

TITLE 43
IRRIGATION DISTRICTS

CHAPTER 13
DISSOLUTION AND MODIFICATION OF DISTRICTS

43-1301. PETITION. Whenever twenty-five (25) or a majority of the landowners in any irrigation district heretofore organized or hereafter to be organized so desire they may petition the board of directors to call a special election for the purpose of submitting to the qualified electors of such irrigation district a proposal to vote on the modification of such district by the exclusion of land within its boundaries or a proposal to vote on the dissolution of such district, or for the sale or transfer of its water rights, canal system and all or any other property or for dissolution and for sale or transfer, as the case may be. Such petition shall set forth the reasons for such proposal and in case it is proposed to modify said district by the exclusion of lands therein shall set forth particularly the land to be excluded and the reasons therefor. Such petition for modification or dissolution of the district or for such sale or transfer either shall state that all outstanding bonds, warrants and other obligations of every nature whatsoever, legal and enforceable, against said district have been fully satisfied and paid or shall set forth facts showing reasonable ground for the belief that the consent of the holders of all outstanding bonds, warrants and other obligations of the district, legal and enforceable, can be obtained, or that the district is able to satisfy all those not consenting.

[(43-1301) R.C., sec. 2437a, as added by 1917, ch. 167, sec. 1, part of subd. 2437a; am. 1919, ch. 36, sec. 1, p. 132; C.S., sec. 4428; I.C.A., sec. 42-1301.]

43-1302. ELECTION -- CALL FOR. It shall be the duty of the said board of directors, if it approves said petition, to call an election for the purpose of submitting to the qualified electors of the district the proposal specified in said petition: provided, that no sale or transfer shall be made unless to a duly organized irrigation company under the laws of Idaho operating only for the benefit of its stockholders.

[(43-1302) R.C., sec. 2437a, as added by 1917, ch. 167, sec. 1, part of subd. 2437a, p. 498; reen. C.L., sec. 2437b; am. 1919, ch. 36, sec. 2, p. 132; C.S., sec. 4429; I.C.A., sec. 42-1302.]

43-1303. ELECTION -- NOTICE. Notice of such election must be given by posting notices in three (3) 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 and, in case such election involves the exclusion of land from the district, must describe the land proposed to be excluded, and in case of sale or transfer shall set forth briefly the property and rights affected and the terms and basis of participation of district land and water owners in such transfer.

[(43-1303) R.C., sec. 2437b, as added by 1917, ch. 167, sec. 1, part of subd. 2437b, p. 498; reen. C.L., sec. 2437c; am. 1919, ch. 36, sec. 3, p. 132; C.S., sec. 4430; I.C.A., sec. 42-1303.]

43-1304. ELECTION -- CONDUCT. Such election must be held in all respects as near as practicable in conformity with the provisions of law governing elections upon the organization of irrigation districts. All persons who possess the qualifications of electors under the general laws of the state and are residents of said district may vote at such election. Upon the ballots used at such elections should be written or printed "For Modification, Yes" and "For Modification, No," or "For Dissolution, Yes" and "For Dissolution, No," or "For Sale or Transfer, Yes" and "For Sale or Transfer, No," depending upon the nature of the proposal to be voted upon.

[(43-1304) R.C., sec. 2437b, as added by 1917, ch. 167, sec. 1, part of subd. 2437b, p. 498; reen. C.L., sec. 2437d; am. 1919, ch. 36, sec. 4, p. 132; C.S., sec. 4431; I.C.A., sec. 42-1304.]

43-1305. CANVASS OF RETURNS. 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.

[(43-1305) R.C., sec. 2437c, as added by 1917, ch. 167, sec. 1, subd. 2437c, p. 498; reen. C.L., sec. 2437e; C.S., sec. 4432; I.C.A., sec. 42-1305.]

43-1306. PETITION FOR CONFIRMATION BY DISTRICT COURT. Immediately after such election, in case the proposal has carried by a majority vote, the board of directors of the irrigation district shall file in the district court of the county in which their office is situated a petition praying in effect that the proceedings aforesaid for the modification or dissolution of the district, or for the sale or transfer of its properties, as the case may be, may be examined, approved and confirmed by the court. The petition shall set forth a full description of the land formerly embraced within said irrigation district which is affected by the proceedings for the modification or dissolution of such district, or of the property and rights proposed to be sold or transferred, as the case may be, 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 secretary of the district. In case any items of indebtedness are in the hands of unknown owners, they shall be so listed.

[(43-1306) R.C., sec. 2437d, as added by 1917, ch. 167, sec. 1, part of subd. 2437d, p. 498; reen. C.L., sec. 2437f; am. 1919, ch. 36, sec. 5, p. 132; C.S., sec. 4433; I.C.A., sec. 42-1306.]

43-1307. CHARACTER OF PROCEEDINGS FOR CONFIRMATION. Said proceedings shall be in the nature of a suit to quiet title with respect to so much of the land within said district as is affected by the proposal to modify or dissolve the same. And the decree of the court approving a sale or transfer shall be full and complete authority for carrying out the same and such de-

cree shall further set forth the basis and terms of sale or transfer and the basis of participation by the owners in said district in such sale or transfer. In such proceedings the board of directors 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 said lands, are parties defendant. The provisions of sections 6658, 6659 and 6660 of Idaho Compiled Statutes [Sections [5-325](#), [5-326](#) Idaho Code], so far as they can be made applicable, shall govern generally the pleadings, summons, proceedings and 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 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 any one interested in or making claim against said district, within twenty (20) days after such last day of publication, default may be entered.

[(43-1307) R.C., sec. 2437d, as added by 1917, ch. 167, sec. 1, part of subd. 2437d, p. 499; reen. C.L., sec. 2437g; am. 1919, ch. 36, sec. 6, p. 132; C.S., sec. 4434; I.C.A., sec. 42-1307.]

43-1308. 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 adduced thereat that there are no such outstanding bonds, warrants or other 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. Said decree shall describe particularly the lands involved and thereafter such lands shall be considered as unaffected by any of the matters done by such irrigation district while such lands were a part thereof: provided, that the election authorized by the preceding sections of this chapter shall have no force or effect to modify or dissolve any district, or to permit such sale or transfer, until confirmed by the decree of court as herein set forth.

[(43-1308) R.C., sec. 2437d, as added by 1917, ch. 167, sec. 1, part of subd. 2437d, p. 499; reen. C.L., sec. 2437h; am. 1919, ch. 36, sec. 7, p. 132; C.S., sec. 4435; I.C.A., sec. 42-1308.]

43-1309. DISSOLUTION WITHOUT ELECTION -- PETITION -- CONDITIONS. An irrigation district may be dissolved without the holding of the election provided for by this chapter upon complaint or petition of parties holding and owning:

- (a) Fifty per cent (50%) or more of the issued outstanding unpaid bonds of such district; or,
- (b) Fifty per cent (50%) or more of all the land situate within the boundaries of such district; or,
- (c) Claims, warrants, liens or other legal obligations of such district in an amount equal to not less than thirty per cent (30%) of the issued outstanding and unpaid bonds of such district.

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

1. That 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 future;
2. That no useful purpose exists for the further continuance of the organization of the district;
3. That there are not sufficient qualified electors residing within the boundaries of such district to hold a legal election.

[(43-1309) C.S., sec. 4435-A, as added by 1929, ch. 102, sec. 1, p. 167; I.C.A., sec. 42-1309.]

43-1310. DISSOLUTION WITHOUT ELECTION -- PARTIES. In such petition the petitioners or complainants shall be named as plaintiffs and the irrigation 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.

[(43-1310) C.S., sec. 4435-B, as added by 1929, ch. 102, sec. 1, p. 167; I.C.A., sec. 42-1310.]

43-1311. 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 such 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 case of the dissolution of villages, or may grant such other or further relief as may be equitable or proper in the premises.

[(43-1311) C.S., sec. 4435-C, as added by 1929, ch. 102, sec. 1, p. 167; I.C.A., sec. 42-1311.]

43-1312. DISSOLUTION WITHOUT ELECTION -- APPLICATION OF OTHER CODE PROVISIONS. The general provisions of this chapter, and the general provisions of sections [5-508](#), [5-509](#), and [5-511](#) [, Idaho Code,] relative to issuance, service and publication of process, hearing, entry and execution of judgment and decree, as far as applicable shall apply to the proceedings

had under the provisions of this act, the necessary substitutions and changes being considered made.

[(43-1312) C.S., sec. 4435D, as added by 1929, ch. 102, sec. 1, p. 167; am. 1931, ch. 47, sec. 1, p. 82; I.C.A., sec. 42-1312.]

43-1313. DISSOLUTION WITHOUT ELECTION -- APPEAL. Each party to any proceeding under this act shall have the right of appeal as in other civil cases.

[(43-1313) C.S., sec. 4435E, as added by 1929, ch. 102, sec. 1, p. 167; I.C.A., sec. 42-1313.]

43-1314. PETITION. The owners of a majority of the land in an irrigation district that is operated and maintained exclusively to deliver natural flow water rights, who also hold title to the water rights appurtenant to that land, and whose water rights are delivered by an organized irrigation district, may petition to partition the irrigation district into two (2) separate irrigation districts, which shall be known for purposes of this act as the new irrigation district and the remaining irrigation district. For each parcel of land that is proposed to be included in the new irrigation district, the petition shall set forth the following:

- (1) Irrigation district assessment number;
- (2) Tax lot or legal description to identify the property;
- (3) Owner of the property;
- (4) Individual water rights that are appurtenant to each property;
- (5) A general characterization of the property as agricultural, residential or commercial; and
- (6) The number of divisions into which the district shall be divided.

The petition must be signed by each landowner who desires to be included in the new irrigation district and their signature shall constitute consent to the partition and consent to have their water rights delivered and distributed by the new irrigation district.

[43-1314, added 2013, ch. 332, sec. 2, p. 867.]

43-1315. SUBMISSION OF PETITION TO COUNTY. The petition shall be filed with the clerk of the board of county commissioners of the county in which the greatest proportion of the proposed new irrigation district is situated. The petition, together with all maps and other papers filed therewith, shall at all proper hours be open to public inspection in the office of the clerk of the board between the date of the filing and the date of the hearing thereon.

[43-1315, added 2013, ch. 332, sec. 3, p. 867.]

43-1316. MAPS AND WATER SUPPLY DATA. The petitioners must accompany the petition with a map of the proposed district. The map shall show the location of the canals situated within the boundaries of the proposed partitioned district.

[43-1316, added 2013, ch. 332, sec. 4, p. 867.]

43-1317. BOND. The petitioners shall accompany the petition with a bond to be approved by the board of county commissioners in double the amount of the probable cost of the county organizing a new irrigation district, condi-

tioning that the bondsman will pay all costs, in the event the new irrigation district is not organized.

[43-1317, added 2013, ch. 332, sec. 5, p. 867.]

43-1318. NOTICE OF PRESENTATION TO COMMISSIONERS. Upon filing of a petition with the clerk of the board of county commissioners, the clerk shall publish a notice that a petition for the partition of an irrigation district has been filed, setting forth the first signature on the petition. The notice shall provide the time at which the petition will be presented to the board, which shall be during a regular meeting of the board or during a special meeting called for that purpose. The notice shall be published at least two (2) weeks prior to the day upon which the petition is to be presented in a newspaper of general circulation in the county. If any portion of the proposed partitioned district be within another county or counties, the notice shall also be published in a newspaper of general circulation in each of those counties.

[43-1318, added 2013, ch. 332, sec. 6, p. 867.]

43-1319. NOTICE OF HEARING. When a petition is presented to the board, the board shall set a time for hearing, which time shall not be less than four (4) nor more than eight (8) weeks from the date of the presentation. Notice of the time of hearing shall be published by the board at least three (3) weeks prior to the time of hearing in a newspaper of general circulation published within each of the counties in which any part of the proposed partitioned district is situated.

[43-1319, added 2013, ch. 332, sec. 7, p. 868.]

43-1320. EXAMINATION BY DEPARTMENT OF WATER RESOURCES. A copy of the petition and all maps and other papers filed with the board of county commissioners shall be filed in the office of the department of water resources by the board at least four (4) weeks prior to the date set for the hearing. The department may examine the petition, maps and other papers and if it deems it necessary, the department may prepare a report upon the matter in such form as it deems advisable. Any report prepared by the department shall be submitted to the board a minimum of seven (7) calendar days before the hearing on the petition and shall be available for public inspection. It shall be the duty of the board to notify the department of water resources of the final action, either favorable or unfavorable, taken on a petition for the partition of an irrigation district.

[43-1320, added 2013, ch. 332, sec. 8, p. 868.]

43-1321. ORDER OF THE BOARD. If it appears to the board of county commissioners that the holders of evidence of title to a majority of the acreage with water rights delivered by the irrigation district within the boundaries of an existing irrigation district have properly signed a petition and approved the partition of the irrigation district, that the holders of evidence of title to such land signing the petition are also holders of title to the water rights appurtenant to the land and it appears that the majority of the acreage with water rights delivered by the irrigation district described in the petition is of an agricultural character, the board shall

issue an order partitioning the irrigation district as set forth in the petition. The board shall not modify the boundaries set forth in the original petition. Provided however, the board may permit any holder of evidence of title to land lying within the boundaries of the original district of forty (40) acres or more in size used primarily for agricultural purposes to include such land in the new irrigation district, if such landowner has filed a separate petition with the board establishing that such land meets all the criteria required to have been joined in the original petition, including ownership of water rights appurtenant to the land. Supplemental petitions may be accepted at any time prior to the date of hearing.

[43-1321, added 2013, ch. 332, sec. 9, p. 868.]

43-1322. DIVISIONS OF DISTRICT FOR ELECTION OF DIRECTORS. The board of county commissioners shall also enter an order dividing the new partitioned irrigation district into not less than three (3) nor more than seven (7) divisions of as nearly equal size as practical, which shall be numbered first, second, third, etc. One (1) director, who shall be an elector and resident in the division, shall be elected from each division of the district. Provided however, that in districts of three thousand (3,000) acres or less, the directors may be elected from qualified electors holding title or evidence of title to land in the district and residing in the county where some portion of the district is located. The number of divisions into which the district shall be divided shall be specified in the petition for the partition of the new irrigation district, and if not otherwise specified, shall be three (3). The board shall also enter an order dividing the remaining irrigation district after partition into the same number of divisions of as nearly equal size as practical as existed in the original irrigation district prior to partition.

[43-1322, added 2013, ch. 332, sec. 10, p. 869.]

43-1323. EFFECTIVE DATE OF PARTITION -- CHALLENGES TO PARTITION. The effective date of the partition of the existing district into two (2) districts shall be as of the date of the order of the board of county commissioners. Following the effective date of the partition order by the board, the newly partitioned irrigation district shall immediately undertake to reorganize, elect officers as set forth in section [43-301](#), Idaho Code, and exercise all powers and duties of an irrigation district. Any appeal from, or judicial challenge to, the order of the board partitioning the irrigation district must be brought in the county where the board sits within ninety (90) days from the effective date of the order or be forever barred.

[43-1323, added 2013, ch. 332, sec. 11, p. 869.]

43-1324. JOINT WORKS -- JOINTLY HELD PROPERTY. The irrigation works and any other real or personal property held by the original irrigation district prior to the partition shall belong to the partitioned irrigation districts jointly as provided in this section. All canals and laterals that deliver water to members of both districts shall be held by each district in proportion to the total quantity of water delivered to members of each district through each individual diversion work, canal and lateral. All other real and personal property shall be held jointly by the two (2) districts in proportion to the total quantity of water rights held by the members of

each district that are appurtenant to lands within the newly partitioned district. Any outstanding debts of the district prior to partition shall be joint obligations of the two (2) newly partitioned districts after the partition in proportion to the total quantity of water rights held by members of each district within the newly partitioned districts. All assessments collected from landowners shall be provided to the new districts based upon the location of the land after the partition, less the proportionate share of expenses incurred prior to the effective date of the order of partition.

[43-1324, added 2013, ch. 332, sec. 12, p. 869.]

43-1325. JOINT OPERATION. Whenever the partitioned irrigation districts share irrigation works, canals and laterals after the partition takes effect, a joint board of control, not exceeding seven (7) members, shall be chosen by the board of directors of the respective partitioned irrigation districts, the members of which shall be apportioned to each district as nearly as practicable in accordance with the acreage for which water shall be provided in each respective district. Said board of control shall control, manage and operate such joint works subject to the board of directors of the respective districts and each member of the board of control shall hold office at the will of the board of directors of the district appointing such member.

[43-1325, added 2013, ch. 332, sec. 13, p. 870.]