, ch. 349, sec. 1, p. 771; am. 1995, ch. 118, sec. 87, p. 499.]

42-5116. JUDICIAL EXAMINATION. Prior to the incurring of indebtedness, the board shall file a petition in the district court of the county in which the office of the board is located, pursuant to the provisions of sections 43-406 to 43-408, inclusive, Idaho Code, as if the district were an irrigation district. Whenever any district which is required to file a petition hereunder has or proposes to enter into a contract or contracts with one or more districts pursuant to law, and such other district or districts is authorized or required to bring a confirmation proceeding or proceedings pursuant to the provisions of section 43-406 or of section 43-1808, Idaho Code, with respect to such contracts or the levy of assessments or the apportionment of costs, the boards of each of such other districts shall join in the filing of such petition, and the district court in which such petition is filed shall have jurisdiction to hear the petition and to grant the relief prayed for therein. Each such petition shall pray for a judicial examination and determination of any power conferred hereby or by any amendment hereto or of any assessment levied or of any apportionment of costs or of any act, proceeding or contract of the district or districts, whether or not said contracts shall have been executed, including proposed contracts for the reconstruction, rehabilitation, replacement and improvement of any such well and other related structures and works and appurtenances, falling water contracts, contracts with other districts and contracts with other public and private persons, firms, corporations and associations. Such petition shall set forth the facts whereon the validity of such powers, assessments, apportionments, acts, proceedings or contracts is founded. Notice of the filing of said petition shall be given by the clerk of the court by mailing, and by publication in at least one (1) newspaper published and of general circulation within the boundaries of each district joining in the petition, or if no newspaper is so published within any district, then in a newspaper published in the same county in which any part of such district is located which is of general circulation in such district, pursuant to and in accordance

with the requirements of section 43-407, Idaho Code, as if the district were an irrigation district under the seal thereof, stating in brief outline the contents of the petition and showing where a full copy of any contract or contracts, therein mentioned, may be examined.

Any water user as defined in section 42-5102, Idaho Code, in any district joining in the petition or any other person interested in the contracts or proposed contracts may appear and answer said petition at any time prior to the date fixed for said hearing or within such further time as may be allowed by the court; and the petition shall be taken as confessed by all persons who fail so to appear. The said petition and notice shall be sufficient to give the court jurisdiction and, upon hearing, the court shall examine into and determine all matters and things affecting the question submitted, shall examine all of the proceedings of all of the districts as set forth in the petition, shall hear all objections either filed in said proceeding or brought up from the hearings before any of the boards, shall correct all errors in the assessments and apportionments of costs, shall ratify, approve and confirm all apportionments of costs and assessments levied, shall make such findings with reference thereto and render a judgment and decree thereon approving and confirming all of the powers, assessments, apportionments, acts, proceedings and contracts of each of the districts as set forth in the petition as the case warrants. Costs may be divided or apportioned among the contesting parties in the discretion of the trial court. Review of the judgment of the court may be had as in other similar cases, except that such review must be applied for within thirty (30) days after the time of the rendition of such judgment, or within such additional time as may be allowed by the court within thirty (30) days. The Idaho Rules of Civil Procedure shall govern in matters of pleading and practice where not otherwise specified herein. The court shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties. Except as provided herein, the provisions of sections 43-406 through 43-408, Idaho Code, shall apply to the proceeding herein authorized as though the ground water management district were an irrigation district.

[42-5116, added 1987, ch. 349, sec. 1, p. 773.]

42-5117. JUDICIAL PROCEEDINGS TO TEST VALIDITY. In the event that any official required to participate in any act leading to the calling or holding of the required election or the execution of any required contract shall refuse to perform such act alleging as his reason illegality of the proposed election or the proposed contract, the board may institute judicial proceedings to compel such steps to be taken and legality of the election or the contract to be determined. All cases in which there may arise a question of the validity of any proceeding under this act shall be advanced as a matter of immediate public interest and concern, and heard at the earliest practicable moment. The courts shall be open at all times for the purposes of this act.

[42-5117, added 1987, ch. 349, sec. 1, p. 774.]

42-5118. TAX EXEMPTION. Interim notes, and the interest thereon, issued pursuant to the authority contained in this chapter shall be exempt from taxation under the Idaho income tax law.

[42-5118, added 1987, ch. 349, sec. 1, p. 774.]

42-5119. LIBERAL CONSTRUCTION. Any restrictions, limitations or regulations relative to the execution of such contracts pursuant to the author-

ity herein contained in any other act shall not apply to the execution of such contracts pursuant to the authority herein contained. Any act inconsistent herewith shall be deemed modified to conform with the provisions of this chapter for the purpose of this chapter only. This chapter being necessary to secure and preserve the public health, safety, convenience and welfare, and for the security of public and private property, it shall be liberally construed to effect the purposes of this chapter.

[42-5119, added 1987, ch. 349, sec. 1, p. 774.]

42-5120. 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 42-5113, 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 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.

[42-5120, added 1987, ch. 349, sec. 1, p. 775.]

42-5121. 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.

[42-5121, added 1987, ch. 349, sec. 1, p. 775.]

42-5122. 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. The treasurer of the district shall mail by regular mail a billing to each water user. The billing shall be mailed on or before the first day of December.

Assessments unpaid on December 31 shall be delinquent and shall bear interest at the rate of fifteen percent (15%) per annum until paid. Delinquent assessments, in addition, shall be subject to a penalty in the amount of fifteen dollars (\$15.00) per delinquent assessment.

The maximum annual assessment limitation specified in section 42-5113, 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.

[42-5122, added 1987, ch. 349, sec. 1, p. 775.]

42-5123. 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, and the treasurer shall then provide by certified mail a notice of delinquency to each water user having a delinquent assessment.

[42-5123, added 1987, ch. 349, sec. 1, p. 775.]

42-5124. 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.

[42-5124, added 1987, ch. 349, sec. 1, p. 776.]

42-5125. WATER USERS SUBJECT TO INCLUSION WITHIN THE DISTRICT. (1) All water users, as defined in subsection (1) of section 42-5102, 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 subsection (2) of section 42-5102, Idaho Code, included within the district shall remain upon 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 subsection (1) of section 42-5102, 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 subsection (1) of section 42-5102, 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.

[42-5125, added 1987, ch. 349, sec. 1, p. 776.]

42-5126. EXCLUSION FROM THE DISTRICT -- PROCEDURE -- GROUNDS FOR EXCLUSION. (1) 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:

(a) 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 adoption of a resolution to incur indebtedness as authorized in section 42-5114, Idaho Code. Any such petition filed after the ninety (90) day period has elapsed shall not be accepted or considered, except upon a showing of good cause for the delay.

(b) 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 adoption of a resolution to incur indebtedness as authorized in section 42-5114, Idaho Code.

(c) 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.

(2) Immediately after the 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 location 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.

[42-5126, added 1987, ch. 349, sec. 1, p. 777.]

42-5127. 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 42-5129, Idaho Code.

[42-5127, added 1987, ch. 349, sec. 1, p. 777.]

42-5128. 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 42-5129, Idaho Code.

[42-5128, added 1987, ch. 349, sec. 1, p. 778.]

42-5129. EFFECT OF EXCLUSION ON LIABILITY FOR ASSESSMENTS. Any water user excluded from the district on the grounds specified in subsection (1) of section 42-5126, 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 subsection (2) of section 42-5126, Idaho Code, shall not be subject to assessment for operation 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 42-5113, 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 42-5102, 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 42-5121, 42-5122, 42-5123 and 42-5124, 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 situated.

[42-5129, added 1987, ch. 349, sec. 1, p. 778.]

42-5130. 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 ground water management district when entered by the district court.

[42-5130, added 1987, ch. 349, sec. 1, p. 778.]

42-5131. 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.

[42-5131, added 1987, ch. 349, sec. 1, p. 779.]

42-5132. 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.

[42-5132, added 1987, ch. 349, sec. 1, p. 779.]