

TITLE 43
IRRIGATION DISTRICTS

CHAPTER 11
EXCLUSION OF LANDS FROM DISTRICT

43-1101. PETITION. Any person or persons owning land within any irrigation district and forming a part thereof may file with the board of directors of such irrigation district a petition in writing requesting the exclusion of the land or lands owned by them and described in the petition from the irrigation district. As many parties owning separate tracts or parcels of lands in any irrigation district or who are united in interest to which the same state of facts apply, may unite in the same petition. The petition shall be signed by all of the petitioners, but need not be acknowledged. A filing fee in the amount of five dollars (\$5.00) for each parcel of land described in the petition shall accompany the filing of each petition, plus an exclusion fee in the amount of twenty-five dollars (\$25.00) for each lot containing less than one (1) acre which is in a subdivision as defined in section [50-1301](#), Idaho Code, or an exclusion fee of fifty dollars (\$50.00) for each parcel containing less than one (1) acre that is not in a subdivision, or an exclusion fee of fifty dollars (\$50.00) for each acre and additional portion thereof in all other parcels of property, for which the district shall provide a suitable receipt evidencing payment. Any petition not accompanied by the required filing fee and exclusion fee shall be returned to the petitioner. The filing fee and the exclusion fee are borne by the petitioner and are not potentially apportionable costs as provided in sections [43-1105](#), [43-1106](#) and [43-1107](#), Idaho Code.

A person or persons purchasing land under a written contract shall be deemed to be the owners of that land for purposes of this section.

[43-1101, added 1905, p. 220, sec. 1; am. R.C., sec. 2434; am. 1911, ch. 46, sec. 1, p. 102; reen. C.L., sec. 2434; C.S., sec. 4422; I.C.A., sec. 42-1101; am. 1972, ch. 325, sec. 1, p. 804; am. 1974, ch. 155, sec. 1, p. 1386; am. 1978, ch. 312, sec. 1, p. 803; am. 1988, ch. 134, sec. 1, p. 241; am. 1990, ch. 181, sec. 1, p. 387; am. 2017, ch. 94, sec. 1, p. 242.]

43-1102. GROUNDS FOR EXCLUSION, CERTAIN LANDS MAY REMAIN IN THE DISTRICT FOR DRAINAGE PURPOSES. (a) The grounds and reasons for exclusion of lands from an irrigation district are listed as follows:

1. The lands are too high to be watered without pumping by the owners of the lands from water owned or controlled by the irrigation district;
2. The owners of the lands have installed a good and sufficient water system independent of the water system of such irrigation district for the irrigation of the lands because the district does not own a sufficient water right to furnish an adequate water supply for those lands;
3. The lands in their present condition are not agricultural lands and the irrigation district has not:
 - (i) Adopted a resolution to construct a distribution system for the lands pursuant to section [43-333](#), Idaho Code; or
 - (ii) Called an election on the question of constructing a distribution system for the lands under the provisions of section [43-329](#), Idaho Code; or

(iii) Independently or in cooperation with a city or county established a local improvement district to construct a distribution system for the lands; or

(iv) Constructed a distribution system for the lands; or

4. Prior to acquisition of the land by the petitioning owner, and without his knowledge or consent, the ditch or other transmission facility extending from the delivery point of the district to the lands has been rendered permanently incapable of carrying water to the lands, but this ground for exclusion shall only apply to parcels less than five (5) acres in size.

(b) If the lands sought to be excluded from an irrigation district under this section or under sections [43-1110](#) through [43-1117](#), Idaho Code, are benefited by surface drainage facilities of the irrigation district pursuant to sections [43-306](#) to [43-312](#), Idaho Code, but otherwise would qualify for exclusion, the lands shall be excluded for purposes of irrigation but shall remain a part of the district for purposes of drainage and shall continue to be assessable for drainage, but shall not be assessed for irrigation water.

[(43-1102) I.C. sec. 43-1101A, as added by 1972, ch. 325, sec. 2, p. 804; am. 1978, ch. 312, sec. 2, p. 803; am. and redesignated, 1990, ch. 181, sec. 2, p. 388; am. 1993, ch. 262, sec. 1, p. 895.]

43-1103. CONTENTS OF PETITION -- SUPPORTING EVIDENCE -- REPRESENTATIONS, CERTIFICATION AND LIABILITY. A petition for exclusion shall set forth all of the following:

1. A description of the land of each petitioner for which exclusion is requested;

2. The reasons why it is claimed the tract or tracts should be excluded and that, except for residential lands for which exclusion is requested under subsection (a)3 or (a)4 of section [43-1102](#), Idaho Code, the lands sought to be excluded are not benefited by the water rights, or by the irrigation in, or drainage by the district, or by ground water subject to recapture and use by the district and the exclusion will be for the best interests (1) of the owner of the land proposed to be excluded and (2) of the other lands in the district.

3. The petition shall be accompanied by such evidence of ownership of the land as is satisfactory to the board of directors of the district and, except for lands for which exclusion is requested under subsection (a)3 or (a)4 of section [43-1102](#), Idaho Code, by a deposit for costs in the amount established by the directors of the district as provided in section [43-1105](#), Idaho Code. The board of directors of the district shall return to the petitioner any petition not accompanied by both such proof of ownership and the filing and exclusion fees set by section [43-1101](#), Idaho Code, and no further action shall be required of the board with respect to such petition.

A petition for exclusion filed with an irrigation district constitutes representations to the district by the petitioner or petitioners that the facts stated in the petition are true and correct and 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. 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.

[(43-1103) I.C. sec. 43-1101B, as added by 1972, ch. 325, sec. 3, p. 804; am. 1978, ch. 312, sec. 3, p. 804; am. and redesignated, 1990, ch. 181, sec. 3, p. 388.]

43-1104. HEARING ON PETITION -- ORDER OF EXCLUSION. The board of directors of the irrigation district may conduct its own investigation of the facts alleged in the petition and, by resolution duly adopted, which may address the allegations of several petitions, accept the facts as alleged and determine that no hearing is required prior to granting the petition or petitions for exclusion. If the allegations are not thus accepted such petition must be heard by the board of directors of such irrigation district within one hundred fifty (150) days of filing of the petition. If no hearing is held within one hundred fifty (150) days, the land described in the petition is excluded from the district. If a hearing is ordered, the petitioner or petitioners must establish by competent evidence the allegations of the petition, and the chairman or presiding member of the board is hereby empowered to administer oaths for the purpose of the hearing.

When (1) the board of directors accepts the facts as alleged without a hearing, or (2) the allegations of the petition are established at a hearing, or (3) the land has been excluded by reason of the board's failure to hold a hearing within one hundred fifty (150) days of filing of the petition, the board must make an order forthwith changing the boundaries of such district so as to exclude the lands described in the petition which the proof has established to be entitled to exclusion, and thereafter the lands so excluded shall not form a part of the irrigation district for any purpose except as provided in subsection (b) of section [43-1102](#), Idaho Code; provided however, that the lands so ordered excluded shall not be relieved of their obligation to pay their proportionate share of any existing bonded or contract indebtedness of the irrigation district, and the lands shall remain a part of the irrigation district for the purpose of discharging the existing bonded or contract indebtedness.

No hearing shall be held when, prior to the date set for the hearing, the board issues an order excluding the land described in the petition from the district.

When land is excluded from the district pursuant to a petition filed on or before December 1 in any calendar year, assessments 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 [43-706](#), Idaho Code. Petitioners are, however, required to pay any outstanding assessments levied the calendar year and prior in which the petition is filed and said lien shall attach until said assessments are paid.

[43-1104, added 1905, p. 220, sec. 3; am. R.C., sec. 2436; am. and designated sec. 2436; 1911, ch. 46, sec. 3, p. 102; reen. C.L., sec. 2435a; C.S., sec. 4424; I.C.A., sec. 42-1103; am. 1971, ch. 254, sec. 2, p. 1028; am. 1978, ch. 312, sec. 4, p. 805; am. 1988, ch. 134, sec. 2, p. 241; am. and redesignated, 1990, ch. 181, sec. 4, p. 389; am. 2017, ch. 94, sec. 2, p. 243.]

43-1105. 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. In any case where the land is excluded on the ground that it is too high to receive any benefit from the irrigation works of said district without pump-

ing by the landowner, the cost of all surveys shall be borne by the irrigation district. The board may not, however, require a survey when the land sought to be excluded lies entirely within a subdivision as defined in section [50-1301](#), Idaho Code. 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.

[(43-1105) 1905, p. 220, sec. 2; reen. R.C., sec. 2435; am. 1911, ch. 46, sec. 2, first part of subd. sec. 2435, p. 102; reen. C.L., sec. 2435; C.S., sec. 4423; I.C.A., sec. 42-1102; am. 1971, ch. 254, sec. 1, p. 1028; am. 1972, ch. 325, sec. 4, p. 804; am. and redesignated, 1990, ch. 181, sec. 5, p. 390.]

43-1106. APPEAL. An appeal shall lie from the decision of the board of directors of such irrigation district denying the petition or any part thereof to the district court of the county where the lands described in the petition are located. The appeal shall be taken in accordance with and shall be subject to the appeal provisions of section [43-719](#)(4) and (5), Idaho Code. If an appeal results in an order of the district court excluding the lands described in the petition, or any of them, the time of segregation shall date from the date of the hearing before the board of directors of the district.

[(43-1106) R.C., sec. 2437; am. 1911, ch. 46, sec. 4, part of subd. 2437, p. 102; reen. C.L., sec. 2435b; C.S., sec. 4425; I.C.A., sec. 42-1104; am. and redesign. 1990, ch. 181, sec. 6, p. 390; am. 2012, ch. 143, sec. 1, p. 378.]

43-1107. COSTS. The costs of excluding any land as provided in this chapter shall be borne by the petitioner or petitioners except in cases where:

(1) The lands excluded are found to be too high or not susceptible of irrigation from the water system of the district without pumping by the landowner and the petitioner or previous owners of the land have paid the assessments of the district against that land; or

(2) The exclusion is requested under subsection (a)3. or (a)4. of section [43-1102](#), Idaho Code, and for the five (5) irrigation seasons preceding the filing of the petition (a) there has been no pipe, ditch or other delivery system between the land and the assigned delivery point on the district's irrigation system, and (b) the petitioner or previous owners of the land have paid the assessments of the district against that land. If the petitioner is required to pay the costs of exclusion hearing proceedings, the board may require a deposit of the estimated costs before they will hear the petition and the one hundred fifty (150) day period in which the petition must be heard as provided in section [43-1104](#), Idaho Code, shall not begin to run until the estimated costs have been deposited; provided however, that, in case of a successful appeal by the petitioner, the costs taxed by the district to the petitioner or petitioners whose lands are excluded by the district court shall be borne by the irrigation district. If the actual costs of the exclusion proceedings are less than the amount deposited by the petitioner, the excess deposit shall be credited against any amounts which are to be paid by the petitioner prior to entry of the order of exclusion, and the balance, if any, shall be refunded to the petitioner within fourteen (14) days after the hearing; if the actual costs of the exclusion proceedings are more than the de-

posit, 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 shall not be required to enter an order of exclusion until the difference is paid.

[43-1107, added 1905, p. 220, sec. 4; am. R.C., sec. 2437; am. 1911, ch. 46, sec. 4, part of subd. 2437, p. 102; reen. C.L., sec. 2436; C.S., sec. 4426; I.C.A., sec. 42-1105; am. and redesignated, 1990, ch. 181, sec. 7, p. 391; am. 2017, ch. 94, sec. 3, p. 243.]

43-1108. CHANGES TO BE FILED FOR RECORD. The 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 irrigation district shall be filed for record in the recorder's office of the county within which are situated the excluded lands.

[(43-1108) 1905, p. 220, sec. 4; am. R.C., sec. 2435; am. 1911, ch. 46, sec. 2, last part of subd. 2435, p. 102; reen. C.L., sec. 2437; C.S., sec. 4427; I.C.A., sec. 42-1106; am. and redesignated, 1990, ch. 181, sec. 8, p. 391; am. 2001, ch. 192, sec. 2, p. 657.]

43-1109. EFFECT OF EXCLUSION. An exclusion of land from any irrigation district shall not impair its existence, nor its rights, including those in its property or its obligations. The land excluded from an irrigation district shall not thereafter be entitled to receive water from the water rights or from the irrigation works and system of the district and shall not thereafter be entitled to any of the benefits of the district and shall be deemed to have fully relinquished all such rights and benefits to the district, provided, that lands retained for drainage purposes shall be entitled to the benefits of the drainage system of the district.

[(43-1109) I.C., sec. 43-1107, as added by 1972, ch. 325, sec. 5, p. 804; am. and redesignated, 1990, ch. 181, sec. 9, p. 391.]

43-1110. RESIDENTIAL LAND NOT USING WATER RIGHTS -- EXCLUSION -- PROCEDURE. The board of directors of an irrigation district may by resolution, or must, if petitioned by the owners of record of over fifty per cent (50%) of the number of lots in a platted subdivision, declare its proposal to exclude from the district all lots or parcels of residential land in the district described in the petition which have not received water from the water rights of the district or through the irrigation works and system of the district during the period of five (5) years immediately preceding the adoption of the resolution. Lots or parcels of land in contiguous subdivisions may be included in the same resolution. Platted lots which theretofore received water through the same ditch operated by a lateral ditch water users' association may be included in the same resolution. If the board is petitioned by over fifty per cent (50%) of the lot owners of a subdivision, the board shall conduct the entire proceedings according to sections [43-1110](#) through [43-1117](#), Idaho Code.

For purposes of this section, residential land shall mean land on which a house, mobile home, duplex, apartment house or other type of living quarters has been constructed or installed and has been occupied as living quarters by an owner or renter.

[(43-1110) 1972, ch. 371, sec. 1, p. 1089; am. and redesignated, 1990, ch. 181, sec. 10, p. 392.]

43-1111. RESOLUTION -- CONTENTS. The resolution proposing to exclude such lands shall:

- (a) Describe each lot or parcel proposed to be excluded;
- (b) Specify the period of time during which each such lot or parcel has not received water from the water rights or through the irrigation works and system of the district;
- (c) Specify the name and address of each person in possession of each such lot or parcel and of each owner thereof as the ownership appears of record in the assessment rolls of the district and of each owner thereof as the ownership appears of record in the office of the county recorder of the county in which the land is situated and of each mortgagee and other lienholder whose mortgage or lien appears of record in the office of the county recorder of the county in which the land is situated; and,
- (d) Fix the time and place for hearing of the proposed exclusion, which time shall be not less than twenty-eight (28) days from the date of the adoption of the resolution.

The board may procure any survey which it deems necessary and any title reports which it deems advisable to describe each lot or parcel proposed to be excluded and to determine the names of owners and lienholders of such lands.

[(43-1111) 1972, ch. 371, sec. 2, p. 1089; am. and redesignated, 1990, ch. 181, sec. 11, p. 392.]

43-1112. NOTICE. The secretary shall publish notice of such hearing for at least once a week for two (2) weeks before the date of such hearing in a newspaper published in the county in which the land proposed to be excluded is situated. If no newspaper is published in the county containing the land proposed to be excluded, notice shall be posted for the same length of time in at least three (3) public places in the district, one (1) of which notices shall be posted on the land proposed to be excluded. Notice of such hearing on such proposed exclusion shall be given by the secretary of the district by certified or registered mail to each person, firm and corporation named in the resolution.

[(43-1112) 1972, ch. 371, sec. 3, p. 1089; redesignated, 1990, ch. 181, sec. 12, p. 393.]

43-1113. NOTICE -- CONTENTS. Such notice shall contain:

- (a) A statement of the date, time and place of the hearing;
- (b) A description of each lot or parcel proposed to be excluded;
- (c) The reasons for the exclusion stated in the resolution of intention; and
- (d) Notice to each person, firm and corporation interested in the proposed exclusion to appear at the district office at the date and time fixed, and file objections in writing showing cause, if any they may have, why the land or any part of it should not be excluded as proposed in the resolution of the board.

[(43-1113) 1972, ch. 371, sec. 4, p. 1089; am. and redesignated, 1990, ch. 181, sec. 13, p. 393.]

43-1114. HEARING. At the hearing on the proposed exclusion, the board of directors shall hear all of the objections presented to it in writing and all evidence introduced in support of the exclusion and in support of the objections to the exclusion.

[(43-1114) 1972, ch. 371, sec. 5, p. 1089; redesignated, 1990, ch. 181, sec. 14, p. 393.]

43-1115. ORDER -- DETERMINATION. The board after the hearing on its proposal to exclude and the objections thereto shall order the exclusion of all or any part of the land described in the resolution when as to the land to be excluded, the board determines that:

(a) The land has not received water from the irrigation works and system of the district during the period of five (5) years immediately preceding the adoption of the resolution of the board declaring its proposal to exclude the land;

(b) The land will not be directly and presently benefited by the operations of the district;

(c) The ditch rights of other landowners in the same lateral ditch water users' association in the district will not be injured; and,

(d) The exclusion is for the best interests of the owner of the land proposed to be excluded and of the district.

[(43-1115) 1972, ch. 371, sec. 6, p. 1089; am. and redesignated, 1990, ch. 181, sec. 15, p. 393.]

43-1116. BOARD -- ENTRY OF ORDER OF EXCLUSION. If the board determines from the hearing that any lot or parcel included in the proceedings should be excluded from the district, the board shall make and enter an order of exclusion in its proceedings describing each lot or parcel being excluded from the district.

If any lot or parcel proposed to be excluded shall not be excluded by such order of exclusion, the board shall make and enter an order describing each lot or parcel included in the proceedings and not excluded from the district.

[(43-1116) 1972, ch. 371, sec. 7, p. 1089; am. and redesignated, 1990, ch. 181, sec. 16, p. 394.]

43-1117. ORDER -- FILING FOR RECORD. A copy of the order or resolution of exclusion, certified by the president and secretary of the district, shall be filed for record in the office of the county recorder of each county wherein any portion of the land is situated.

[(43-1117) 1972, ch. 371, sec. 8, p. 1089; am. and redesignated, 1990, ch. 181, sec. 17, p. 394.]

43-1118. APPEALS -- PROCEDURE. An appeal shall lie from the resolution or the order of the board of directors excluding, and from the order of the board of directors not excluding, lands covered by proceedings under sections [43-1110](#) through [43-1117](#), Idaho Code, or from any part of any such order. The appeal may be taken by any landowner in the district and by any person, firm or corporation having any interest in any tract of land included in any such order. The appeal shall be to the district court of the county

where the lands involved in the appeal are located. The appeal shall be taken in accordance with and shall be subject to the appeal provisions of section [43-719](#) (4) and (5), Idaho Code.

[(43-1118) 1972, ch. 371, sec. 9, p. 1089; am. and redesisg. 1990, ch. 181, sec. 18, p. 394; am. 2012, ch. 143, sec. 2, p. 378.]

43-1119. EXCLUSION -- LOSS OF WATER RIGHTS -- OBLIGATIONS OUTSTANDING -- EFFECT -- ENFORCEMENT -- PAYMENT -- CERTIFICATE. (1) Land excluded from any irrigation district shall not thereafter be entitled to receive water from the water rights or from the irrigation works and system of the district and, except as provided in subsection (b) of section [43-1102](#), Idaho Code, shall not thereafter be entitled to any of the benefits of the district. An exclusion of land from any irrigation district shall not impair the water rights or irrigation works and system of the district nor its rights in or to its property or its obligations.

(2) Land excluded from a district 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 order or resolution excluding the land as fully as though the land had not been excluded.

(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 lot or parcel of land shall be excluded from an irrigation district and there shall be paid to the district all of the debts and obligations of the district assessable, chargeable or allocable to the lot or tract 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.

[(43-1119) 1972, ch. 371, sec. 10, p. 1089; am. and redesignated, 1990, ch. 181, sec. 19, p. 394.]

43-1120. REINSTATEMENT OF NONAGRICULTURAL LANDS -- ORDER -- FILING FOR RECORD. Where lands have been excluded from an irrigation district under the provisions of this chapter and the owner or owners of the excluded lands desire to receive irrigation water: through an existing distribution system; through a distribution system proposed to be constructed under authority of section [43-329](#), [43-330A](#) or [43-333](#), Idaho Code, or under any law authorizing a local improvement district; pursuant to a lease executed under section [43-335](#) or [43-338](#), Idaho Code; or pursuant to a contract executed under section [43-730](#), Idaho Code, the owner or owners may file with the secretary of the irrigation district a written request, signed and acknowledged in the manner required for conveyances of real property, that the lands be reinstated by the irrigation district. Upon receipt of such a request the board of directors of the irrigation district, in its discretion, may enter an order declaring that the lands are reinstated to their former status, including the water rights, and directing the assessor of the irrigation district to enter the lands on the assessment roll. A copy of the order or resolution of reinstatement, certified by the president and secretary of the district, shall be filed for record in the office of the county recorder of each county wherein any portion of the reinstated land is situated. The district may

charge a filing fee not to exceed the costs of processing the reinstatement request, and may also charge a reinstatement fee not to exceed the exclusion fee provided in section [43-1101](#), Idaho Code.

[43-1120, added 1993, ch. 209, sec. 1, p. 570; am. 1998, ch. 231, sec. 1, p. 789.]

43-1121. NOTICE OF PROPOSED CONSTRUCTION OF DISTRIBUTION SYSTEM -- TIME FOR FILING WRITTEN REQUEST. Prior to construction of a distribution system under the authority of either section [43-329](#) or [43-333](#), Idaho Code, or under any law authorizing a local improvement district, an irrigation district shall mail a notice of the intended construction to the current owner of any lot or parcel within the area to which irrigation water can be delivered by that distribution system, which previously had been excluded from the district as not agricultural. The notice shall state that the lot or parcel may be eligible for reinstatement, with water rights, if the owner so requests in writing, properly signed and acknowledged, and shall specify the date, not less than three (3) weeks after mailing of the notice, after which the irrigation district may decline to consider the request.

[43-1121, added 1993, ch. 209, sec. 2, p. 571.]

43-1122. TRANSFER OF LANDS BETWEEN DISTRICTS. The boards of directors of two (2) irrigation districts may by resolution declare and act upon their proposal to transfer lands from one (1) district to the other through exclusion and annexation in accordance with sections [43-1122](#) through [43-1129](#), Idaho Code. The district from which lands are proposed to be excluded shall be identified as the "excluding district." The district to which lands are proposed to be annexed shall be identified as the "annexing district."

[43-1122, added 2012, ch. 122, sec. 1, p. 339.]

43-1123. RESOLUTION -- CONTENTS. The districts proposing to transfer lands as authorized by section [43-1122](#), Idaho Code, shall adopt a resolution, either separately or jointly, which shall:

- (1) Identify the excluding district and the annexing district;
- (2) Provide a legal description of each lot or parcel proposed to be transferred;
- (3) Specify the name and address of each person in possession of each such lot or parcel and of each owner thereof as the ownership appears of record in the assessment rolls of the district and of each owner thereof as the ownership appears of record in the office of the county recorder of the county in which the land is situated and of each mortgagee and other lienholder whose mortgage or lien appears of record in the office of the county recorder of the county in which the land is situated;
- (4) Explain the reasons for the transfer including, but not limited to, that the transfer is in the best interests of the owner of the land proposed to be transferred and of the districts;
- (5) Describe the benefits that will be apportioned and provided to the proposed transferred lands by the annexing district;
- (6) Provide a statement of applicable levies by the annexing district in the year prior to the proposed transfer;
- (7) Describe the proposed method of water delivery from the annexing district to the lands proposed to be transferred;

(8) Identify obligations of the excluding district that will continue to apply to the lands to be transferred;

(9) State whether the lands proposed to be transferred will be retained within the excluding district for drainage purposes;

(10) Fix the date, time and place for hearing on the proposed transfer, which time shall be not less than twenty-eight (28) days from the date of the adoption of the resolution(s); and

(11) Recite any other information the districts deem to be pertinent to the proposed transfer.

[43-1123, added 2012, ch. 122, sec. 2, p. 339.]

43-1124. NOTICE. The secretaries of the excluding and annexing districts shall publish and provide notice of the hearing on the proposed transfer in the manner described in section [43-1112](#), Idaho Code. The secretaries may publish and provide such notice separately or jointly.

[43-1124, added 2012, ch. 122, sec. 3, p. 339.]

43-1125. NOTICE -- CONTENTS. The notice required by section [43-1124](#), Idaho Code, shall contain:

(1) The information identified in section [43-1123](#), Idaho Code; and

(2) Notice to each person, firm, corporation and other legal entity interested in the proposed transfer to appear at the district office at the date and time fixed, and file objections in writing showing cause, if any they may have, why the land or any part of it should not be transferred as proposed in the resolution(s) of the boards of directors.

[43-1125, added 2012, ch. 122, sec. 4, p. 339.]

43-1126. HEARING. The boards of directors of the districts may hold separate hearings or a joint hearing on the proposed transfer. At such hearing(s), the boards of directors shall hear all of the objections presented to them in writing and all evidence introduced in support of the transfer and in support of the objections to the transfer.

[43-1126, added 2012, ch. 122, sec. 5, p. 340.]

43-1127. ORDERS -- DETERMINATIONS. After the hearing(s) on the transfer proposal, the boards of directors of the districts shall order the transfer of all or any part of the land described in the resolution when as to the lands to be excluded they determine that:

(1) The transfer is in the best interests of the owner of the lands to be transferred and of the district;

(2) The annexing district will apportion and provide comparable benefits to the lands to be transferred;

(3) There will be no interruption in the delivery of water to the lands to be transferred as a result of the transfer; and

(4) The ditch rights of other landowners in the same lateral ditch water users' association in the excluding district will not be injured.

[43-1127, added 2012, ch. 122, sec. 6, p. 340.]

43-1128. ENTRY AND RECORDING OF ORDERS. If the boards of directors determine from the hearing that all or part of the lands described in the resolution should be transferred from one (1) district to another, the boards shall enter orders as follows:

(1) The board of the excluding district shall make and enter an order of exclusion that:

- (a) Describes each lot or parcel being transferred;
- (b) Changes the boundaries of the district to exclude such lands;
- (c) States that the excluded lands shall not be entitled to receive water from the water rights or irrigation system of the excluding district;
- (d) States that the excluded lands shall remain part of the excluding district for drainage purposes if the excluded lands will continue to receive drainage benefits from the excluding district;
- (e) Identifies the obligations of the excluding district that will continue to apply to the lands to be transferred;
- (f) Recites any other information the districts deem to be pertinent to the proposed transfer; and
- (g) Provides that the order shall not become effective until the annexing district enters an order annexing the lands described in the exclusion order.

(2) The secretary of the excluding district shall deliver a copy of the exclusion order to the annexing district.

(3) As soon as practicable after receiving the exclusion order, the annexing district shall make and enter an order that the lands described in the exclusion order be annexed to the annexing district.

(4) After the annexing district has entered its order of annexation, copies of the orders of exclusion and annexation, certified by the presidents and secretaries of the districts, shall be recorded in the office(s) of the county recorder(s) of each county wherein any portion of the transferred lands are situated.

[43-1128, added 2012, ch. 122, sec. 7, p. 340.]

43-1129. EFFECT OF ORDERS. The order excluding the transferred lands from the excluding district shall have the same effect described in sections [43-1109](#) and [43-1119](#), Idaho Code. The order annexing the transferred lands to the annexing district shall have the same effect described in section [43-1009](#), Idaho Code.

[43-1129, added 2012, ch. 122, sec. 8, p. 341.]

43-1130. APPEALS -- PROCEDURE. An appeal shall lie from the orders of the boards of directors transferring lands covered by the procedures pursuant to sections [43-1122](#) through [43-1128](#), Idaho Code, and from any part of such orders. The appeal may be taken by any landowner in the excluding district or in the annexing district and by any person, firm, corporation or other entity having any interest in any tract of land included in such orders. The appeal shall be to the district court of the county where the lands involved in the appeal are located. The appeal shall be taken and shall be subject to the appeal provisions of section [43-719](#)(4) and (5), Idaho Code.

[43-1130, added 2012, ch. 122, sec. 9, p. 341.]

43-1131. COSTS. All costs incurred by the districts in the transfer process provided by sections [43-1122](#) through [43-1128](#), Idaho Code, shall be divided equally between the districts, unless the districts agree upon a different apportionment of costs.

[43-1131, added 2012, ch. 122, sec. 10, p. 341.]