

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 52
GROUND WATER DISTRICTS

42-5201. SHORT TITLE -- TITLE OF DISTRICTS -- DEFINITIONS. This chapter is known as the "Ground Water District Act"; the districts created hereunder may be termed "ground water districts." When used in this chapter, and unless otherwise specified, the following terms shall be defined as follows:

(1) "Board" means the board of directors of a ground water district organized pursuant to this chapter.

(2) "Corporation" means a corporation or limited liability company.

(3) "County commission" means the board of county commissioners or any other governing board or authority for a county, as provided by law.

(4) "Department" means the Idaho department of water resources.

(5) "Director" means the director of the department of water resources.

(6) "District" means a ground water district established, or to be established, pursuant to this chapter.

(7) "Ground water" when used in this chapter means water under the surface of the ground whatever may be the geologic structure in which it is standing or moving, as provided in section [42-230](#) (a), Idaho Code.

(8) "Ground water user" means the legal or beneficial owner of a ground water right, or the user of a ground water right pursuant to lease or contract of a ground water right to divert ground water of the state for a beneficial use or purpose, except for those diverting under rights used solely for domestic or stock use as defined by sections [42-111](#) and [42-1401A](#), Idaho Code, and provided, that for purposes of this chapter, the term ground water user shall not include any ground water right held by or on behalf of an Indian tribe or by tribal members for diversion and use within an Indian reservation, ground water rights held by the United States or ground water rights held by the state of Idaho. A ground water user is within the boundary of a ground water district if the well or other point of diversion used by that ground water user is within the boundary. A husband and wife together diverting ground water pursuant to right shall constitute one (1) ground water user. Ground water user includes both a ground water irrigator and a nonirrigator as defined in this chapter.

(9) "Ground water irrigator" means a ground water user holding a ground water right for irrigation purposes within a ground water district.

(10) "Land" or "lands," when used in the context of the property of a ground water user subject to district assessment under this chapter, means the real property where ground water is diverted or placed to beneficial use, including the facilities in or through which a ground water user makes beneficial use of ground waters.

(11) "Nonirrigator" means a ground water user holding a ground water right for commercial, municipal, or industrial purposes within a ground water district. A ground water user will be deemed a nonirrigator for purposes of this chapter even though: (a) some component of the user's ground water use is for irrigation; or (b) the user holds a ground water right for irrigation that is incidental to, or normally associated with, the user's commercial, municipal or industrial purpose.

(12) "Member" means a ground water user whose lands, facilities and/or water rights are included in and subject to a ground water district and its policies.

(13) "Mitigation plan" means a plan to prevent or compensate for material injury to holders of senior water rights caused by the diversion and use of water by the holders of junior priority ground water rights who are participants in the mitigation plan.

(14) "Person" means an individual, partnership, trust, estate, association, corporation, municipal corporation, the state of Idaho and any of its agencies, the United States, an Indian tribe, a public corporation, or any other public or private entity.

(15) "Public corporation" means counties, city and counties, cities, school districts, municipal water districts, irrigation districts, recharge districts, water districts, park districts, subdistricts, and all other governmental agencies of this state, having the power of levying or providing for the levy of general or special taxes or special assessments, and any political subdivision of another state of the United States.

(16) "Water right" means the legal right to divert and beneficially use the public waters of the state of Idaho where such right is evidenced by a decree, a permit or a license issued by the department, a beneficial or constitutional use right evidenced by an adjudication claim or claim based on section [42-243](#), Idaho Code, or a right based on federal law.

[42-5201, added 1995, ch. 290, sec. 1, p. 983; am. 1997, ch. 374, sec. 7, p. 1203; am. 2005, ch. 367, sec. 1, p. 1155.]

42-5202. ESTABLISHMENT OF GROUND WATER DISTRICTS. Whenever fifty (50) or a majority, whichever is less, of the ground water users in a particular geographic area desire to organize a ground water district, they may propose the organization of a district and the election of its initial board of directors under this chapter.

[42-5202, added 1995, ch. 290, sec. 1, p. 985.]

42-5203. PETITION FOR ORGANIZATION -- MAP -- BOND. (1) A petition shall be first presented to the county commission of the county in which the greatest proportion of cubic feet per second of ground water rights of the proposed district is situated, which petition shall:

- (a) Be signed by the required number of ground water users in such proposed district;
- (b) State that the petitioners desire to have their lands included within and subject to the assessments of the district for purposes consistent with this chapter;
- (c) Set forth and describe by township, range and section, with the degree of certainty required by law in a tax roll, the boundary of the area where, if a ground water user is located within that boundary, that ground water user would be included in a ground water district, and shall request that the area described be organized into a ground water district;
- (d) Propose a name for the district;
- (e) Be accompanied by a list, identifying the ground water users within such proposed district by name, address, ground water right number, point of diversion, and cubic feet per second per ground water right,

certified by the director of the department of water resources as accurately reflecting the records of the department;

(f) Be accompanied by a map which shall indicate the proposed boundaries of the district, and which may propose division boundaries as specified in section [42-5208](#), Idaho Code;

(g) Propose between three (3) and seven (7) divisions and division boundaries;

(h) Include nominations for a director for each division, each of which shall be signed by not less than six (6) ground water users in the proposed district;

(i) Be accompanied by bond, to be approved by the county commission, in double the amount of the probable cost to the county and the department of organizing such district, conditioned that the bondsmen will pay all said costs, in case organization of the district is unsuccessful.

(2) The petition, together with all maps and papers filed therewith, shall, during the county's office hours, be open to public inspection at the office of the county clerk between the date of filing and the date of the final hearing thereon. The boundaries specified in the petition shall be proposed in such manner that the greatest distance between two (2) wells in the district shall be no more than thirty (30) miles unless good cause is shown to the county commission for including a larger area.

(3) Lands of ground water users do not have to be contiguous within a ground water district, and such district may be organized even though its boundaries may overlap with other districts formed pursuant to [title 43](#), Idaho Code, or other titles of the Idaho Code.

(4) If the district is organized, the costs of organization shall be assessed against the members of the district.

[42-5203, added 1995, ch. 290, sec. 1, p. 985.]

42-5204. NOTICE OF PRESENTATION TO COUNTY COMMISSION. The petition may be filed with the county clerk, upon verifying with the county assessment roll or other evidence of entitlement whether the petition is valid, at any time, and upon such filing the clerk forthwith shall cause a notice to be published in a newspaper printed within the county (counties) within the boundaries specified in the petition, or if no newspaper is printed in any of the affected counties, then in newspapers of general circulation in the affected county (counties). The notice shall state that (giving the first name on the petition) and others have filed a petition for the organization of a ground water district. The notice shall state the numbers of the townships, ranges, and sections where, if a ground water user is within those townships, ranges, and sections, that ground water user would be within the proposed district. The notice shall further state the time at which such petition will be presented to the county commission, which time shall be during a regular meeting of the commission or a special meeting called for that purpose, and the notice shall be published at least once a week for two (2) consecutive weeks before the day on which the petition is to be presented.

[42-5204, added 1995, ch. 290, sec. 1, p. 986.]

42-5205. NOTICE OF COUNTY COMMISSION HEARING. When the petition is presented, the county commission shall set a time for a hearing on the petition, which shall not be less than four (4) nor more than eight (8) weeks from the date of presentation, unless extended by the county commission for good

cause. A notice of the time of such hearing shall be published by the county clerk, at the direction of the commission, at least three (3) weeks before the time of such hearing, in a newspaper or newspapers as required in section [42-5204](#), Idaho Code.

[42-5205, added 1995, ch. 290, sec. 1, p. 986.]

42-5206. EXAMINATION BY DEPARTMENT OF WATER RESOURCES -- REPORT TO COUNTY COMMISSION -- AMENDMENT OF PLAN. (1) A copy of the petition and all maps and other papers filed with the county commission shall be filed with the department on the same day the petition is filed with the county commission.

(2) The department shall examine the petition, maps and other papers submitted in support of it, and, taking into account hydrological factors, patterns of ground water use, or other attributes of the area that may aid the county commission, prepare a report upon the boundaries proposed for the district and submit the report to the county commission at least two (2) weeks before the meeting set for the commission to hear the petition.

[42-5206, added 1995, ch. 290, sec. 1, p. 986.]

42-5207. ORGANIZATION HEARING BEFORE COUNTY COMMISSION -- ORDER OF COUNTY COMMISSION. (1) After receiving the report of the department of water resources, the county commission shall conduct a hearing on the petition. If the county commission determines that the requisite number of signatures were not gathered on the petition, the board shall adjourn the hearings for two (2) weeks for the purpose of enabling the petitioners to gather additional signatures. The petitioners may amend the boundaries of the proposed district at the hearing to include or exclude lands of those ground water irrigators who provide written notice or who appear at the hearing requesting that their lands be either included or excluded, to meet the recommendations of the department, or as they may find advisable to achieve suitable district boundaries. The county commission shall accept any additional nominations of persons to be directors at the hearing or the nominations may be filed with the county clerk. The nominations must be signed by at least six (6) ground water users from the proposed district.

(2) When the county commission has determined to proceed with the petition, it may adjourn the hearing from time to time, not exceeding four (4) weeks in all, and on final hearing, the county commission:

(a) May make such other changes in the proposed boundaries of the district and divisions within the district as it may find proper; and

(b) Shall make an order on its records describing the area which it shall have determined to include in the district, and stating that lands of ground water users within such area will be organized into a ground water district if the vote of the electors accepts organization of the district.

(3) The county commission shall notify the department of the final action by mailing or faxing a copy of the order to the department within seven (7) days of the board's decision. If the boundaries of the proposed ground water district differ from the boundaries contained in the department's original report, the department shall prepare a revised list of the ground water users within such proposed district by name, address, ground water right number, point of diversion, and cubic feet per second per ground water right and return it to the county commission.

[42-5207, added 1995, ch. 290, sec. 1, p. 987.]

42-5208. DIVISIONS OF DISTRICT FOR ELECTION OF DIRECTORS. The county commission shall also make an order dividing the district into not less than three (3) nor more than seven (7) divisions, each division to contain approximately the same amount, measured in cubic feet per second, of ground water rights as each other division. The divisions shall be numbered first, second, third, etc., and one (1) director, who shall be a ground water user in the division, shall be elected from each division of the district at large. The number of divisions into which the district shall be divided shall be specified in the petition for the organization of the district, and if not otherwise specified shall be three (3).

[42-5208, added 1995, ch. 290, sec. 1, p. 987.]

42-5209. NOTICE OF ELECTION. The county commission shall give notice of an election to be held in accordance with section [34-106](#), Idaho Code, in the proposed district for the purpose of determining whether the district shall be organized under this chapter, and, if so, who shall be its initial directors. The notice shall describe the area, with the certainty required in an ordinary deed, where, if a ground water user is located within that area, that ground water user would be included in the district and shall state the name of the proposed district as designated by the commission, and shall state that a map showing the area of the district is on file in the office of the county clerk, which map, if not previously made, shall be made by the petitioners after the determination of the commissioners of the boundary of the proposed district, and shall state the names of those individuals who have been nominated for director's positions. The notice shall be published for four (4) weeks prior to such election, in a newspaper or newspapers as required in section [42-5204](#), Idaho Code. The notice shall require the electors to cast ballots which shall contain the words "ground water district--yes," or "ground water district--no," and also to cast ballots for at least one (1) person from each division for director of the district.

[42-5209, added 1995, ch. 290, sec. 1, p. 988.]

42-5210. QUALIFICATIONS OF VOTERS FOR DISTRICT ELECTIONS. (1) Any ground water irrigator, and any nonirrigator who is a member for all purposes, within the proposed district shall be entitled to vote at any election held under the provisions of this chapter. The production of documentation of a water right as described in section [42-5201](#)(16), Idaho Code, shall be sufficient evidence of ground water use for purposes of acting as an elector under this chapter. A representative of a ground water user shall be so designated by written proxy signed by the ground water user except that the vote of a state, city or county government may be cast by an elected or appointed official of the agency, or his designee. A corporation or partnership shall vote or otherwise act by a single individual who is authorized by the corporation or partnership to act on its behalf. A corporation or partnership must furnish the election officials a written designation stating the name of the individual who is authorized to vote and otherwise act for the corporation or partnership.

(2) Any ground water user who becomes a member of a district solely for mitigation purposes:

(a) Shall be entitled to vote only in those district elections concerning whether to incur indebtedness as specified in section [42-5234](#), Idaho Code; and

(b) Shall be ineligible to nominate directors or officers of the district, to serve in such capacities, or otherwise to participate in the governance of the district.

(3) A nonirrigator may participate in the election to determine whether a district will be formed only according to the following provisions:

(a) The nonirrigator shall notify the judges of election in writing at least ten (10) working days prior to the date of the election that such person supports the formation of the district, elects to become either a member for all purposes, or a member only for mitigation purposes as described in section [42-5214](#), Idaho Code, should it be formed, and, by such notice, casts its vote(s) in favor of formation.

(b) The notification shall contain a legal description of the land through which the nonirrigator places ground waters to beneficial use, a statement of the amount of such person's ground water right in cubic feet per second of diversions, and a copy of the ground water right documentation described in section [42-5201](#)(16), Idaho Code.

(c) Once the judges of election have accepted the notification described in subsection (3) (b) of this section, they shall duly record the nonirrigator's vote(s) in favor of district formation in the canvassing of votes carried out pursuant to section [42-5213](#), Idaho Code.

(d) If the voting results in the formation of the district, the nonirrigator who provided such notification thereafter shall be a full member or member for mitigation purposes of such district, whichever the case may be, and shall have all obligations, rights, and limitations attaching thereto.

(4) Each ground water user shall have one (1) vote for each cubic foot per second, or proportion thereof (rounded to the nearest tenth of a cubic foot per second), for which such ground water user holds a ground water right whose point of diversion is within the proposed district boundaries.

[42-5210, added 1995, ch. 290, sec. 1, p. 988; am. 1996, ch. 298, sec. 4, p. 981; am. 2005, ch. 367, sec. 2, p. 1157.]

42-5211. CONDUCT OF ELECTIONS. (1) Elections shall be conducted as nearly as practicable in accordance with the general laws of the state; provided, no particular form of ballot shall be required, and that the provisions of the election laws as to the form and distribution of ballots shall not apply.

(2) The county commission shall establish one (1) or more election precincts, not exceeding seven (7), as may be necessary, and define the boundaries thereof, which boundaries, when the district is divided into precincts, shall be the same as the division boundaries above-provided for and which said precincts may thereafter be changed by the board of directors of such district as may be necessary; provided, that districts shall have not less than three (3), nor more than seven (7) voting precincts.

(3) The county commission shall also appoint three (3) judges of election for each such election precinct, who shall perform the same duties as near as may be as judges of election, under the general laws of the state.

[42-5211, added 1995, ch. 290, sec. 1, p. 989.]

42-5212. REGISTRATION NOT REQUIRED. No registration shall be required in any ground water district election, but in lieu thereof the judges of election shall require every elector to subscribe to an elector's oath as prerequisite to casting his vote, and such oath shall be the usual elector's oath with the following words added thereto, "I am a resident of county, and I am a ground water user within the (proposed) ground water district, or I am a representative of a ground water user within the (proposed) ground water district" and present evidence of such ground water use pursuant to section [42-5201](#) (16), Idaho Code, if they do not appear on the department's list as provided in section [42-5206](#), Idaho Code.

[42-5212, added 1995, ch. 290, sec. 1, p. 989; am. 2005, ch. 367, sec. 3, p. 1158.]

42-5213. CANVASS OF VOTES -- COMPLETION OF ORGANIZATION. (1) Immediately after any election for voting upon the organization of a ground water district, the judges of the election shall forward the official results of said election to the county clerk. The county commission shall meet within ten (10) days after the election returns are received, and canvass the votes cast. If it appears that two-thirds (2/3) of the votes cast are "ground water district--yes," the commission shall, by order entered on its minutes, declare such territory duly organized as a ground water district, under the name designated, shall declare that a map showing the area of the district is on file in the office of the county clerk and shall declare the persons receiving respectively the highest number of votes for director from each division to be duly elected as directors. The county commission shall cause a copy of such order, duly certified, to be immediately filed for record in the office of the county recorder of each county in which any portion of such district is situated, and shall mail a certified copy of the order to the director.

(2) If it shall appear, however, that more than one-third (1/3) of the votes cast are "ground water district--no," then a record of that fact shall be duly entered upon the minutes of the board, and all proceedings in regard to the organization of the district shall be void, and the expenses properly incurred thereunder may be collected on the bond provided for in section [42-5203](#), Idaho Code.

[42-5213, added 1995, ch. 290, sec. 1, p. 990.]

42-5214. GROUND WATER USERS INCLUDED WITHIN THE DISTRICT -- NOTICE AND HEARING FOR MEMBERS INCLUDED IN DISTRICT AFTER MARCH 31, 2005 -- ORDER -- APPEAL AND CONCLUSIVENESS. (1) All ground water irrigators within the boundaries of the district shall be members of the district and subject to assessments, rights and responsibilities established by the district as set forth in this chapter, 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, unless excluded from the district pursuant to sections [42-5251](#) through [42-5257](#), Idaho Code. Except as provided in section [42-5276](#), Idaho Code, any ground water irrigator who previously was not a member as of March 31, 2005, shall be included as a member effective upon order of the board finding and confirming that inclusion of such ground water irrigator is in the best interests of the district and that such ground water irrigator shall receive benefits from such inclusion as a

member. Such order may be made only after the board shall have caused a notice of such hearing to be published in the manner of notices of elections, which notice shall state that all persons interested in or that may be affected by such inclusion as a member shall appear at the time and place named in the notice and show cause in writing why they should not be included as a member. The board, at the time mentioned in said notice shall hear any objections to inclusion. The failure of any person to file with the district office an objection to inclusion as a member prior to the noticed hearing shall be taken as an assent on his part to such inclusion as a member of the district. Any order confirming the inclusion of ground water irrigators as members of the district shall be certified by the board president and secretary and filed for record in the recorder's office of each county within which are situated any lands of the district and notice of the order shall be published in the manner of notices of elections. Any person who properly has filed an objection to inclusion as a member shall have the right to appeal to the district court of the county in which such person's ground water right is situated, provided such appeal shall be made within thirty (30) days from the date of publication of the order confirming such inclusion. After said thirty (30) day appeal period, no one shall have any cause or right of action to contest the legality, formality or regularity of said order of inclusion for any reason whatsoever, and thereafter, said inclusion and the constitution and validity of the district shall be considered valid and incontestable without limitation. Any ground water irrigator who previously was not a member of the district as of March 31, 2005, that is included as a member upon order of the board shall be liable for his proportionate share of all costs of the district incurred after such date, including his proportionate share of all bonded, warrant or other indebtedness incurred prior to March 31, 2005, but only the proportionate share of such prior indebtedness applicable to the period after March 31, 2005.

(2) All nonirrigators within the boundaries of the district who voted according to notice as provided in section [42-5210](#)(3), Idaho Code, are members of the district as specified in such notice.

(3) A nonirrigator also may become a member of a district by providing, within sixty (60) days after the date on which the district is formed, written notice to the district board that the nonirrigator wishes to join the district either as a member for all purposes or as a member for mitigation purposes only. Upon providing such notice, the nonirrigator shall be either a member for all purposes or a member for mitigation purposes only, as specified in the notice, and shall be subject to assessment accordingly as provided in this chapter. After such sixty (60) day period, a nonirrigator may become a member of a district only through the annexation procedure described in sections [42-5245](#) through [42-5249](#), Idaho Code.

(4) Except as provided for nonirrigators as defined in subsection (11) of section [42-5201](#), Idaho Code, any person whose permit, license, or other entitlement to appropriate ground water was acquired after the formation of the district, or who appropriates ground water for uses not requiring a permit after the formation of the district, but qualifies as a ground water user under subsection (8) of section [42-5201](#), Idaho Code, within the area of the district in all other respects, shall be deemed included within and subject to assessment by the district, if benefitted either directly or indirectly by the district as of the date the permit, license, or entitlement is acquired.

[42-5214, added 1995, ch. 290, sec. 1, p. 990; am. 1996, ch. 298, sec. 5, p. 982; am. 2005, ch. 367, sec. 4, p. 1158; am. 2006, ch. 355, sec. 1, p. 1085.]

42-5215. LIMITATION ON PROCEEDINGS AFFECTING VALIDITY. No action shall be commenced or maintained, or defense made affecting the validity or organization of the district, more than two (2) years from and after the county commission enters on its minutes the order directing the formation of the district.

[42-5215, added 1995, ch. 290, sec. 1, p. 991.]

42-5216. ORGANIZATIONAL MEETING OF BOARD. From and after the date the county commission files its order declaring the district to be formed by election, the organization of the district shall be complete and those ground water users specified in section [42-5214](#), Idaho Code, shall be included within the district. The officers and directors of the district shall be entitled to enter immediately upon the duties of their respective offices, upon qualifying according to law, and shall hold such offices respectively, until their successors are elected and qualified. The board of directors so elected shall meet within thirty (30) days after their election and elect a chairman, and appoint a secretary and treasurer, who shall perform the duties imposed upon such officers under this chapter.

[42-5216, added 1995, ch. 290, sec. 1, p. 991; am. 1996, ch. 298, sec. 6, p. 983.]

42-5217. TREASURER'S OFFICIAL BONDS. The treasurer shall on his appointment execute and file with the secretary an official bond in such amount as may be fixed by the district board of directors, which shall not be less than five thousand dollars (\$5,000); 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 of 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.

[42-5217, added 1995, ch. 290, sec. 1, p. 991.]

42-5218. ELECTION, TERM OF OFFICE, NOMINATIONS AND QUALIFICATIONS. (1) One (1) year following the organization of the district, an election shall be held in accordance with section [34-106](#)(1), Idaho Code, at which shall be elected one (1) director for each division of the district by the electors of the district at large. Following the election, the term of office of the directors shall be selected by lot so that as nearly as may be, one-third (1/3) of the number shall hold office for the term of one (1) year, one-third (1/3) for the term of two (2) years, and the balance for the term of three (3) years. An election shall be held in the district in accordance with section [34-106](#)(1), Idaho Code, for each year thereafter, at which directors shall be elected to succeed those whose terms expire, to hold office for a term of three (3) years, or until their successors are elected and qualified. Every director must be a ground water user and a member of the district in the division of the director whom he is to succeed in office. Written nominations for the office of director must be signed by at least six (6) members in dis-

tricts having less than one hundred (100) members and by at least twelve (12) members in districts having more than one hundred (100) members, and filed with the secretary of the district not less than twenty-eight (28) days nor more than forty-two (42) days before the date of election; and the names of the persons so nominated shall be placed upon official ballot to be furnished by the district.

(2) The board of directors may provide that any elections conducted under this chapter may be conducted by mail as long as the ballots are mailed not later than fourteen (14) days prior to the election and received by the secretary of the district by 8:00 p.m. on the date of the election.

[42-5218, added 1995, ch. 290, sec. 1, p. 991; am. 1996, ch. 298, sec. 7, p. 983.]

42-5218A. WHEN ELECTION NOT REQUIRED. In any election for directors if, after the expiration of the date for filing written nominations for the office of director, it appears that only one (1) qualified candidate has been nominated thereby for each position to be filled, it shall not be necessary to hold an election, and the board of directors shall, within five (5) days after expiration of the date for filing written nominations, declare such candidate elected as director. The procedure set forth in this section shall not apply to any other district election.

[(42-5218A) 42-5219, added 1995, ch. 290, sec. 1, p. 992; am. and redesign. 2005, ch. 367, sec. 5, p. 1159.]

42-5218B. NOTICE OF ELECTION. The secretary of the district shall give notice of all elections in the district by posting the same in five (5) public places in each county in which a part of the district is situated and in the office of the board of directors at least four (4) weeks before the day of such election, or by publication of the notice once a week for four (4) successive weeks in a newspaper or newspapers published in each of said counties or in a newspaper of general circulation therein. 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.

[(42-5218B) 42-5220, added 1995, ch. 290, sec. 1, p. 992; am. and redesign. 2005, ch. 367, sec. 6, p. 1160.]

42-5218C. CONDUCT OF ELECTIONS. The election shall be conducted as nearly as practicable in accordance with the general laws of the state; provided that no particular form of ballot shall be required and the provisions of the election laws as to the form and distribution of ballots shall not apply and each ballot must indicate the number of cubic feet per second associated with the ballot cast. 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 near as may be, 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.

[(42-5218C) 42-5221, added 1995, ch. 290, sec. 1, p. 992; am. and re-desig. 2005, ch. 367, sec. 7, p. 1160.]

42-5218D. 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.

[(42-5218D) 42-5222, added 1995, ch. 290, sec. 1, p. 992; am. and re-desig. 2005, ch. 367, sec. 8, p. 1160.]

42-5219. DIRECTORS AT LARGE. In the event a district is divided into six (6) or fewer divisions, the district is authorized to elect one (1) to two (2) directors at large. Directors at large shall be elected at the annual meeting of the district by a two-thirds (2/3) majority of the members present at the meeting. Every director at large elected pursuant to the provisions of this section shall be a ground water user in the district. Directors at large shall hold office for a term of two (2) years, or until their successors are elected and qualified. Provided however, that in no event shall a district have more than a total of seven (7) directors serving at any time whether elected pursuant to the provisions of section [42-5218](#), Idaho Code, or pursuant to this section.

[42-5219, added 2005, ch. 367, sec. 9, p. 1160.]

42-5223. 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. Upon appointment the treasurer shall 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 designate an office of the district.

(3) The board of directors shall hold a regular monthly meeting in the district's office on the first Tuesday in every month or such date each month as it shall fix by resolution, and such special meetings as may be required 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.

(4) The members of the board of directors shall fix the compensation board members shall receive for each day spent attending the meetings, or while engaged in official business under the order of the board, together with actual and necessary 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.

(5) 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 a ground water user who is a member of the district or a representative thereof, possessing full voting qualifications under this chapter and the qualifications of the director whose office has become vacant to serve the remainder of the term.

[42-5223, added 1995, ch. 290, sec. 1, p. 992.]

42-5224. POWERS AND DUTIES OF BOARD OF DIRECTORS. The board shall, in addition to any other powers and duties provided in this chapter, and provided that nothing in this chapter shall abrogate or impair the right of any person to take any action necessary to acquire, protect, challenge or defend any water right, have the following powers and duties:

(1) To acquire, and/or construct, operate, control or use by appropriation, grant, purchase, bequest, devise, contract or lease works or facilities, water rights, water permits or licenses, well-drilling permits, wells, pipelines, ditches and any other real and personal property (including easements and rights-of-way) or contract entitlement within or without the district necessary or convenient to fully exercise its powers;

(2) To sell, lease, encumber, alienate, or otherwise dispose of works or facilities, water, water rights, wells, pipelines, ditches, reservoirs, recharge facilities, and any other real and personal property owned by the district within or without its boundaries, and to incur indebtedness on behalf of the district as specified in this chapter;

(3) To enter into contracts and agreements, cooperative and otherwise, including contracts with the United States of America and any of its agencies or instrumentalities, and tribes, and contracts with corporations, public or private, municipalities, or governmental subdivisions necessary or convenient to fully exercise its powers;

(4) To hire and retain agents, employees, engineers, hydrologists, geologists, and attorneys as shall be necessary and convenient to transact the district's business and to represent the district's interests;

(5) To levy assessments for the operation of the district and its programs;

(6) To represent district members, with respect to their individual water rights, in general water rights adjudications and other legal and administrative proceedings or before political bodies, provided that the board may levy assessments for these matters against only those members who have given written consent for the representation;

(7) To represent district members in proceedings or meetings of a water district established by the director of the department notwithstanding any provision to the contrary in [chapter 6, title 42](#), Idaho Code. Provided however, that the board shall not be authorized to cast a vote in any proceeding or meeting of a water district established pursuant to [chapter 6, title 42](#), Idaho Code, on behalf of any district member who has, prior to such proceeding or meeting, given written notice to the board and to the water district that such district member intends to vote on his own behalf, or on behalf of any district member who attends such meeting or proceeding and intends to vote on his own behalf. The board shall provide a verified list of the water rights that it represents at any water district proceeding or meeting to the chairman of the water district proceeding or meeting;

- (8) To appropriate, develop, store, and transport water within the state;
- (9) To acquire stock in canal companies, water companies, and water users' associations;
- (10) To invest any surplus money in the district treasury pursuant to the public depository law as contained in [chapter 1, title 57](#), Idaho Code;
- (11) To develop, maintain, operate and implement mitigation plans designed to mitigate any material injury caused by ground water use within the district upon senior water uses within and/or without the district;
- (12) To finance the repair or abandonment of wells in the ground water district which have experienced or are experiencing declines in water level or water pressures because of reasons including, but not limited to, flow, leakage, and waste from improper construction, maintenance, and operation of wells;
- (13) To have and exercise the power of eminent domain in the manner provided by law for the condemnation of private property for easements, rights-of-way, and other rights of access to property necessary to the exercise of the mitigation powers herein granted, both within and without the district;
- (14) To sue and be sued, and be a party to suits, actions and proceedings;
- (15) To enter into joint powers agreements and/or memoranda of understanding with other districts, governmental or quasi-public entities;
- (16) To develop and acquire water rights for, and operate, aquifer storage or recharge projects;
- (17) To monitor, measure, study, and implement programs in the interests of the district's members regarding the protection of ground water diversions, depth of water in wells, aquifer water levels and characteristics;
- (18) To adopt and amend bylaws not in conflict with the constitution and laws of the state for carrying on the business, objects and affairs of the board and of the district and to establish a fiscal year;
- (19) To enter upon land to make surveys, locate district property, works, or facilities, and to otherwise conduct the affairs of the district;
- (20) To make, record and report annually to the director sufficient measurements of diversions and water levels of district members to allow the district to be excluded from any water measurements district created pursuant to sections [42-705](#) through [42-715](#), Idaho Code;
- (21) To manage and conduct the affairs of the district and to have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted herein. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this chapter.

[42-5224, added 1995, ch. 290, sec. 1, p. 993; am. 1996, ch. 298, sec. 8, p. 984; am. 2003, ch. 137, sec. 1, p. 400; am. 2005, ch. 367, sec. 10, p. 1161.]

42-5225. AUTHORITY TO CONSTRUCT AND OPERATE GROUND WATER RECHARGE OR STORAGE PROJECT. Any ground water district organized under the laws of this state is authorized in section [42-234](#), Idaho Code, to file an application with the department to acquire water rights or to appropriate the unappropriated waters of the state for the purpose of storing waters in, or recharging, ground water basins within the district to aid in the efficient irrigation of district lands, to serve domestic, commercial, municipal or industrial uses within the district, or to carry out a mitigation plan. Upon

approval of the application for permit by the director, the district shall proceed in the manner provided by law to construct and operate the ground water storage or recharge project. The construction and operation of the project shall be subject to such additional conditions and limitations as shall be imposed by the director pursuant to sections [42-203A](#), [42-222](#) and [42-234](#), Idaho Code.

[42-5225, added 1995, ch. 290, sec. 1, p. 995; am. 2009, ch. 242, sec. 4, p. 744.]

42-5226. INTERSECTIONS WITH STREETS, RAILROADS, WATERCOURSES. The board of directors shall have power to construct the works necessary to implement an approved mitigation plan across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch or flume which the works may intersect or cross, in such manner as to comply with the requirements of the stream channel alteration act, [chapter 38, title 42](#), Idaho Code, and to afford security for life and property, provided that the board shall restore the same when so crossed or intersected, to its former state as near as may be, or in a sufficient manner not to have impaired unnecessarily its usefulness; and every company whose railroad shall be intersected or crossed pursuant to this section, shall unite with the board in forming the intersections and crossings and grant the privileges aforesaid; and if such railroad company and the board, or the owners and controllers of the property, thing or franchise to be crossed, cannot agree upon the amount to be paid therefor, or upon the points or the manner of said crossings or intersections, the same shall be ascertained and determined in all respects as herein provided in respect to the taking of land.

[42-5226, added 1995, ch. 290, sec. 1, p. 995.]

42-5227. OFFICERS MUST NOT BE INTERESTED IN CONTRACTS. No director or any other officer named in this chapter shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom, except as a member of the district; and for any violation of this provision such officers shall be deemed guilty of a misdemeanor, and such conviction shall work a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars (\$500), or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

[42-5227, added 1995, ch. 290, sec. 1, p. 995.]

42-5228. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS. The indemnification provisions of section [43-204A](#), Idaho Code, shall apply to ground water districts in the same manner as for irrigation districts.

[42-5228, added 1995, ch. 290, sec. 1, p. 996.]

42-5229. REPORT TO DEPARTMENT OF WATER RESOURCES. At least as often as once a year after organization, the board of directors shall make a report to the department of the condition of the work of any mitigation plans developed by the district, as to capacity, stability and permanency, and whether or not any such mitigation plans are being successfully carried out, and whether or

not in the opinion of the board the funds available will complete and maintain the mitigation plans. Upon the receipt of such report by the department, it may make such suggestions and recommendations to such board of directors as it deems advisable for the best interest of the district.

[42-5229, added 1995, ch. 290, sec. 1, p. 996.]

42-5230. STATEMENT OF FINANCIAL CONDITION. On or before the second Tuesday of February of each year the board of directors of each ground water district organized under this chapter shall publish in at least one (1) issue of a newspaper published in the county or counties in which such district is situated, a full, true and correct statement of the financial condition of the district, at the end of the last preceding fiscal year, giving all liabilities and assets of the district, in a form to be prescribed by the controller of the state of Idaho.

[42-5230, added 1995, ch. 290, sec. 1, p. 996.]

42-5231. COUNTY COMMISSION TO HAVE ACCESS TO BOOKS. Any district board, or the secretary thereof, shall at any time allow any member of the county commission, when acting under resolution of the commissioners, to have access to all books, records and vouchers of the district which are in possession or control of the board of directors or secretary of the board.

[42-5231, added 1995, ch. 290, sec. 1, p. 996.]

42-5232. LEVY OF ASSESSMENTS. (1) The secretary of the board 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 lands within the district that are subject to assessment under this chapter.

(2) 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.

(3) The board shall, in addition, determine the assessments necessary to pay, without limitation, the expenses of developing, operating or maintaining any mitigation plan established by the district and the cost of contracts with any person for mitigation plans, or evaluation of proposed contracts. Money received in payment of such assessments shall be deposited in a separate fund to be known as the mitigation expense fund.

(4) The board shall, in addition, determine the assessments necessary to pay maintenance and operation of the district not related to mitigation plans or purposes. These operation and maintenance duties include making the assessment book, giving notice of assessments and making collections thereof, and other duties, programs or projects of the district to the extent such duties, programs or projects are not attributable to mitigation plans or purposes. Money received in payment of such assessments shall be deposited in a separate fund of the district to be known as the operating expense fund.

(5) If, after levying the regular assessments described in this section, the board determines that the money held in such fund is inadequate or prior to the next regular assessment is likely to become inadequate to pay

the expenses for which such fund exists, the board may levy an emergency assessment to pay such additional expenses; provided, that the board shall, at least fourteen (14) days prior to the meeting at which the board determines the amount necessary to pay such expenses, mail written notice of the board's intent to levy an emergency assessment to each member of the district at the address on file with the district.

(6) If a mitigation plan has been approved and a district member fails to operate in accordance with the plan, the board may take action to mitigate such member's noncompliance and levy a special assessment against such member equal to one hundred twenty-five percent (125%) of all costs incurred by the district to mitigate such member's noncompliance. If the noncompliance constitutes excess water use, the board may alternatively levy a special assessment equal to one hundred dollars (\$100) per acre-foot of excess water use.

(7) Any ground water user who becomes a member of a district for mitigation purposes shall be subject to no assessment beyond his proportional share of the costs, including administrative costs and other reasonable expenses, of any mitigation plan or actions or activities in furtherance of the district's mitigation plans or purposes.

(8) No assessment made pursuant to this chapter shall be a lien against any municipal property.

(9) Except as otherwise provided in this chapter, each member shall pay a proportionate share of the total of all amounts to be assessed for the purposes aforementioned, which share shall be based on (a) the ratio which the quantity of water the member is authorized to divert under the member's ground water right(s) bears to the total quantity of water authorized for diversion under the ground water rights of all members of the district, or (b) the ratio which the number of acres the member is authorized to irrigate under the member's ground water right bears to the total number of acres authorized for irrigation under the ground water rights of all members of the district; provided, that the board shall be entitled to levy assessments that adjust a member's proportionate share to take into consideration priority dates, consumptive use under the members' respective ground water rights, other attributes of the ground water rights appurtenant to the assessed lands, and/or the benefits the member derives from a mitigation plan or other activity of the district. Any nonirrigator who is a member of a ground water district, or whose ground water rights are appurtenant to property located within a ground water district, and who has adopted and implemented a mitigation plan that has been approved by the director and that is not inconsistent with such a plan approved by the director and adopted and implemented by the ground water district, shall be entitled to an assessment credit for the contribution made by that nonirrigator's mitigation plan toward the district's mitigation obligation as determined by the director.

[42-5232, added 1995, ch. 290, sec. 1, p. 996; am. 2006, ch. 355, sec. 2, p. 1087; am. 2016, ch. 112, sec. 1, p. 317; am. 2019, ch. 33, sec. 1, p. 93.]

42-5233. POWER TO INCUR INDEBTEDNESS -- ASSESSMENTS TO SECURE REPAYMENT -- WARRANTS. (1) In order to secure funds for the mitigation plan or plans for 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 thirty (30) 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 [42-5232](#), Idaho Code. Assessments to repay debt with a term exceeding one (1) year may be levied only if the indebtedness has been approved at an election pursuant to sections [42-5234](#) through [42-5238](#), Idaho Code.

(2) Notwithstanding the provisions of subsection (1) of this section, the board of directors may, before the collection of the first assessment, incur indebtedness for the purpose of organization, or for any of the purposes of this chapter, and cause warrants of the district to issue therefor, provided that the total dollar amount of the warrants authorized to be issued shall not exceed three dollars (\$3.00) for each acre of land authorized to be irrigated with ground water within the district, or for each two-hundredths (.02) of a cubic foot per second of ground water authorized to be diverted and used upon lands or facilities located within the district. Following the collection of the first assessment, the board of directors may at any time issue warrants of the district for the purpose of paying claims of indebtedness against the district, including salaries of officers and employees, not to exceed the district's anticipated revenue.

(3) The warrants herein authorized shall be in form and substance the same as county warrants or as nearly the same as may be practicable and shall be signed by the chairman and attested by the secretary of said board. All such warrants shall be presented by the holder thereof to the treasurer of the district for payment who shall endorse thereon the day of presentation for payment with the additional endorsement thereon, in case of nonpayment, that they are not paid for want of funds, and such warrants shall draw interest at a rate to be established by the board of directors from the date of their presentation to the treasurer for payment as aforesaid until such warrants are paid. No warrants shall be issued in payment of any indebtedness of such district for less than face or par value. It shall be the duty of the treasurer from time to time when sufficient funds are available for that purpose to advertise in a newspaper in the county in which the district is situated requiring the presentation to the treasurer for payment of as many of the outstanding warrants as are able to be paid. Ten (10) days after the first publication of said notice by the treasurer calling in any of said outstanding warrants, said warrants shall cease to bear interest, which shall be stated in the notice. Said notice shall be published two (2) weeks consecutively and said warrants shall be called in and paid in the order of their endorsement.

[42-5233, added 1995, ch. 290, sec. 1, p. 997; am. 2005, ch. 367, sec. 11, p. 1163; am. 2015, ch. 309, sec. 1, p. 1214; am. 2016, ch. 112, sec. 2, p. 318; am. 2016, ch. 113, sec. 1, p. 321.]

42-5234. ELECTION FOR INDEBTEDNESS -- REFERENDUM PETITION. (1) The board may by resolution adopted by a two-thirds (2/3) majority of the board, determine that the interest of the district and the public interest and necessity demand the development and operation of a mitigation plan and shall set forth the amount of obligation or contract indebtedness proposed to be issued by the district under the provisions of this chapter for the development of such mitigation plan. If any obligation or contract indebtedness has a repayment term exceeding one (1) year, the board shall submit the obligation or contract indebtedness in the proposed resolution

to a vote of the qualified electors of the district as defined in section [42-5210](#), Idaho Code, at an election to be held only if within fifteen (15) days after the passage of such resolution a referendum petition signed by qualified electors of the district whose aggregate ground water rights equal not less than ten percent (10%), measured in cubic feet per second or acres irrigated, of the aggregate ground water rights of all qualified electors of the district, shall be filed with the secretary of the district requesting that an election upon the issuance of the contract indebtedness be held and conducted under the provisions of this section. Any election required to be held pursuant to a referendum petition filed in accordance with this section for the purpose of submitting any proposition or propositions of incurring such obligation or indebtedness shall be held in accordance with section [34-106](#), Idaho Code. 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 mitigation plan, 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 separate 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.

(2) Any election for indebtedness required to be held hereunder shall be called by resolution, which resolution shall also fix the date upon which such election shall be held, 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 county commission 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 county commissions of the various counties may be consolidated for special elections held hereunder. In the event any such election shall be called to be held concurrently with any other election or shall be consolidated therewith, the resolution calling the election hereunder need not designate precincts or polling places or the names of officers of election, but shall contain reference to the act or order calling such other election and fixing the precincts and polling places and appointing election officers therefrom. The resolution calling the election shall prescribe an official notice of election, which notice shall be published once a week for two (2) consecutive weeks, the last publication of which shall be at least ten (10) days prior to the date set for said election, in a newspaper of general circulation printed and published within the district, and no other or further notice of such election or publication of the names of election officers or of the precincts or polling places need be given or made.

(3) 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 district secretary. At any regular or special meeting of the

board held not earlier than five (5) days following the date of such election, the returns shall be canvassed and the results declared.

(4) If no referendum petition is filed, or if so filed, if it shall appear from the returns that the qualified electors of the district representing two-thirds (2/3) of the aggregate ground water rights of the district, such fraction computed according to cubic feet per second, have voted in favor of the proposition, the district thereupon shall be authorized to incur such indebtedness or obligations, or enter into such contracts, all for the purposes provided for in the proposition submitted in the resolution, 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.

[42-5234, added 1995, ch. 290, sec. 1, p. 998; am. 2016, ch. 112, sec. 3, p. 319; am. 2016, ch. 113, sec. 2, p. 322.]

42-5235. JUDICIAL EXAMINATION. (1) Prior to the incurring of indebtedness with a repayment term exceeding one (1) year, 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](#) through [43-408](#), 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 (1) 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 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, without limitation, proposed contracts for the reconstruction, rehabilitation, replacement and improvement of any 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.

(2) Any ground water user in any district joining in the petition or any other person interested in the contracts or proposed contracts may appear

and answer the petition at any time prior to the date fixed for the 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 the 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. 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 district were an irrigation district.

[42-5235, added 1995, ch. 290, sec. 1, p. 1000; am. 2016, ch. 113, sec. 3, p. 323.]

42-5236. JUDICIAL PROCEEDINGS TO TEST VALIDITY. If 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.

[42-5236, added 1995, ch. 290, sec. 1, p. 1001.]

42-5237. 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.

[42-5237, added 1995, ch. 290, sec. 1, p. 1001.]

42-5238. LIBERAL CONSTRUCTION. Any restrictions, limitations or regulations relative to the execution of such contracts pursuant to the authority 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 wel-

fare, and for the security of public and private property, it shall be liberally construed to effect the purposes of this chapter.

[42-5238, added 1995, ch. 290, sec. 1, p. 1001.]

42-5239. 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. In the event that the annual assessment to meet a payment or payments falling due will be unreasonably high, the district court may, in the alternative, enter 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.

[42-5239, added 1995, ch. 290, sec. 1, p. 1001.]

42-5240. LIEN OF ASSESSMENT. From and after January 1 of any year, all assessments, other than those levied against municipalities, shall be liens against the land of ground water users to which the water rights used to determine assessments are appurtenant, and notwithstanding anything to the contrary in this chapter or any provisions incorporated therein by reference, shall be superior to the lien of any mortgage or deed of trust, whether prior in time or not, provided that notice of the assessment delinquency is sent to the mortgage or deed of trust holder at least sixty (60) days prior to any foreclosure sale of the property. Said assessment liens shall not be removed until the assessments are paid or the property is sold for the payment thereof, and shall constitute such lien until paid. Upon any sale of the property the purchaser at such sale shall take the property subject to any annual assessments of the district subsequent in time to the assessment for which the foreclosure occurred. Nothing in this section alters or affects any liens of water related districts or entities authorized pursuant to Idaho law.

[42-5240, added 1995, ch. 290, sec. 1, p. 1002; am. 2011, ch. 325, sec. 1, p. 950.]

42-5241. PAYMENT OF ASSESSMENTS -- WHEN DELINQUENT -- INTEREST AND PENALTIES. (1) District assessments levied pursuant to subsections (2) through (4) of section [42-5232](#), Idaho Code, shall be billed and collected in one (1) of the following ways:

(a) On or before the first day of December, the treasurer of the district shall mail an assessment bill to each water user and 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, which bill and notice shall set forth the date by which assessments must be paid and the times and places at which payment may be made. Assessments collected by the ground water district shall be due and payable on or before December 31 of each year, after which date each unpaid assessment shall be delinquent; shall bear interest at the rate of interest established for money due on judgments until paid; shall entitle the district to take any appropriate action

to collect the assessment, including suit and the foreclosure of liens as provided in this chapter; and, in addition, shall be subject to a penalty in the amount of fifteen dollars (\$15.00) per delinquent assessment; or

(b) The board of directors of any ground water district organized under the laws of this state desiring to provide for the collection of district assessments by the county treasurer instead of the district treasurer may do so by adopting a resolution providing for collection by the county treasurer, and furnishing a copy of the resolution to the county auditor of each county in which any of the district lands are located; provided that the county commissioners of the county or counties must first approve the ground water district resolution by a proper resolution of the board of county commissioners adopted by a majority of the county commissioners and made and entered upon the minutes of the board or boards of county commissioners. The board of county commissioners' resolution may provide for collection fees and for any additional fee against the ground water district for the cost of transferring records and initiating the collection process. The board of county commissioners of any county, having determined that the collection of ground water district assessments is an undue burden upon the county and shall no longer be provided, shall notify the board of directors of the ground water district by December 1 in the year preceding the year for which the action shall first be effective by providing to the board of directors a certified copy of the majority decision of the board of county commissioners.

If the ground water district board determines to issue assessments through the respective counties, the treasurer of the ground water district first shall prepare a list containing the legal description, the assessor's parcel number, the name and last known address of the owner of record, and the amount of the assessment for each parcel. The sum assessed and charged against each parcel shall be entered by the ground water district as the operation and maintenance assessment of the (name of district) ground water district. On or before the third Tuesday of July of each year, the list shall be certified by the treasurer of the ground water district to the county auditor of the county in which the lands are located, and the county treasurer shall enter the same upon the tax rolls, as provided by law for the entry of taxes, against the land of each of the persons named in the list, together with the amounts thereof; and the same shall be subject to the same interest and penalties in case of delinquency as in the case of property taxes and shall be collected in the same manner as taxes and subject to the same right of redemption, and the lands sold for the collection of delinquency shall be subject to the same right of redemption as the sale of land for property taxes.

When a ground water district includes lands in more than one (1) county, the treasurer of the ground water district shall prepare separate lists for the county assessor for each county. When a parcel lies partly in one county and partly in another county, only the portion in a county shall be included on the list for that county. If the legal description of any parcel on any such list differs from the legal description as shown by the assessor's records, the assessor shall notify the district treasurer of the discrepancy and the district treasurer shall submit to the county assessor an addendum changing the description to conform with the assessor's records; provided, that where the discrepancy between the descriptions occurs because a portion

of the parcel lies outside the district, no change in description shall be required and the district assessments shall be effective only as to the portions of any parcel that are within district boundaries.

Assessments shall be due and payable on the date specified in the county's tax notice, shall be collected and accounted for by the county treasurer in the same manner as property taxes, and shall be paid over to the ground water district treasurer together with any penalties or interest collected. The county shall enforce the collection of assessments in the same manner as it enforces the collection of taxes of the county, and failure to pay the assessment shall be subject to the same penalties. The collection of a ground water district's assessments by the county treasurer shall not make the district's obligations respecting any bond, contract, debt, or interest the obligation of the county.

(2) District assessments levied pursuant to subsection (5) or (6) of section [42-5232](#), Idaho Code, shall be billed and collected in one (1) of the ways as provided in subsection (1) of this section, provided that assessments billed and collected pursuant to subsection (1) (a) of this section may be mailed at any time of the year and shall be due and payable within thirty (30) days after mailing.

[42-5241, added 1995, ch. 290, sec. 1, p. 1002; am. 1996, ch. 298, sec. 9, p. 985; am. 2019, ch. 33, sec. 2, p. 94.]

42-5242. ENTRY OF DELINQUENT ASSESSMENTS -- FILING OF DELINQUENCY LIST. (1) 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.

(2) 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, duly acknowledged by the treasurer, 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 ground water user having a delinquent assessment.

(3) Upon the payment in full of any delinquent assessment and penalty that was entered on a recorded delinquency list, the treasurer shall file with the county recorder of each county in which the list of delinquent assessments was recorded an acknowledged notice that the delinquent assessment and any penalty owed has been paid in full. The treasurer shall file any notices of payment of delinquent assessments with the county recorders, as required, on at least a monthly basis.

[42-5242, added 1995, ch. 290, sec. 1, p. 1002; am. 2005, ch. 367, sec. 12, p. 1163.]

42-5243. 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.

[42-5243, added 1995, ch. 290, sec. 1, p. 1002.]

42-5244A. APPORTIONMENT OF MITIGATION PLAN OBLIGATIONS. (1) The board of directors may apportion among district members mitigation plan obligations requiring district members to limit the amount of water diverted under their respective ground water rights or perform other actions to mitigate material injury to senior priority water rights caused by ground water use within the district.

(2) Each member shall bear a proportionate share of the district's total mitigation obligation. The proportionate share shall be based on:

(a) The ratio which the quantity of water the member is authorized to divert under the member's ground water right(s) bears to the total quantity of water authorized for diversion under the ground water rights of all members of the district; or

(b) The ratio which the number of acres the member is authorized to irrigate under the member's ground water right bears to the total number of acres authorized for irrigation under the ground water rights of all members of the district.

(3) The board shall adjust each member's proportionate share of the district's obligation based on priority date, unless the mitigation plan benefits all members equally. The board may additionally adjust a member's proportionate share of the district's obligation based on consumptive use under the member's ground water rights or other attributes of the member's ground water rights.

(4) Any nonirrigator who is a member of a ground water district, or whose ground water rights are appurtenant to property located within a ground water district, may propose a separate mitigation plan to the director. If the director approves the nonirrigator's mitigation plan, and the nonirrigator implements the mitigation plan, the nonirrigator shall be entitled to a credit for the contribution made by that nonirrigator's mitigation plan toward the district's mitigation obligation as determined by the director.

[42-5244A, added 2019, ch. 261, sec. 2, p. 771.]

42-5244B. DELINQUENT ASSESSMENTS -- NONCOMPLIANCE WITH MITIGATION PLAN. A water user who is delinquent in the payment of any assessment under this chapter, or who has failed to comply with any apportionment of mitigation obligations imposed by the board under this chapter, shall not be entitled to divert ground water until such delinquent assessment is paid in full and noncompliance is remedied in full. To commence enforcement, the district shall submit to the director a report documenting the delinquent assessment or noncompliance with the apportionment of mitigation plan obligations. For delinquent assessments, the report shall contain an accounting of the basis for the assessment, the apportionment of those assessments among district members, and the ground water user's delinquency in the payment of those assessments. For noncompliance with the apportionment of mitigation plan obligations, the report shall identify the mitigation plan under which the mitigation plan obligations were apportioned, explain the basis for the apportionment of those obligations among district members, and document the water user's noncompliance with the apportioned mitigation

obligations. If, after the director analyzes information in the report, the director concludes that the district has reasonably apportioned those assessments based on the factors set forth in section [42-5232](#)(7), Idaho Code, or has reasonably apportioned those mitigation plan obligations based on the factors set forth in section [42-5244A](#), Idaho Code, the director shall instruct the water master to curtail all ground water diversions by the water user for which assessments are delinquent or for which the user has not complied with the mitigation obligations apportioned to the user. Any person aggrieved by the action of the director and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action pursuant to section [42-1701A](#)(3), Idaho Code. No district shall commence enforcement under the provisions of this section prior to January 1, 2020. The director shall not curtail ground water diversions based on delinquent assessments levied prior to April 1, 2019, or based on mitigation plan noncompliance that occurred prior to April 1, 2019.

[42-5244B, added 2019, ch. 261, sec. 3, p. 772.]

42-5245. PETITION FOR ANNEXATION OF LAND. Any ground water user, as defined in section [42-5201](#)(8), Idaho Code, as well as any user of ground water for domestic or stock use as defined by sections [42-111](#) and [42-1401A](#), Idaho Code, may file with the board a petition in writing praying that the land and/or facilities listed under the ground water user's ground water right(s) may be annexed into the district. The petition shall contain a legal description of the lands and any other information the district may require, and the petitioner shall state under oath that petitioner holds the title to said lands. If the ground water user is a nonirrigator, the petition shall state if the ground water user is seeking to join the district solely to participate in the district's mitigation plans and other mitigation activities.

[42-5245, added 1995, ch. 290, sec. 1, p. 1003; am. 2005, ch. 367, sec. 14, p. 1164; am. 2016, ch. 109, sec. 1, p. 314.]

42-5246. NOTICE OF PETITION. The board secretary shall cause a notice of the filing of such petition to be published in the manner of notices of elections. The notice shall state the filing of such petition, and the name of the petitioner, a description of the lands mentioned in the said petition, and it shall notify all persons interested in or that may be affected by such change of boundaries of the district, to appear at the office of said board, at a time named in said notice, and show cause in writing, if any they have, why the lands mentioned should not be annexed to said district. The petitioner shall advance to the secretary sufficient money to pay the estimated costs of all proceedings under this chapter.

[42-5246, added 1995, ch. 290, sec. 1, p. 1003.]

42-5247. HEARING ON PETITION. The board, at the time mentioned in said notice or at such other time to which the hearing may be adjourned, shall hear the petition and all the objections thereto. The failure of any person to appear and object shall be taken as an assent on his part to a change of the boundaries of the district as requested in the petition, or to such a change thereof as will include a part of the lands.

[42-5247, added 1995, ch. 290, sec. 1, p. 1003.]

42-5248. ASSESSMENTS AGAINST ANNEXED LANDS. (1) The board of directors may require, as a condition to the granting of an annexation petition, that the petitioners shall severally pay to the district such respective sums, as nearly as the same can be estimated, as said petitioners, or their grantors, would have been required to pay such district, had such lands been included in such district at the time it was originally formed, together with a proportionate share of the expenses of the district accrued since formation.

(2) If the petition of a nonirrigator seeks only to participate in the district's mitigation plans and other mitigation activities, the board may require a proportionate sum of the mitigation expenses accrued since the district was originally formed to be paid as a condition to the granting of an annexation petition.

[42-5248, added 1995, ch. 290, sec. 1, p. 1003; am. 2016, ch. 109, sec. 2, p. 314.]

42-5249. ORDER ACCEPTING OR REJECTING PETITION. (1) If the board of directors deems a proposed annexation not to be in the best interests of the district to include the lands mentioned in the petition, the board shall reject the petition. But if they deem it for the best interest of the district, the board may order the lands mentioned in the petition or some part thereof be annexed to the district.

(2) The order shall describe the lands to be annexed to said district and the board may cause a survey thereof to be made if deemed necessary. Thereafter the annexed land shall be subject to such assessments from time to time as the board of directors shall deem right under the circumstances, and such assessments shall be deemed to be assessments for benefits to said lands by reason of their annexation to said district. The directors shall state on their minutes at their next regular meeting which division and election precinct in said district the said lands so annexed shall be attached, and, if necessary, the board shall make an order redividing the district into divisions and election precincts, in the same manner and to like effect, as near as may be, as provided for that purpose on the formation of a district.

[42-5249, added 1995, ch. 290, sec. 1, p. 1004.]

42-5250. ORDER TO BE RECORDED. Upon a change of the boundaries of a district becoming effective, a copy of the order of the board of directors ordering such change, certified by the president and secretary of the board, shall be filed for record in the recorder's office of each county within which are situated any of the lands of the district, and thereupon the district shall be and remain a ground water district, as fully and to every intent and purpose as if the lands which are included in the district by the change of the boundaries had been included therein at the original organization of the district.

[42-5250, added 1995, ch. 290, sec. 1, p. 1004.]

42-5251. PETITION FOR EXCLUSION OF LANDS -- GROUND WATER IRRIGATED LANDS -- LANDS OF NONIRRIGATOR -- LANDS MAY REMAIN IN THE DISTRICT FOR MITIGATION PURPOSES. (1) Any district member who is an irrigator may file with the district board a petition requesting that the member's irrigated

lands be excluded from the district. The petition may request that the lands either be excluded for all purposes or be excluded for all purposes except mitigation. The petition shall be signed by each petitioner, and shall state that continued inclusion of the irrigated lands in the district is inappropriate or unwarranted:

- (a) Because the diversions of ground water under the ground water irrigator's water right have no depletive effect on any water source, either individually or cumulatively when considered in conjunction with other similar diversions;
- (b) Because the only ground water use associated with the lands sought to be excluded by the petition is a domestic or stock water use as defined by sections [42-111](#) and [42-1401A](#), Idaho Code;
- (c) Because the exclusion of the lands will not impair the district's ability to repay debt or carry out mitigation plans;
- (d) Because the exclusion is in the best interests of the district and its members; or
- (e) For other compelling reasons.

The board shall consider the petition and, based on findings concerning such factors, the board shall grant or deny the petition within ninety (90) days of the date it is filed, unless the board, in its sole discretion, grants a hearing on the petition within such time period, in which case the board shall issue a final decision within sixty (60) days after the conclusion of the hearing.

(2) Any district member who is a nonirrigator, may file with the district board a petition requesting that the member's lands be excluded from the district. The petition may request that the lands either be excluded for all purposes or be excluded for all purposes except mitigation. The petition shall be signed by each petitioner, but need not be acknowledged. The board shall consider the petition and grant or deny the petition within ninety (90) days of the date it is filed, unless the board, in its sole discretion, grants a hearing on the petition within such time period, in which case the board shall issue a final decision within sixty (60) days after the conclusion of the hearing.

(3) All costs incurred by the district in carrying out an exclusion proceeding shall be assessed as provided in section [42-5253](#), Idaho Code. A person purchasing land under a written contract shall be deemed to be the owner of that land for purposes of this section.

[42-5251, added 1995, ch. 290, sec. 1, p. 1004; am. 2005, ch. 367, sec. 15, p. 1165; am. 2006, ch. 355, sec. 4, p. 1088.]

42-5252. CONTENTS OF PETITION -- REPRESENTATIONS, CERTIFICATION AND LIABILITY -- WAIVER OF BENEFITS UPON EXCLUSION. (1) A petition for exclusion shall set forth or include the following:

- (a) A description of the land and/or facilities of petitioner for which exclusion is requested, together with such evidence of ownership of the land and/or facilities as is satisfactory to the district board;
- (b) A representation that no mortgagee or other person holds a lien of record in the county where the land for which exclusion is requested is located, for which the lienholder's consent to the exclusion is required or that, if such consent is required, the consent has been granted by the lienholder;
- (c) If the member seeks exclusion for all purposes, an explicit written waiver and relinquishment, on a form provided by the board or otherwise,

of all right to rely upon or be covered by any program, plan, activity or benefits of any kind provided by or through the district;

(d) If the member seeks to be excluded from the district for all purposes except mitigation, an explicit written waiver and relinquishment stating that the member recognizes and agrees that:

(i) The member no longer will be entitled to vote or participate in the governance of the district, to nominate directors, or to serve as a director of the district except as specified in this chapter;

(ii) The member will remain subject to all assessments pertaining to the district's mitigation program(s) or plans;

(iii) The member will be entitled to receive no benefits of any kind from the district except those pertaining to mitigation purposes.

(e) Regardless of whether the exclusion will be for all purposes or for all except mitigation purposes, an explicit written statement, on a form provided by the board or otherwise, that the member recognizes and agrees that he will remain liable to the district, and subject to assessment, for any financial indebtedness the member may have to the district for indebtedness incurred before exclusion occurs.

(2) The district board shall return to the petitioner any petition not accompanied by the information required in subsection (1) of this section, and no further action shall be required of the board with respect to such petition. The petitioner shall be liable for any expenses or damages to lienholders or to other landowners or to the district resulting directly or indirectly from wrongful exclusion of lands by reason of untrue or incorrect statements in the petition.

(3) The petition for exclusion shall be signed by the member and be acknowledged in front of a notary public in the same manner as for deeds of land.

[42-5252, added 1995, ch. 290, sec. 1, p. 1004.]

42-5253. ORDER OF EXCLUSION. (1) In the event the district's board of directors grants a petition for exclusion, the board shall, by resolution, make an order forthwith excluding the lands described in the petition either for all purposes or for only those purposes not related to mitigation. No hearing is required prior to granting a petition for exclusion.

(2) At a minimum, the order of exclusion shall specify that:

(a) Lands excluded for all purposes shall not be a part of or be entitled to receive any benefits from the district;

(b) Lands excluded only for purposes not related to mitigation, shall continue to be part of the district for mitigation purposes only and shall be assessed for these purposes as provided under this chapter;

(c) Any excluded lands are subject to the requirements of section [42-5257](#), Idaho Code.

(d) When the petition is filed on or before December 1 in any calendar year, any assessment, other than those specified in section [42-5257](#), Idaho Code, against the land for any calendar year subsequent to the year in which the petition was filed shall not be valid and no lien for any such attempted assessment shall attach under section [42-5240](#), Idaho Code.

[42-5253, added 1995, ch. 290, sec. 1, p. 1005; am. 2005, ch. 367, sec. 16, p. 1165.]

42-5254. SURVEY OF LAND TO BE EXCLUDED. The board of directors may cause any survey to be made it deems necessary for the purpose of determining the change in the district by reason of an exclusion or proposed exclusion. If the land described in the petition is described in accordance with the public survey or in accordance with a plat approved, filed and recorded as provided by law, the cost of survey shall be borne by the district, otherwise the cost shall be borne by petitioner.

[42-5254, added 1995, ch. 290, sec. 1, p. 1006.]

42-5255. COSTS OF EXCLUDING LAND. The costs of excluding any land as provided in this chapter shall be borne by the petitioner or petitioners except as provided in section [42-5254](#), Idaho Code. The board may require a deposit of the estimated costs before granting the petition. If the actual costs of completing the exclusion of the lands from the district are less than the amount deposited by the petitioner, the balance shall be refunded to the petitioner within fourteen (14) days after the final action for the exclusion is completed. If the actual costs of the exclusion of the lands is more than the deposit, the difference shall be paid to the district by the petitioner within fourteen (14) days after receipt of a statement to that effect from the district, and the board's order of exclusion shall not be effective until the difference is paid.

[42-5255, added 1995, ch. 290, sec. 1, p. 1006.]

42-5256. CHANGES TO BE FILED FOR RECORD. Any decision and order of the board of directors or the district court, in case of appeal, excluding the petitioner's land and changing the boundaries of such ground water district shall be filed for record in the recorder's office of the county or counties within which are situated the lands of such ground water district.

[42-5256, added 1995, ch. 290, sec. 1, p. 1006; am. 2005, ch. 367, sec. 17, p. 1166.]

42-5257. EXCLUSION -- EFFECT -- OBLIGATIONS OUTSTANDING -- ENFORCEMENT -- PAYMENT -- CERTIFICATE. (1) Except as otherwise provided in this chapter, land and/or facilities excluded from any ground water district shall not thereafter be entitled to any of the rights and benefits of the district and shall be deemed to have fully relinquished all such rights and benefits.

(2) Land and/or facilities fully excluded from a district and those excluded only from nonmitigation purposes shall be subject to assessment and be otherwise chargeable for the payment and discharge of all obligations outstanding at the time of the entry of the exclusion order as fully as though the land had not been excluded. Such obligations shall include, but are not limited to, their proportionate share of any of the district's existing indebtedness that was incurred for a project or activity that: (a) provided a benefit to such lands prior to the exclusion and for which benefit the excluded lands remain indebted; or (b) continues to benefit such lands even after the exclusion. Where either of these circumstances exists, excluded lands shall remain a part of the district for the purpose of discharging such existing contract indebtedness, and otherwise shall be obligated to pay all

regular and special assessments to retire such debt as if they had not been excluded. The district's board of directors may allow any debt or obligation against any excluded land and/or facility to be paid in installments or in any other manner the board deems equitable.

(3) All provisions which could be used to compel the payment by excluded land of its portion of the outstanding obligations had the exclusion not occurred, may be used to compel the payment on the part of the land of the portion of the outstanding obligations of the district for which it is liable.

(4) When any member obtaining the exclusion of land from a ground water district has paid to the district all of the debts and obligations of the district assessable, chargeable or allocable to the land and/or facility excluded, the district may issue its certificate of full payment executed by the president and secretary of the district, and acknowledged so that the certificate may be recorded in the records of the county wherein the land is situate.

[42-5257, added 1995, ch. 290, sec. 1, p. 1006.]

42-5258. REINSTATEMENT OF LANDS. Where lands have been excluded from a ground water district they may be reinstated to the district by following the procedures provided in sections [42-5245](#) through [42-5250](#), Idaho Code, except that the board of directors, in its discretion, may refuse for any reason to annex such lands to the district.

[42-5258, added 1995, ch. 290, sec. 1, p. 1007.]

42-5259. PARTICIPATION BY NONMEMBER IN DISTRICT SOLELY FOR MITIGATION PURPOSES. Upon written request from any ground water user who is not a member of a district, a district board of directors may enter a contract with such nonmember pursuant to which the nonmember shall be allowed to participate fully in, and obtain all benefits of, any mitigation plan, purpose or activity the district currently has in force or is developing, pursuant to terms and conditions acceptable to both parties, provided that:

(1) The board finds that the plan is likely to be effective in mitigating the effects of such nonmember's ground water use, and that including the nonmember within the mitigation plan's coverage will not impair the plan's effectiveness as to district members;

(2) If the district's mitigation plan has been approved by the director, the board shall evaluate the contract request in accordance with any conditions of the district's mitigation plan which address equitable participation by ground water users who do not initially participate in such mitigation plan;

(3) Before the contract may be effective, the board may collect from the nonmember a payment adequate to compensate the district for the nonmember's proportional share of the costs the district already has incurred in developing and implementing the mitigation plan;

(4) The board may include in the contract a provision requiring the nonmember to pay a reasonable surcharge, either annually or on some other basis, to reimburse the district for such nonmember's proportional share of those past or future costs of operating the district attributable to formulating or implementing the mitigation plan or plans in which the nonmember is participating;

(5) The board may require the nonmember to provide security to assure the payment of all assessments and charges related to the contract.

[42-5259, added 1995, ch. 290, sec. 1, p. 1007; am. 2005, ch. 367, sec. 18, p. 1166; am. 2016, ch. 110, sec. 1, p. 315.]

42-5260. PETITION TO ANNEX STATE LAND. The state board of land commissioners may, by resolution duly passed at any meeting of such state board and recorded in its minutes, after due consideration in each specific case, authorize the governor of the state of Idaho, as chairman of the board of land commissioners, to sign a petition for the annexation of adjacent Idaho state lands to a district, or sign a petition to exclude such state lands from a district. The governor shall be deemed the owner of such state lands for the purpose of signing any petition herein authorized, with like effect as the owner of private lands.

[42-5260, added 1995, ch. 290, sec. 1, p. 1008.]

42-5261. PETITION FOR DISSOLUTION OF DISTRICT. Whenever a majority of the members entitled and qualified to vote in district elections so desire, they may petition the board to call a special election to submit to the qualified district electors a proposal to vote on the dissolution of the district. The petition shall set forth the reasons for such proposal. The petition for dissolution of the district shall state that all the district's outstanding legal and enforceable obligations of every nature whatsoever have been fully satisfied and paid or shall set forth facts showing reasonable grounds for the belief that the consent of the holders of all such district obligations can be obtained, or that the district is able to satisfy all those not consenting.

[42-5261, added 1995, ch. 290, sec. 1, p. 1008.]

42-5262. CALL FOR ELECTION ON DISSOLUTION PETITION. It shall be the duty of the said board of directors, if it approves the dissolution petition, to call an election in accordance with section [34-106](#), Idaho Code, for the purpose of submitting to the qualified electors of the district the proposal for dissolution of the district.

[42-5262, added 1995, ch. 290, sec. 1, p. 1008.]

42-5263. NOTICE OF DISSOLUTION ELECTION. Notice of such election must be given by posting notices in five (5) public places in each election precinct in said district at least four (4) weeks before the date of said election and by the publication thereof for the same length of time in some newspaper published in each county in which the district or any part thereof is located. Such notice must specify the time and place of holding such election.

[42-5263, added 1995, ch. 290, sec. 1, p. 1008.]

42-5264. CONDUCT OF DISSOLUTION ELECTION. An election on a dissolution petition shall be held in all respects as near as practicable in conformity with the provisions of sections [42-5211](#) through [42-5213](#), Idaho Code. Those district members who are qualified to vote pursuant to section [42-5210](#)(1), Idaho Code, shall be entitled to vote in the dissolution election. Upon the ballots used at such elections shall be written or printed "For Dissolution-Yes" and "For Dissolution--No," depending upon the nature of the proposal

to be voted upon. Each member qualified to vote in the election shall cast a number of votes in proportion to that user's cubic feet per second of ground water rights.

[42-5264, added 1995, ch. 290, sec. 1, p. 1008.]

42-5265. CANVASS OF RETURNS ON ELECTION FOR DISSOLUTION. On the first Monday after any such election the board of directors of the district shall meet at its usual place of meeting to canvass the returns, and when they shall have declared the result the secretary shall make full entry in his record.

[42-5265, added 1995, ch. 290, sec. 1, p. 1009.]

42-5266. PETITION FOR CONFIRMATION OF DISSOLUTION BY DISTRICT COURT. Immediately after such election, in case the proposal has carried by a vote of members representing a majority of the ground water rights in the district, measured by cubic feet per second, the board shall file in the district court of the county in which the district's office is situated a petition praying in effect that the proceedings for the dissolution of the district be examined, approved and confirmed by the court. The petition shall set forth a full description of the lands formerly embraced within the district which is affected by the proceedings for the dissolution of such district, shall set forth generally the proceedings taken with reference to the petition and the election specified in the preceding sections of this chapter, and shall set forth fully every item of legal and enforceable indebtedness of the district with the name and residence of the holder thereof so far as known to the district secretary. In case any items of indebtedness are in the hands of unknown owners, they shall be so listed.

[42-5266, added 1995, ch. 290, sec. 1, p. 1009.]

42-5267. CHARACTER OF PROCEEDINGS FOR CONFIRMATION. Dissolution proceedings shall be in the nature of a suit to quiet title with respect to so much of the land and/or facilities within the district as is affected by the proposed dissolution. In such proceedings the board shall be the parties plaintiff and the holders of any obligations of the district, including obligations which are or might become liens against any of the lands, are parties defendant. The provisions of section [5-326](#), Idaho Code, so far as it can be made applicable, shall govern generally the force and effect of the decree; provided, that the petition may be in form against all persons having interest in or claim against the district, without naming them, and the summons, directed in the same way, and setting forth briefly the purposes of the petition, shall be by publication in the first instance or order of the court or a judge thereof and service on all parties interested, whether unknown owners, heirs, devisees, claimants or otherwise, shall be deemed complete at the time prescribed by the order for publication; and, unless answer be made by anyone interested in or making claim against said district default may be entered.

[42-5267, added 1995, ch. 290, sec. 1, p. 1009.]

42-5268. DECREE OF CONFIRMATION. The court or judge shall set a day for the hearing of such petition and if it appears to the court from the proof that there is no such outstanding indebtedness of such district, or in case

there is any such indebtedness outstanding that the holders thereof have filed no objections to the proceedings, or have filed their consent thereto, then the court shall enter its decree confirming the said proceedings, or may hear and determine and make decree as to any controversy. The election authorized by the preceding sections of this chapter shall have no force or effect to dissolve any district until confirmed by the decree of court as herein set forth.

[42-5268, added 1995, ch. 290, sec. 1, p. 1009.]

42-5269. DISSOLUTION WITHOUT ELECTION -- PETITION -- CONDITIONS. (1) A ground water district may be dissolved without the holding of the election provided for in this chapter upon complaint or petition of parties holding and owning fifty percent (50%) or more, measured on the basis of cubic feet per second, of all the ground water rights within the district.

(2) It must be made to appear to the satisfaction of the court, by such complaint or petition, that any one (1) or more of the following conditions exist in or as to said district:

(a) The district has been abandoned, or for two (2) or more years last past has ceased to function, and there is little or no probability that it ever will or can function in the future;

(b) No useful purpose exists for the further continuance of the organization of the district; or

(c) There are insufficient members to pay for the costs of operating the district.

[42-5269, added 1995, ch. 290, sec. 1, p. 1010.]

42-5270. DISSOLUTION WITHOUT ELECTION -- PARTIES. In such petition the petitioners or complainants shall be named as plaintiffs and the ground water district, and its directors, if any there are, and all persons having interest in or claim against the district, without naming them, shall be defendants. In the course of the proceedings of said case, and at any time before the final hearing thereof, any person interested may join in said case as a party plaintiff or as a party defendant, or any party interested may intervene in said case without order of the court.

[42-5270, added 1995, ch. 290, sec. 1, p. 1010.]

42-5271. DISSOLUTION WITHOUT ELECTION -- APPOINTMENT OF OFFICER TO MARSHAL ASSETS -- DECREE. In the exercise of the jurisdiction given it by this act, the court shall have the power to appoint such referee, master, auditor, or receiver as may be considered necessary or proper to marshal the assets, and protect or preserve them, or ascertain the true condition of the district. After due hearing and consideration of the evidence submitted, the court shall enter a decree establishing the legal and equitable rights, interests and priorities of all parties and claimants, and may decree and direct the sale of all or any part of the properties of the district, whether real, personal or mixed, and direct the disbursement and application of the proceeds and the payment of the costs of the proceeding, and may dissolve the district, or may approve and confirm any settlement or agreement of settlement made between the parties interested in such district, if a settlement is agreed upon by them, or may direct the payment of the indebtedness of the district in the order of priority determined and established by the decree,

through assessments made as in the case of the dissolution of villages, or may grant such other or further relief as may be equitable or proper on the premises.

[42-5271, added 1995, ch. 290, sec. 1, p. 1010.]

42-5272. DISSOLUTION -- APPEAL. Each party to any proceeding for dissolution of a district under this act shall have the right of appeal as in other civil cases.

[42-5272, added 1995, ch. 290, sec. 1, p. 1011.]

42-5273. CONSOLIDATION OF TWO OR MORE GROUND WATER DISTRICTS. Whenever the boards of directors of any two (2) or more ground water districts which together form a contiguous area determine that it is in the best interests of their respective districts that the districts be consolidated into a single ground water district and wish to proceed toward consolidation, the following procedures shall be followed:

(1) Each board shall petition its respective county commission in the counties identified by reference to section [42-5203](#), Idaho Code, for an order for an election to vote upon the question of such consolidation, which petition shall state in detail the terms upon which such consolidation is proposed to be made, and also shall transmit a copy of the petition to the department of water resources.

(2) Upon receiving the petitions, the department shall investigate questions affecting such proposed consolidation, and it shall make a report of the result of such investigations to each county commission with whom the petitions were filed not more than ninety (90) days after the department receives such petitions.

(3) After receiving the department's report, each county commission, if it deems it advisable, shall make an order fixing the time for an election in the districts to vote upon the question of proposed consolidation, which time shall be at the first available date in accordance with section [34-106](#), Idaho Code. Notice of the election shall be published as required for notice of election in section [42-5209](#), Idaho Code, and the boards of directors shall make all necessary arrangements for such election in their respective districts as provided in this title for other elections. The ballots shall be substantially as follows: "Consolidation--Yes." "Consolidation--No."

(4) The boards of directors shall canvass the returns of the election as provided in case of usual ground water district elections, and shall immediately thereafter transmit, by messenger or registered mail, certified abstracts of the result of said election in their respective districts to the clerk of the county commission. Within ten (10) days after such returns are received by the clerk, the county commission shall meet and canvass the same.

(5) If it appears that a majority of all the votes cast in each of said districts is "Consolidation--Yes." said board shall make an order, and enter the same of record in its minutes, establishing said consolidated district, giving its boundaries and designation, and in detail the terms under which the consolidation has been effected, and dividing said consolidated districts into three (3) divisions, and shall appoint some person qualified under this title, to act as director for each of said divisions of said district until the next general election for the election of officers, when a board of directors shall be elected as provided in section [42-5218](#), Idaho Code; provided however, that the organization of such district shall not

take effect until the first Tuesday of the January following said order of its establishment. If the date provided by law for the election of directors shall come between the date of said order of the county commission and the first Tuesday of January, then in making such order the board shall designate the board of directors of one (1) of the consolidated districts as a board to take charge of such election, and in that case a director shall be elected for each such division of the consolidated district, and no appointment of directors shall be made by the county commission.

(6) If, however, upon such canvass by the county commission, it appears that a majority of the votes cast in any district thus proposed to be consolidated is "Consolidation--No," then a record of that fact shall be entered in the same minutes of the county commission, and all the proceedings had under the preceding sections of this chapter shall be void.

[42-5273, added 1995, ch. 290, sec. 1, p. 1011.]

42-5274. PROCEDURE FOR CONSOLIDATING ONE GROUND WATER DISTRICT WITHIN ANOTHER HAVING SUBSTANTIALLY LARGER GROUND WATER DIVERSIONS. In those cases where the cumulative total ground water diversions (excluding diversions under domestic and stockwater rights) in one (1) district are less than one-tenth (1/10) of such diversions in the larger district, and the boards of directors deem it for the best interests of the respective districts that the two (2) districts be consolidated into a single district, such boards may seek to consolidate according to the following procedure as an alternative to that described in section [42-5273](#), Idaho Code:

(1) The boards may propose a contract between them setting forth the terms and conditions of consolidating the district having the smaller ground water diversions into the other district, with the name and officers of the district having the larger ground water diversions still retained.

(2) Once both boards have approved the contract, it shall be submitted for approval by the members of the district having the smaller ground water diversions, together with the question of whether the two (2) districts shall be consolidated under the contract's terms, at a special election held for that purpose in such district. Notice of the election shall be published as required for notices of election for indebtedness. At the election should two-thirds (2/3) of the electors voting, vote in favor of the contract and the consolidation of the districts, the board of directors of the district having the smaller ground water diversions shall petition the board of directors of the district having the larger ground water diversions, which notice shall be published in a newspaper published within the county wherein the office of the board of directors of the district having the larger ground water diversions is situated, for such length of time and covering the same matters as required by a petition to annex land and/or facilities into a district.

(3) The law applicable to the annexation of land into a district after the petition is filed and notice given, shall apply to the consolidation, including an annexation of a smaller district into a larger district.

(4) After the board of directors of the district having the larger ground water diversions has approved the resolution or other decision including within its boundaries the district having the smaller ground water diversions, the board shall file a petition in the district court within the county wherein the principal office of its district is situated, asking for an approval and confirmation of the proceedings thereunder, and the same procedure shall be followed as provided in sections [43-406](#) through [43-408](#),

Idaho Code, with reference to the confirmation of the proceedings within irrigation districts. In such petition the prayer shall be that the proceedings, together with the contract, may be examined and approved by the court; that after the confirmation of said proceedings the order of the board of directors admitting the smaller district into the district having the larger ground water diversions, containing a description of all the land properly certified by the secretary of the district, shall be filed for record in the office of the recorder of both counties with which the petition was filed.

[42-5274, added 1995, ch. 290, sec. 1, p. 1012.]

42-5275. EXERCISE OF POWERS UNDER THIS CHAPTER BY IRRIGATION DISTRICTS ORGANIZED UNDER [TITLE 43](#). Any irrigation district organized and operating pursuant to [title 43](#), Idaho Code, may exercise the authorities provided under this chapter to the extent doing so does not conflict with any provision of [title 43](#), Idaho Code.

[42-5275, added 1995, ch. 290, sec. 1, p. 1013.]

42-5276. INCLUSION OF IRRIGATION DISTRICTS ORGANIZED UNDER [TITLE 43](#). Where the water supply for lands is ground water provided by an irrigation district established under [title 43](#), Idaho Code, and such lands are included in and subject to assessment by the irrigation district, such lands shall be included in a ground water district organized under the provisions of this chapter only if the board of the irrigation district serves notice in the same manner as that provided for nonirrigators in section [42-5214](#) (2) and (3), Idaho Code.

[42-5276, added 1995, ch. 290, sec. 1, p. 1013.]