

TITLE 43
IRRIGATION DISTRICTS

CHAPTER 3
POWERS AND DUTIES OF BOARD OF DIRECTORS

43-301. ELECTION OF OFFICERS. On the first Tuesday of January next following their election, the board of directors shall meet and organize as a board, elect a president from their number and appoint a secretary and treasurer, who shall each hold office during the pleasure of the board. At any regular or special meeting the board of directors may appoint an assistant secretary or an assistant treasurer, or both, and fix the duties, the length of term, and the amount of bond, of each of them.

[(43-301) 1903, p. 150, part of sec. 12; am. 1907, p. 484, sec. 1, part of subd. 12; reen. R.C., sec. 2385; am. 1911, ch. 154, sec. 7, p. 461; am. 1915, ch. 86, sec. 1, p. 203; reen. C.L., sec. 2385; C.S., sec. 4343; I.C.A., sec. 42-301; am. 1933, ch. 33, sec. 1, p. 44.]

43-302. OFFICE OF BOARD. On the organization of the first board of directors of any such district they shall designate some place within the district as the office of said board: provided, that the board of directors may establish the office of the district temporarily outside of the boundary of the district, but within the county in which the same or some portion thereof is situated, in cases where the business of the district may be more conveniently transacted thereby; and if such temporary location be approved by a majority of the electors of the district voting at any regular election at which such question may be submitted then such temporary location may be fixed as the location of the office of the district for such period of years as may be designated on their ballots by the majority of such electors at such election.

[(43-302) 1903, p. 150, sec. 12; am. 1907, p. 484, sec. 1; reen. R.C., sec. 2385; am. 1911, ch. 154, sec. 7, p. 461; am. 1915, ch. 86, sec. 1, parts of subd. 2385, p. 203; reen. C.L., sec. 2385a; C.S., sec. 4344; I.C.A., sec. 42-302.]

43-303. MEETINGS OF BOARD. The board of directors shall hold a regular monthly meeting in its office, or in any other location the board deems more convenient and suitable within the boundary of the district, 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. All meetings of the board shall be held in compliance with Idaho's open meetings law as provided in [chapter 2, title 74](#), Idaho Code.

All meetings of the board must be public, and a majority shall constitute a quorum for the transaction of business. Unless otherwise provided by law, a question before the board shall be decided by a majority of the board members present. All records of the board shall be open to the inspection of any elector during business hours. Notwithstanding any other provision of law, this section and section [43-325](#), Idaho Code, shall be the exclusive method for inspection of records of the board.

[(43-303) 1903, p. 150, part of sec. 12; am. 1907, p. 484, sec. 1; reen. R.C., sec. 2385; am. 1911, ch. 154, sec. 7, p. 461; am. 1915, ch.

86, sec. 1, p. 203; compiled and reen. C.L., sec. 2385b; C.S., sec. 4345; I.C.A., sec. 42-303; am. 1965, ch. 38, sec. 1, p. 62; am. 2015, ch. 78, sec. 1, p. 200; am. 2019, ch. 191, sec. 1, p. 603.]

43-304. GENERAL POWERS OF BOARD -- BY-LAWS -- RIGHT OF ENTRY -- ACQUISITION OF PROPERTY. Said board shall have the power to manage and conduct the business and affairs of the district, make and execute all necessary contracts, employ and appoint such agents, officers and employees as may be required and prescribe their duties, to establish equitable by-laws, rules and regulations for the distribution and use of water among the owners of such land, as may be necessary and just to secure the just and proper distribution of the same, which said by-laws, among other things, shall establish a fiscal year, and in case the by-laws do not provide for the establishment of a fiscal year, the fiscal year shall commence the first day of November and end the thirty-first day of October of each and every year. Said by-laws, rules and regulations must be printed in convenient form for distribution throughout the district.

The board and its agents and employees shall have the right to enter upon any land and to make surveys, and may locate the necessary irrigation works and the line of any canal or canals, and the necessary branches for the same on any lands which may be deemed best for such location.

Said board shall also have the right to acquire, either by purchase, condemnation or other legal means, all lands and water rights, and other property necessary for the construction, use and supply, maintenance, repair and improvement of said canal or canals and works, including canals and works constructed and being constructed by private owners, lands for reservoirs for the storage of needful waters, lands and water rights for ground water recharge projects initiated pursuant to [chapter 42, title 42](#), Idaho Code, and all necessary appurtenances. In case of purchase, the bonds of the district hereinafter provided for may be used to their par value in payment. Said board may also construct the necessary dams, reservoirs, ground water recharge facilities and works for the collection of water for said district, and do any and every lawful act necessary to be done that sufficient water may be furnished to each landowner in said district for irrigation purposes. The use of all water required for the irrigation of the lands of any district formed under the provisions of this title, together with the rights of way for canals and ditches, sites for reservoirs, ground water recharge projects and all other property required in fully carrying out the provisions of this title, is hereby declared to be a public use, subject to the regulation and control of the state, in the manner prescribed by law.

The board of directors of an irrigation district organized under the laws of the state of Idaho may enter into contracts for a water supply to be delivered to the canals and works of the district, and do any and every lawful act necessary to be done that sufficient water may be furnished to the lands in the district for irrigation purposes.

[(43-304) 1903, p. 150, sec. 12a, as added by 1907, p. 484, sec. 1, subd. 12a; reen. R.C., sec. 2386; am. 1911, ch. 71, sec. 1, p. 194; am. 1911, ch. 154, sec. 5, p. 461; am. 1915, ch. 143, sec. 4, p. 308; reen. C.L., sec. 2386; am. 1919, ch. 15, sec. 1, p. 78; C.S., sec. 4346; I.C.A., sec. 42-304; am. 1985, ch. 120, sec. 2, p. 293.]

43-305. DRAINAGE OF LANDS -- PAYMENT OF COST -- APPORTIONMENT OF COST WHEN PAYMENT DEFERRED. Any irrigation district heretofore organized or

hereafter to be organized, may, whenever it appears necessary, proper or beneficial to drain any of the lands within said district, whether for the benefit of the land actually requiring drainage or for the protection of other lands within said district, whether the irrigation works have been actually acquired or constructed or not, cause drainage canals and works to be constructed and to this end such district shall in all respects have the same power and authority as is now conferred or may hereafter be conferred respecting irrigation, and all the powers conferred upon irrigation districts under the laws of this state with respect to irrigation shall be construed to include drainage.

Any irrigation district now, or which may hereafter be organized under the laws of the state of Idaho, shall have the authority to construct drainage works for the purpose of draining any land or lands within such irrigation district, and such authority shall be exercised by the board of directors in its discretion. The cost of any such drainage works may be paid for out of the maintenance, operation charges, tolls, or assessments, or out of either or all of such funds which are not otherwise necessary for the purposes for which such funds were created; that not to exceed twenty per cent (20%) of the total amount of such maintenance, operation charges, tolls and assessments for any year shall be expended for drainage.

In all cases where the construction of drainage works requires the issuance of bonds or such works are constructed by the United States under a contract by which the payments therefor are deferred, the board of directors of such irrigation district shall apportion the cost of such drainage works to each tract of land in said district according to benefits. In determining the amount to be apportioned to each tract of benefits under this section, the board of directors may consider benefits to each tract drained; the damage done to the low land from seepage and saturation from irrigation water from high land, and the necessity for carrying off waste water, and such high land may be considered as being benefited to the extent and in the amount that such lands are responsible for damage to low lands from seepage and saturation by irrigation water; the board may also consider any advantage to the lands of the district and each tract thereof, growing out of the construction of such drainage works. In lieu of issuing bonds or contracting with the United States for the construction of drainage works, the board of directors may consider such drainage works as a part of the irrigation system and may make levies to pay for the same upon the same basis as assessments for the construction of the irrigation works by which the lands of the district are irrigated. In all cases where the cost of drainage works shall be apportioned to all the tracts of lands of the district as herein provided, all the provisions of this title applicable to procedure and the confirmation of the apportionment by the court, including the right of appeal, shall be applicable to the apportionment of benefits under this section.

[(43-305) 1917, ch. 31, sec. 2, p. 74; compiled and reen. C.L., sec. 2386n; C.S., sec. 4347; am. 1925, ch. 139, sec. 1, p. 245; am. 1927, ch. 207, sec. 1, p. 290; am. 1929, ch. 112, sec. 1, p. 180; I.C.A., sec. 42-305.]

43-306. LEVY AUTHORIZED FOR PURPOSE OF DRAINING LANDS WITHIN DISTRICT. Any irrigation district now organized, or which may hereafter be organized, under the laws of the state of Idaho, shall have authority to construct drainage works for the purpose of draining, or reclaiming, any

land, or lands, within such irrigation district, which authority shall be exercised by the board of directors in its discretion.

The board of directors before levy as hereinafter provided, shall determine by resolution spread on the minutes thereof if any of the lands within an irrigation district are in need of drainage, and should be drained to protect said land or other lands within said district from damage from seepage or other waters, subterranean or otherwise, then the board of directors of such district shall have the power and authority, at the time provided by law for levying assessments for the operation and maintenance of said irrigation district in addition to such assessments, to also levy an assessment against the lands of said irrigation district for drainage purposes, said levy not to exceed in any one (1) year forty per cent (40%) of the total amount levied for operation and maintenance purposes. Such assessment for drainage shall in all respects be levied and collected at the same time and in the same manner as assessments for operation and maintenance.

All funds collected for drainage purposes under the provisions hereof shall be kept in a separate fund to be known as "Drainage Fund" of said irrigation district, and the moneys in said "Drainage Fund" from time to time may be expended by the board of directors of said irrigation district.

[(43-306) I.C.A., sec. 42-305A, as added by 1945, ch. 17, sec. 1, p. 25; am. 1951, ch. 48, sec. 1, p. 65.]

43-307. AUTHORITY TO EXERCISE FUNCTIONS OF DRAINAGE DISTRICTS. Any irrigation district heretofore or hereafter organized under the laws of this state desiring so to do, and having received the petition required by and complied with the provisions of section [43-308](#) as amended, and sections [43-309](#), [43-310](#), [43-311](#), [43-312](#), [Idaho Code,] may exercise, and it is hereby given, all the functions, powers and authority of a drainage district and of its board of commissioners under the laws of this state relating to drainage districts. The functions, powers and authority granted by this act shall be exercised by such irrigation district through its board of directors and, so far as may be, in the manner provided in the drainage district laws of the state.

[(43-307) 1931, ch. 163, sec. 1, p. 277; I.C.A., sec. 42-306; am. 1945, ch. 4, sec. 1, p. 5.]

43-308. AUTHORITY TO EXERCISE FUNCTIONS OF DRAINAGE DISTRICTS -- PETITION AND RESOLUTION. After receiving a petition signed by the holders of title or evidence of title to one-fifth (1/5) of the lands within the district praying it shall do so, any irrigation district desiring to accept the provisions of this act shall so declare by resolution adopted by majority vote of its directors and spread upon its minutes, and thereupon said district shall cause to be filed with the clerk of the district court of the county in which a greater portion of the lands of said irrigation district are located, its petition praying that the court shall set a day for hearing said petition and on and after said hearing make and enter its order and decree authorizing such irrigation district to perform all of the functions of a drainage district under the laws of the state of Idaho, and that there are lands within said district which need drainage: that there shall be attached to said petition so filed with the clerk of said court a true and correct copy of the petition of the said land owners in this section provided, together with a copy of said resolution of the board of directors of said district.

[(43-308) 1931, ch. 163, sec. 2, p. 277; I.C.A., sec. 42-307; am. 1945, ch. 4, sec. 2, p. 5.]

43-309. NOTICE OF HEARING OF PETITION. After the filing of said petition the judge of said court shall fix the time for hearing said petition by order by him made, which order shall provide that said petition shall be published for at least three (3) successive weeks in some newspaper or newspapers printed and published in said county or counties in which the lands are situated, or in case no such paper is published in said county, then in some paper of general circulation therein; together with a notice of the time and place when said judge shall consider said petition.

[(43-309) I.C.A., sec. 42-307a, as added by 1945, ch. 4, sec. 3, p. 5.]

43-310. HEARING -- OBJECTIONS -- FINDINGS. Upon the day fixed for the hearing of said petition, any person or corporation interest [interested] therein, may appear before said court and make objections in writing to the granting of said petition but said objections shall be limited to determining whether or not the granting of authority to said irrigation district to perform the duties and functions of a drainage district and as such perform such functions is a proper and advantageous method of accomplishing the reclamation and protection of swamped, bogged or water-logged lands and lands subject to overflow therein, and whether or not there is a reasonable probability that the object sought by granting such powers to said irrigation district may be accomplished, and whether or not the drainage of lands in said district will be conducive either to the public health, welfare or convenience or increase the public revenue; and at the hearing the court shall hear and consider such evidence only as may be presented for or against the petition or objections thereto. Thereupon the court shall make its findings upon the facts alleged in the petition and objections and any other facts necessary and proper for the determination of the propriety of granting such powers to said irrigation district; and if such petition be granted the judge of said court shall make findings of fact setting forth the facts found by the said judge upon the hearing of said petition.

[(43-310) I.C.A., sec. 42-307b, as added by 1945, ch. 4, sec. 3, p. 5.]

43-311. DECREE GRANTING PETITION -- VESTING OF POWERS AND AUTHORITY IN DISTRICT. Upon the filing of the findings of fact at the final hearing of said petition, as set forth in the last preceding section, said judge, if he finds that the granting of said petition and the drainage of the lands in said irrigation district will be conducive either to the public health, welfare or convenience, or will increase the public revenue, or will be of special benefit to the majority of the acreage of the lands in said irrigation district, shall enter the decree of said court granting said petition. Thereupon a certified copy of same shall be filed in the office of the secretary of state: and from and after the date of said filing of said decree, said irrigation district shall be vested with all of such functions, powers and authority of a drainage district and its board of commissioners under the laws of this state relating to drainage districts. The function, powers and authority granted by this act shall be exercised by such irrigation district through its board of directors and so far as may be in the manner provided by the drainage district laws of this state.

[(43-311) I.C.A., sec. 42-307c, as added by 1945, ch. 4, sec. 3, p. 5.]

43-312. APPEALS. Appeal may be taken by any interested person from said decree of the district court to the Supreme Court by serving a written notice of such appeal upon the secretary of said board of the irrigation district, within thirty (30) days after the rendition of said decree by said court.

[(43-312) I.C.A., sec. 42-307d, as added by 1945, ch. 4, sec. 3, p. 5.]

43-313. ELECTRIC POWER PLANTS -- CONSTRUCTION AND OPERATION. The board of directors of any irrigation district, organized under the laws of the state of Idaho, shall have the power to construct and operate, or to contract for the construction and operation, of electric power plants, power transmission lines, and all other works in connection therewith necessary or proper for generating and transmitting electric power, and for pumping water for irrigation and domestic use; and to contract to sell surplus power generated at such power plants.

[(43-313) 1915, ch. 50, sec. 1, p. 137; reen. C.L., sec. 2386p; C.S., sec. 4348; am. 1923, ch. 27, sec. 1, p. 29; am. 1931, ch. 22, sec. 1, p. 49; I.C.A., sec. 42-308; am. 1973, ch. 183, sec. 1, p. 427.]

43-314. ELECTRICAL POWER PLANTS -- SALE OF SURPLUS POWER -- RATIFICATION OF CONTRACT. The question of the ratification of contracts for the sale of surplus power as provided in the preceding section shall be submitted in the same manner, and shall be governed by the same limitations and provisions as questions creating indebtedness: provided, that the form for the notices, and the form upon the prepared ballots, and the form for the returns, shall be so changed as to conform to the purposes of this and the preceding section. Notwithstanding any provisions of [chapter 23, title 43](#), Idaho Code, or the provisions of this chapter, no election and no confirmation proceedings shall be required when the contract for construction of a hydroelectric plant by the district does not involve questions of indebtedness incurred by the district.

[(43-314) 1915, ch. 50, sec. 2, p. 138; reen. C.L., sec. 2386o; C.S., sec. 4349; I.C.A., sec. 42-309; am. 2016, ch. 144, sec. 1, p. 411.]

43-315. ASSESSMENT FOR EXTERMINATION OF RODENTS. The board of directors of an irrigation district may levy an assessment upon the lands within the district, not to exceed ten (10) cents per acre for the purpose of raising funds to be used for the extermination of gophers and other rodents. Said assessment shall be levied at the same time and in the same manner and with a like effect, as assessments levied for maintaining and operating the property of the district. Said assessments shall constitute a lien upon the property assessed and shall be collected, in like manner as assessments for maintenance and operation.

The funds realized from such assessment shall be used for the extermination of gophers and other rodents within the irrigation district, in such manner and by such means as the said board of directors may direct.

[(43-315) 1927, ch. 42, sec. 1, p. 57; I.C.A., sec. 42-310.]

43-316. LEGAL TITLE TO PROPERTY. The legal title to all property acquired under the provisions of this title shall immediately and by operation of law vest in such irrigation district, and shall be held by such district in trust for, and is hereby dedicated and set apart to, the uses and purposes set forth in this title. Said board is hereby authorized and empowered to hold, use, acquire, manage, occupy and possess said property as herein provided.

[(43-316) 1903, p. 150, sec. 13; reen. R.C. sec. 2387; am. 1915, ch. 143, sec. 3, p. 304; reen. C.L., sec. 2387; C.S., sec. 4350; I.C.A., sec. 42-311.]

43-317. CONVEYANCE OF PROPERTY -- ACTIONS. The said board is hereby authorized and empowered to take conveyance or other assurances for all property acquired by it under the uses and provisions of this title, in the name of such irrigation district, to and for the purposes herein expressed; and to institute and maintain any and all actions and proceedings, suits at law and in equity, necessary or proper in order to fully carry out the provisions of this title, or to enforce, maintain, protect or preserve any and all rights, privileges and immunities created by this title, or acquired in pursuance thereof. In all courts, actions, suits or proceedings the said board may sue, appear and defend, in person or by attorneys, and in the name of such irrigation district.

[(43-317) 1903, p. 150, sec. 14; reen. R.C. & C.L., sec. 2388; C.S., sec. 4351; I.C.A., sec. 42-312.]

43-318. SALE OF PERSONAL OR REAL PROPERTY -- PROCEDURE -- SALE OF FEDERAL OR STATE LICENSE OR PERMIT. (1) Personal or real property of an irrigation district including a federal or state license or permit may be sold or transferred by its board of directors whenever the board finds and by resolution declares that the district no longer has use therefor. This procedure shall not be applicable to sales of real property acquired in compliance with the provisions of [chapter 7, title 43](#), Idaho Code, because of the failure to pay irrigation district assessments.

1. If, in the opinion of the board, such property does not exceed fifty thousand dollars (\$50,000) in value, it may sell the same without independent appraisal, notice or competitive bids.
2. Personal or real property, but not including a federal or state license or permit, exceeding fifty thousand dollars (\$50,000) in estimated value shall first be appraised by three (3) disinterested freeholders of the district, who shall be selected by the board. It may then be sold at public or private sale to the highest bidder for cash at not less than its appraised value, after due notice.
3. Notice of sale shall describe the property, the appraised value thereof (by separate items, if so appraised), and the time, place and condition of sale.
4. If the appraised value exceeds fifty thousand dollars (\$50,000), notice of sale shall be posted in three (3) public places in each of the election precincts in the district (one of which shall be the office of the board) at least ten (10) days before the date of sale. The board, in its discretion, may order that, in addition to such posting of notice, the notice shall be published in a daily or weekly newspaper, published or having a general circulation in the district, for the number

of times, not to exceed three (3), and on the dates that the board shall specify in its order.

5. If, at the time set for closing the bids, no bidder offers the appraised price, or more, the board may sell the property for such price, and upon such terms, as the board by resolution declares to be reasonable, without further appraisal, notice or competitive bids.

(2) Whenever the board, by resolution, shall determine that the interest of the district in any federal or state license or permit is no longer required, it may, without independent appraisal or competitive bid, sell or transfer such federal license or permit upon such terms as may be fixed by the board; provided, that such resolution sets forth the license or permit to be sold or transferred and terms and conditions for sale or transfer, and provided further, that said resolution shall be published in a newspaper having general circulation in the district at least once a week for four (4) consecutive weeks preceding the date of sale; provided, however, that if within fifteen (15) days after the first publication of the resolution a referendum petition signed by qualified electors of the district equal in number to not less than ten percent (10%) of the electors of the district, based upon the aggregate vote cast at the general election of the directors of the district next preceding the filing of such petition, and at which election votes were cast in the election of directors, shall be filed with the secretary of the district requesting that an election be held upon the sale or transfer of such license or permit. Any election required to be held pursuant to a referendum petition filed in accordance with the provisions of this section, may be held separately or may be held concurrently with any other election authorized by law, pursuant to notice as provided in section [43-206](#), Idaho Code.

Any such election required to be held hereunder shall be called by resolution, which resolution shall also fix the date upon which such election shall be held, which shall be not more than forty-five (45) days following the receipt of petition requesting the election, the manner of holding the same and the method of voting for or against the sale or transfer. 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 who shall constitute a board of election for each polling place, which officers shall consist of three (3) judges, one (1) of whom shall act as clerk. The description of precincts may be made by reference to any order or orders of the board of county commissioners of the county or counties in which the district or any part thereof is situated, or by reference to any previous order or resolution of the board or by detailed description of such precincts. Precincts established by the boards of the various counties may be consolidated for 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 publica-

tion of the names of election officers or of the precincts or polling places need be given or made. At such election the ballots shall contain the words "Sale--Yes" or "Sale--No."

The respective election boards shall conduct the election in their respective precincts in the manner prescribed by law for the holding of district elections to the extent the same shall apply and shall make their returns to the secretary of the district.

In the event that no referendum petition is filed, or if so filed, and if it shall appear from the election returns that a majority of the qualified electors of the district who shall have voted on the proposition submitted hereunder at such election voted in favor of such proposition, the directors of the district shall, by resolution, authorize the sale or transfer under the terms prescribed and effective as of the end of the notice period hereinafter provided, and shall cause notice thereof to be published one (1) time in a newspaper of general circulation within the district. For a period of thirty (30) days from the date of such publication, any person in interest may file suit in any court of competent jurisdiction to test the regularity, formality or legality of the proceedings authorizing the sale or transfer and the provisions of the contract of sale or transfer. After the expiration of such thirty (30) day period, no one shall have any right of action to contest the validity of the sale or transfer, or of the contract, or of the proceedings, or of any resolution of the board of directors regarding such sale or transfer, and said sale or transfer shall be conclusively presumed to be legal and no court shall thereafter have authority to inquire into such matter.

[(43-318) 1921, ch. 242, sec. 1, p. 533; I.C.A., sec. 42-313; am. 1949, ch. 206, sec. 1, p. 432; am. 1967, ch. 76, sec. 1, p. 175; am. 1974, ch. 84, sec. 1, p. 1175; am. 1982, ch. 196, sec. 1, p. 523; am. 2014, ch. 125, sec. 1, p. 355.]

43-318A. TRADE-IN OR EXCHANGE OF DISTRICT PROPERTY. Whenever the board of directors of an irrigation district finds and by resolution declares that the district no longer has use for any personal property of the district, or finds and declares that such property is no longer economical to use, the district may, in lieu of the sale of said property as provided in section [43-318](#), Idaho Code, dispose of the property by exchanging the same in part payment for new or replacement property.

If the acquisition of the new or replacement property is required to be let to bid under the provisions of [chapter 28, title 67](#), Idaho Code, the district shall include in its request for bids, a full description of the property to be exchanged as part payment, and shall permit any interested bidder to examine the same, and any contract let as a result of said bid shall be awarded on the basis of net cost to the district after allowance for the property to be exchanged in part payment.

Exchange of property will be permitted only when, in the opinion of the board of directors of the district, the sale of the property under the provisions of section [43-318](#), Idaho Code, will yield a lesser monetary return to the district than the exchange thereof as herein provided.

[43-318A, added 1988, ch. 160, sec. 1, p. 290; am. 2005, ch. 213, sec. 13, p. 650.]

43-319. COMPENSATION OF DIRECTORS AND OFFICERS. 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 and actual and necessary expenses. The term "actual and necessary expenses," shall be deemed to include all traveling expenses and hotel 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 named in this title, to be paid out of the treasury of the district: provided, that such board shall, upon the petition of fifty (50) or a majority of the freeholders within such district, submit to the electors, at any general election, a schedule of salaries and fees to be paid hereunder. Such petition must be presented to the board twenty (20) days prior to a general election, and the result of the election shall be determined and declared in all respects as other elections are determined and declared under this title.

[(43-319) 1903, p. 150, sec. 38; reen. R.C. & C.L., sec. 2389; C.S., sec. 4352; am. 1921, ch. 166, sec. 1, p. 361; am. 1923, ch. 73, sec. 1, p. 81; I.C.A., sec. 42-314; am. 1951, ch. 11, sec. 1, p. 20; am. 1969, ch. 32, sec. 1, p. 57; am. 1982, ch. 234, sec. 1, p. 617; am. 1989, ch. 338, sec. 1, p. 856.]

43-320. OFFICERS MUST NOT BE INTERESTED IN CONTRACTS. No director or any other officer named in this title 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; 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 \$500, or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

[(43-320) 1903, p. 150, sec. 39; reen. R.C. & C.L., sec. 2390; C.S., sec. 4353; I.C.A., sec. 42-315.]

43-321. SPECIAL ASSESSMENTS -- ELECTIONS -- COLLECTION OF ASSESSMENTS -- DELINQUENT LIST. The board of directors may, at any time when in their judgment it may be advisable, call a special election and submit to the qualified electors of the district the question whether or not a special assessment shall be levied for the purpose of raising money to be applied to any of the purposes provided in this title, and shall, at the same time, fix a date upon which such assessment shall become delinquent, which date shall be not less than sixty (60) days nor more than ninety (90) days from the date of said meeting of said board. Such election must be called upon the notice prescribed, and the same shall be held, and the result thereof determined and declared, in all respects in conformity with the provisions of section [43-401](#)[, Idaho Code]. The notice must specify the amount of money proposed to be raised, and the purpose for which it is intended to be used. At such elections the ballots shall contain the words "Assessment yes" or "Assessment no." If two[-]thirds (2/3) or more of the votes cast are "Assessment yes," the board shall immediately levy an assessment sufficient to raise the amount voted.

The assessment so levied shall be computed and entered on the assessment roll by the secretary of the board, and within ten (10) days after such assessment, the secretary must deliver the assessment book to the treasurer of

the district who shall, within ten (10) days after receipt of such book, publish a notice in a newspaper published in each county in which any portion of the district may lie, that said assessments are due and payable and will become delinquent at six o'clock p.m. of the day fixed by the board of directors, naming such day and date, and also the times and places at which the payment of the assessment may be made; which notice shall be published for a period of two (2) weeks.

The treasurer must attend at the times and places specified in the notice to receive assessments which must be paid in lawful money of the United States. Within fifteen (15) days after the delinquent date as fixed by the board of directors, said treasurer shall begin the preparation of the delinquent list, which delinquent list shall contain a description of all the tracts of land upon which such special assessments are delinquent, and the amount of such assessment against each of the said tracts, and the name of the owner as shown on the assessment book. And on or before thirty (30) days thereafter, the treasurer shall complete said delinquent list, shall properly certify the same, and prepare a duplicate thereof; and deliver the delinquent list to the secretary of the district. At the same time the treasurer must commence to publish the delinquent list and publication shall continue three (3) weeks and must contain the names of the owners, a description of the property delinquent at that time, the amount of assessments and penalties and the costs due, opposite each name and description. After said publication shall have been made for the first time the treasurer shall collect twenty-five (25) cents in addition to the assessment and penalties on each description of lands published. The treasurer must append and publish with the delinquent list a notice that unless the assessments delinquent, together with penalties and costs, are paid, the real property upon which said assessments are made will be sold at public auction on the first Tuesday in September following date of notice. The publication must be made in some newspaper published in the district, if it can be so published, and if it cannot be so published, then in some newspaper published in the county in which the office of the board of directors is situated; and if it cannot be so published, then by posting in not less than three (3) places in said district, one (1) of which shall be at the door of the office of said board of directors.

The place of such sale shall be at the office of said board of directors. The treasurer, as soon as he has made the publication required, must file with the secretary proof of such publication by affidavit, or like proof of posting in case such notice was posted as herein required. Such sales and all proceedings thereafter shall be in accordance with the provisions of sections 4392 to 4401, both inclusive, or [of] Idaho Compiled Statutes, where not in conflict herewith.

When collected such assessments shall be paid into the district treasury for the purposes provided in the notice of such special election.

[(43-321) 1903, p. 150, sec. 40; reen. R.C. & C.L., sec. 2391; C.S., sec. 4354; am. 1921, ch. 234, sec. 1, p. 524; I.C.A., sec. 42-316.]

43-322. POWER TO INCUR DEBTS -- WARRANTS. The board of directors, or other officers of the district, shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this section; and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void: provided, that for the purpose of organization, or for any of the purposes of

this title, the board of directors may, before the collection of the first assessment, incur indebtedness and cause warrants of the district to issue therefor according to the following limitations: Districts embracing fifty thousand (50,000) acres, or more, of irrigable land, not in excess of fifteen thousand dollars (\$15,000) of warrants; districts embracing forty thousand (40,000) acres, or more, and less than fifty thousand (50,000) acres of irrigable land, up to twelve thousand dollars (\$12,000) of warrants; districts embracing thirty thousand (30,000) acres, or more, and less than forty thousand (40,000) acres of irrigable land, up to nine thousand dollars (\$9,000) of warrants; districts embracing twenty thousand (20,000) acres, or more, and less than thirty thousand (30,000) acres of irrigable land, up to six thousand dollars (\$6,000) of warrants; districts embracing ten thousand (10,000) acres, or more, and less than twenty thousand (20,000) acres of irrigable land, up to four thousand dollars (\$4,000) of warrants; districts embracing more than two thousand (2,000) acres, or more, and less than ten thousand (10,000) acres of irrigable land up to three thousand dollars (\$3,000) of warrants, and districts embracing less than two thousand (2,000) acres of irrigable land up to two thousand dollars (\$2,000) of warrants.

Provided, further, that for the purpose of defraying the expenses in the care, operation, repair and improvement of such portion of the irrigation works of the district as are completed and in use, including salaries of officers and employees, the board of directors of an irrigation district may at any time issue warrants of such district in payment of claims of indebtedness against the district, not to exceed the district's anticipated revenue.

The warrants herein authorized shall be in form and substance the same as county warrants or as near 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 indorse thereon the day of presentation for payment with the additional indorsement 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 he has sufficient funds in his hands for that purpose to advertise in some newspaper in the county in which the district is situated requiring the presentation to him for payment of as many of the outstanding warrants as he may be able to pay. 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 indorsement.

Provided, further, after an irrigation district has organized and has no warrants outstanding, the district may maintain its operation on a cash basis and pay by check the expenses of operation and maintenance, repair, improvement, obligations on contractual or bonded indebtedness, and all other general necessary expenses incurred by the district.

The board of directors, or other officers of the district, may incur debt by contracting indebtedness with a money-lending institution, subject to the election requirements contained in section [43-401](#), Idaho Code, or as

described in section [42-322A](#), Idaho Code, but the term of such indebtedness shall not exceed thirty (30) years.

[(43-322) 1903, p. 150, sec. 41; reen. R.C. & C.L., sec. 2392; C.S., sec. 4355; am. 1923, ch. 61, sec. 1, p. 69; am. 1925, ch. 134, sec. 1, p. 236; I.C.A., sec. 42-317; am. 1967, ch. 211, sec. 1, p. 641; am. 1976, ch. 251, sec. 2, p. 859; am. 1980, ch. 61, sec. 9, p. 122; am. 2015, ch. 107, sec. 1, p. 269.]

43-322A. POWER TO INCUR DEBTS -- MITIGATION PLANS AND RECHARGE PROJECTS -- JUDICIAL EXAMINATION. (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 or recharge project 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 or recharge project. The board shall submit the contract indebtedness in the proposed resolution to a vote of the qualified electors of the district as defined in section [43-111](#), 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 water rights equal not less than ten percent (10%), calculated on a per acre basis, of the aggregate 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 or recharge 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. 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 water rights of the district, calculated on a per acre basis, 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 subject to judicial examination as provided in subsection (2) of this section. 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.

(2) Prior to the incurring of indebtedness, 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 may be examined, approved and confirmed by the court. The petition shall state generally that the irrigation district was duly

organized and the first board of directors elected, that due and lawful proceedings were taken to authorize the incurrence of indebtedness by the issuance of bonds or otherwise for mitigation plans or recharge projects in an amount to be stated, and that said assessment, list and apportionment were duly made and a copy of said assessment, list and apportionment shall be attached to said petition. Whenever any district that is required to file a petition hereunder has or proposes to enter into a contract or contracts with one (1) or more districts or ground water district, the boards of such other districts or ground water districts may 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 associated with mitigation plans or recharge projects. 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 in accordance with the requirements of section [43-407](#), Idaho Code, 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.

(3) Any 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 court shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties.

[43-322A, added 2015, ch. 107, sec. 2, p. 270.]

43-323. PLACE OF USE. A change in the generally described place of use for a water right held by an irrigation district may be made without applying for a change under the provisions of section [42-222](#), Idaho Code, provided the

district files with the department of water resources a map portraying the changes to the generally described place of use within which the district's water rights shall be exercised. For this filing requirement, it shall be sufficient to provide a drawing on a seven-and-one-half-minute (7-1/2) quadrangle map having a scale of one to twenty-four thousand (1:24,000) which shows the changes to the outer limits of the boundaries of the irrigation district to include each quarter-quarter section within which irrigation occurs. This map showing changes to the generally described place of use shall be filed with the department no later than April 1 of the year following the changes. Notwithstanding the filing of such map, only the legal description of an irrigation district's boundaries recorded in compliance with [title 43](#), Idaho Code, shall constitute conclusive proof of the district's boundaries for purposes other than defining the generally described place of use for a water right held by the district.

[(43-323) 1903, p. 150, sec. 37; reen. R.C. & C.L., sec. 2393; C.S., sec. 4356; I.C.A., sec. 42-318; am. 1998, ch. 332, sec. 3, p. 1069; am. 2019, ch. 190, sec. 8, p. 602.]

43-324. STATEMENT OF FINANCIAL CONDITION. On or before the second Tuesday of February of each year the board of directors of each irrigation district organized under this title shall publish in at least one (1) issue of some newspaper published in the county or counties in which such district is situated, a full, true and correct statement of the financial condition of said district, at the end of the last preceding fiscal year, giving all liabilities and assets of the said district, in a form to be prescribed by the bureau of public accounts of the state of Idaho.

[(43-324) 1903, p. 150, sec. 57; reen. R.C. & C.L., sec. 2394; C.S., sec. 4357; am. 1927, ch. 115, sec. 1, p. 160; am. 1931, ch. 126, sec. 1, p. 222; I.C.A., sec. 42-319; am. 1941, ch. 170, sec. 1, p. 341; am. 1998, ch. 332, sec. 4, p. 1069.]

43-325. COUNTY COMMISSIONERS TO HAVE ACCESS TO BOOKS. Any board of directors of any such irrigation district, or the secretary thereof, shall at any time allow any member of the board of county commissioners, when acting under the order of such board, to have access to all books, records and vouchers of the district which are in possession or control of said board of directors or said secretary of said board.

[(43-325) 1903, p. 150, sec. 58; reen. R.C. & C.L., sec. 2395; C.S., sec. 4358; I.C.A., sec. 42-320.]

43-326. POWER TO MAINTAIN PARKS. The board of directors of any irrigation district shall have the power to maintain public parks and recreation grounds for the benefit of the people of the district and may set aside for this purpose, land belonging to the district, including land acquired by the district from sale for delinquent water assessments. The district shall have the power to purchase land, or to acquire land by lease, within the district for public parks and recreation ground. In the maintenance of said grounds, the board of directors may construct buildings and provide facilities for recreation purposes and may receive gifts and donations of either real or personal property for the purposes hereinbefore enumerated.

[(43-326) I.C.A., sec. 42-322, as added by 1935, ch. 11, sec. 1, p. 26; am. 1959, ch. 7, sec. 1, p. 21.]

43-327. DELINQUENT ASSESSMENTS -- SHUTTING OFF OF WATER. The board of directors of any irrigation district shall have the power to refuse to deliver water for the use on any lands upon which any assessments, tolls or charges levied, assessed or charged against said lands or the owner, lessee, occupant or contract purchaser thereof, under any section of this title, whether for irrigation or domestic water service, are unpaid for more than ninety (90) days after delinquency until such assessments, tolls or charges, together with any lawful penalties and additional charges are paid.

Provided, that, in irrigation districts having a contract with the United States under the provisions of this title, for the construction, or operation, or maintenance of a domestic water system or for the repayment to the United States of a loan for any such purpose, the board of directors of such district may, by resolution, from time to time, fix a date or dates after which any or all lawful tolls and/or charges of the district, including without limitation domestic water tolls and charges, and excepting only assessments provided for in this title against real property within the district, shall be deemed delinquent. Such district shall have the right, in addition to and supplemental to all other legal rights now in effect, or hereafter acquired for the collection of any such sums, to cease delivery of domestic and irrigation water to all lands in connection with which such tolls or charges have been incurred and, at the district's option, also to all other lands within the district belonging to the person or persons, firm, corporation or other legal entity incurring any such tolls or charges. Such delivery may be ceased at any time after the tenth day following the date any such sums become delinquent, and until all such sums together with any lawful penalties, additional charges and/or interest at the legal rate are paid.

[(43-327) I.C.A., sec. 42-323, as added by 1939, ch. 269, sec. 1, p. 668; am. 1959, ch. 14, sec. 1, p. 34; am. 1965, ch. 25, sec. 1, p. 38.]

43-328. PETITION TO CONSTRUCT IMPROVEMENTS FOR IRRIGATION -- ASSENT OF PETITIONERS TO ASSESSMENT OF COST OF IMPROVEMENT. The holders of title, or evidence of title, representing a majority of the acreage of any body of land within any irrigation district, may file with the board of directors of the district a petition in writing, praying for the construction of any improvement necessary or expedient for the efficient irrigation of the lands, including facilities for the recharge of ground water basins. The petition shall in a general way describe the proposed improvement and shall describe the tracts, or body of land, owned by the petitioners, and shall contain a description of the exterior boundaries of the land for which the proposed improvement is to be constructed, and describing therein any lands that are to be excepted from the benefit or use of the proposed improvement. The petition shall also contain an agreement on the part of the petitioners that the cost of construction of the improvement shall constitute a lien upon the lands within the exterior boundaries of the land described in the petition, except the lands that are therein excepted from the benefit or use of the proposed improvement, and that the lands shall be assessed for and pay the cost of the improvement. The petition shall be deemed to give assent of the petitioners to construction of the improvement and shall authorize the assessment of the cost of such improvement upon and against the lands described in the petition and not specifically therein excepted. The petition shall be

acknowledged in the same manner that conveyances of land are required to be acknowledged.

[43-328, as added by 1973, ch. 64, sec. 1, p. 105; am. 1985, ch. 120, sec. 3, p. 294.]

43-329. ELECTIONS TO DETERMINE QUESTION AS TO CONSTRUCTION OF IMPROVEMENT -- RESOLUTION OF DIRECTORS. (1) The board of directors, if they deem it for the best interest of the district that the proposed improvement be constructed, may by resolution call an election to be held within the boundaries of the land described in the petition for the purpose of submitting the question as to whether or not the proposed improvement shall be constructed. The board shall in the resolution fix the time and place of holding the election, and specify the polling place, and shall also appoint three (3) judges who shall constitute a board of election. The resolution shall also contain the ballot title to be used at the election, which title shall contain such information as in the judgment of the board will advise the owners of the land to be charged with the cost of the proposed improvement as to the general nature of the improvement and the estimated cost.

(2) The board at the time of calling the election within the land described in the petition shall also by resolution call an election to be held within the district at large for the purpose of submitting the question as to whether or not the proposed improvement shall be constructed. This resolution shall contain provisions identical with those provided for in subsection (1) of this section. The election in the district at large shall be held on the same day that the election within the territory described in the petition is held. The election shall be conducted, as nearly as practicable, in accordance with the general election laws of the state applicable to irrigation districts.

[43-329, as added by 1973, ch. 64, sec. 2, p. 105.]

43-330. MAJORITY OF VOTES AS DETERMINATIVE -- CONSTRUCTION OF IMPROVEMENT -- COST -- APPORTIONMENT -- ASSESSMENT. If a majority of the votes cast by the electors within the boundaries of the land described in the petition are "Improvement--Yes," and if a majority of the votes cast by the electors in the district at large are "Improvement--Yes," then, but not otherwise, the board shall construct the improvement. The cost of construction shall be apportioned by the board to the lands within the boundaries described in the petition, so that each acre of irrigable land therein shall be assessed and required to pay the same amount. In all other respects the assessment and its levy and collection shall be, as nearly as practicable, in accordance with the assessment, levy and collection of other assessments and taxes levied upon lands within the district.

[43-330, as added by 1973, ch. 64, sec. 3, p. 105.]

43-330A. CONTRACTS WITH LANDOWNERS FOR CONSTRUCTION OF IMPROVEMENTS. When a parcel of land lying within an irrigation district has been subdivided and the owner or owners of the entire parcel propose to develop that parcel or any of the tracts therein for residential, commercial, industrial or municipal use, the board of directors of the district may enter into a contract with the owner or owners of the entire parcel, or of any tract therein, for the construction of a pressurized system for the proper

distribution of irrigation water to the parcel or to the designated tracts within the parcel.

[43-330A, added 1993, ch. 261, sec. 1, p. 892; am. 1998, ch. 195, sec. 1, p. 706.]

43-330B. CONTRACT PROVISIONS. Any contract entered into under the authority of section [43-330A](#), Idaho Code, shall include the following provisions:

(1) An apportionment of the cost of the construction of the distribution system against the parcel or against the tract or tracts which are included in the contract;

(2) The cost of construction of the distribution system shall constitute a lien against the parcel, tract or tracts included in the contract, to secure payment of any portion of the cost of construction that is not paid upon completion of construction by the owner or owners, or by a third party on their behalf, and securing payment of interest on any deferred installments of the construction costs;

(3) A schedule of annual installment payments, with accrued interest, for the portion, if any, of the construction costs that are not paid upon completion of construction;

(4) The annual installment payment against the parcel or against the tract or tracts included in the contract shall be included in the annual assessments levied by the district against the parcel, tract or tracts and any such assessment and its levy and collection shall be, as nearly as practicable, in accordance with the assessment, levy and collection of other assessments levied upon lands in the district;

(5) The deferred annual installment payments of principal and accrued interest may be prepaid in whole or in part at any time without penalty, but any prepayment of principal shall not be less than [than] one-half (1/2) the amount of the annual installment payment of principal next coming due, but the prepayment privilege authorized in this subsection shall not be applicable where the construction costs have been financed through a local improvement district;

(6) If the district has constructed or proposes to construct a pumping station and pipeline to serve the parcel, tract or tracts included in the contract and other lands, the cost of the pumping station and pipeline shall be apportioned by the board to all lands which are planned to be served by the pumping station, so that each acre of irrigable land to be served by the pumping station shall be assessed and required to pay the same amount;

(7) A grant of an easement to the district for the installation, operation, maintenance, repair and replacement of the portion of the distribution system located on the parcel, tract or tracts included in the contract. The easement shall be of sufficient width to allow construction, installation, operation, maintenance, repair and replacement by the use of ordinary mechanized equipment designed to perform those functions.

[43-330B, added 1993, ch. 261, sec. 1, p. 892.]

43-330C. COMPLIANCE. If the contract provides for construction of any portion of the distribution system by the owner or owners, [chapter 9, title 43](#), Idaho Code, shall not be applicable to that portion of the construction. If any portion of the distribution system is to be constructed by the district, the district shall comply with the provisions of [chapter 9, title 43](#),

Idaho Code, insofar as applicable to the construction to be performed by the district or by a contractor under a separate contract with the district, unless the owner or owners furnish a written waiver of such compliance.

[43-330C, added 1993, ch. 261, sec. 1, p. 893.]

43-330D. CONTRACT TO BE RECORDED. Any contract entered into by an irrigation district under the authority of section [43-330A](#), Idaho Code, shall be recorded in the office of the county recorder of each county in which any portion of the land covered by the contract is located, and the owner or owners named in the contract shall remain personally liable, jointly and severally, for the cost of construction until the contract has been properly recorded.

[43-330D, added 1993, ch. 261, sec. 1, p. 893.]

43-330E. DISTRICT TO OWN DISTRIBUTION SYSTEM. Any pressurized distribution system constructed under the authority of section [43-330A](#), Idaho Code, shall be the property of, and shall be owned by, the district.

[43-330E, added 1993, ch. 261, sec. 1, p. 894.]

43-330F. OPERATION AND MAINTENANCE OF PRESSURIZED DISTRIBUTION SYSTEMS. Any pressurized distribution system constructed under the authority of section [43-330A](#), Idaho Code, shall be operated, maintained, repaired and replaced by the district, and the district may levy and collect an assessment against each tract of land served by the distribution system to defray the cost and expense of such operation, maintenance, repair or replacement. The board shall apportion to each tract of land included in the contract a portion of the cost of operation, maintenance, repair and replacement of the distribution system, on the same basis as the cost of construction of the distribution system is apportioned.

[43-330F, added 1993, ch. 261, sec. 1, p. 894.]

43-330G. DISTRIBUTION SYSTEMS FOR LAND IN MORE THAN ONE IRRIGATION DISTRICT -- JOINT CONTRACT -- DIVISION OF MANAGEMENT -- ASSESSMENTS. Where the interests of two (2) or more irrigation districts and the interests of the contracting landowners will be served thereby, lands in two (2) or more irrigation districts may be included in a contract entered into by the districts and the landowners under the authority of section [43-330A](#), Idaho Code, and the contract shall specify how the ownership, management, operation, maintenance, repair and replacement of the distribution system shall be divided between or among the districts, and shall provide that all assessments for construction costs and for costs of operation, maintenance, repair and replacement against any tract of land included in the contract shall be levied and collected by the district in which that tract is located.

[43-330G, added 1993, ch. 261, sec. 1, p. 894.]

43-331. DIRECTORS MAY CONSTRUCT OR MAINTAIN IMPROVEMENTS, LEVY ASSESSMENTS. (1) This section applies: (a) When a parcel of land lying within an irrigation district is subdivided and the owner has made no provisions which in the opinion of the board of directors is adequate for the proper distribution of water thereto; or (b) when improvements for the distribution or

delivery of water to any tract of land are not owned by the district and the owner or person in control of the improvement fails to maintain, repair or replace the improvement as required for the proper and efficient distribution or delivery of water to any tract; or (c) when fifty percent (50%) or more of the owners of the tracts in any such subdivided parcel request that the board provide for the proper distribution of water thereto or request that the board maintain, repair or replace the improvement as required for the proper and efficient distribution or delivery of water to any tract.

(2) Whenever the interest or convenience of such tracts requires the construction, repair or maintenance of any ditch, flume, dike, aqueduct or other improvement, the board may construct, repair or maintain such improvement, and levy and collect an assessment upon all tracts specially benefited thereby, to defray the whole or any portion of the cost and expense thereof. The board may determine what lands are specially benefited by such construction, repair or maintenance, and the amount to which each tract is benefited.

[43-331, as added by 1973, ch. 64, sec. 4, p. 105; am. 1978, ch. 251, sec. 1, p. 550; am. 1998, ch. 195, sec. 2, p. 706.]

43-332. APPORTIONMENT OF WATER TO TRACTS -- EMPLOYMENT OF PERSON TO DISTRIBUTE WATER -- ASSESSMENT OF COST -- LIEN ON LAND. Whenever a parcel of land lying within an irrigation district is subdivided and plats of such subdivision are filed as provided by law, and the owners fail to properly apportion the water to their various tracts in the subdivision, or upon request made by fifty percent (50%) or more of the owners of the tracts in the subdivision the board of directors may employ some competent person to distribute and apportion water for such tracts. The reasonable cost of such services shall be apportioned each year by the board to such tracts. The cost of such services shall be assessed by the board as a special charge to the tracts in the same manner as other assessments are made by the board. The assessment so levied and apportioned shall be a lien upon the tracts, and shall be collected in the same manner as all other assessments are levied and collected by the board.

[43-332, as added by 1973, ch. 64, sec. 5, p. 105; am. 1978, ch. 250, sec. 1, p. 549; am. 1998, ch. 195, sec. 3, p. 706.]

43-333. RESOLUTION FOR WATER DISTRIBUTION WORKS OR SERVICES -- HEARING OF OBJECTIONS -- CONSTRUCTION, REPAIR OR MAINTENANCE OF IMPROVEMENT -- APPORTIONMENT OF COSTS -- ASSESSMENT. (1) Whenever the board of directors shall deem it expedient or necessary to construct, repair or maintain ditches, flumes, dikes, aqueducts or other improvements as provided in section [43-331](#), Idaho Code, or to employ the services of some competent person to distribute and apportion water for any subdivision, as provided in section [43-332](#), Idaho Code, it shall declare such necessity by resolution.

(2) A resolution shall be posted in three (3) public places in the subdivision for five (5) days. Within ten (10) days from the date when the resolution is posted, the owner of any property within the tract may file with the secretary a written remonstrance against the proposed improvement or employment. The board hearing such remonstrances may, in its discretion, overrule any remonstrance and by a resolution order construction, repair or maintenance of the improvements. The board may either enter into a contract to complete the improvement or, in its discretion, complete the improvement under its own supervision. After the work on the improvement is completed

the board shall, by resolution, apportion the costs and shall declare an assessment upon each tract benefited, which assessments shall be final and conclusive.

[43-333, as added by 1973, ch. 64, sec. 6, p. 105.]

43-334. PROCEDURE FOR LEVY AND COLLECTION OF SPECIAL ASSESSMENT -- APPEAL. Whenever the board of directors levies a special assessment against the various tracts of land as provided in section [43-331](#) and section [43-332](#), Idaho Code, it shall be extended against the tracts of land in the same manner as other assessments are levied and extended upon the assessment rolls of the irrigation district or county. The assessments shall be collected in the same manner as other assessments are collected. An appeal may be taken from the action of the board to the district court of the county in which the land is situated. The appeal shall be taken, perfected and prosecuted in the same manner and within the same period of time as an appeal from the board of county commissioners.

[43-334, as added by 1973, ch. 64, sec. 7, p. 105.]

43-335. LEASING OF WATER RIGHTS BY IRRIGATION DISTRICT WITHIN THE DISTRICT BY DISTRICT'S WHERE LANDOWNER CAN RECEIVE WATER THROUGH THE DISTRICT'S IRRIGATION SYSTEM. Any irrigation district which has within its boundaries residential, commercial or industrial lands, or any combination of those lands, and which holds water rights for those lands, shall have the right to lease, to any municipality, municipal provider, public utility, domestic water users organization which furnishes water service to those lands, or to any other entity for the distribution of water to those lands for uses other than culinary purposes, those water rights which are held for any residential, commercial or industrial lands for which the owner has elected not to receive his proportionate share of the irrigation district's water through the irrigation system of the district; provided, however, that no water right under which water is delivered through a community ditch shall be leased without the written consent of the ditch users who do not elect not to receive water from the district. For purposes of this chapter, the terms "municipality" and ["municipal provider" shall be defined as provided in section [42-202B](#), Idaho Code; "culinary purposes" shall mean the use of water for direct human consumption, cooking, sanitary purposes, and other such uses. Nothing in this chapter shall be construed as amending or affecting the laws of Idaho pertaining to the control and regulation of public utilities, municipal providers or water corporations.

[43-335, added 1983, ch. 68, sec. 1, p. 151; am. 1997, ch. 401, sec. 1, p. 1277.]

43-336. NOTIFICATION OF LANDOWNERS REGARDING LEASE. Whenever the board of directors of an irrigation district resolves to lease all or any portion of any water right or water rights as authorized by section [43-335](#), Idaho Code, the district shall notify its landowners, by such method as the board shall order, that (1) the district intends to lease the water right or water rights identified by priority date, quantity and source in the notice, (2) owners of residential, commercial or industrial lands for which the district holds water rights may elect not to receive water from the district for their lands, and (3) consent of other ditch owners who will continue receiv-

ing water is required for leasing water rights delivered through community ditches.

[43-336, added 1983, ch. 68, sec. 2, p. 151.]

43-337. REQUIREMENTS OF ELECTION FOR LANDOWNERS. The election under section [43-335](#), Idaho Code, not to receive water shall be made in writing and shall state:

- (a) The name and address of the landowner;
- (b) The legal description of the land as to which the election is made;
- (c) The date of the notification from the district pursuant to which the election is made;
- (d) That the owner elects not to receive water from the irrigation system of the district under the water right held for the land described in the notification of election;
- (e) That this landowner's election not to receive water from the district shall remain in effect so long as the lease under section [43-335](#), Idaho Code, has not been terminated.

The written notification of election shall be signed by the landowner and shall be delivered to the district at its office. Signature by each surviving spouse shall be required for a valid election as to land which is community property.

[43-337, added 1983, ch. 68, sec. 3, p. 152; am. 1997, ch. 401, sec. 2, p. 1277.]

43-338. LEASING OF WATER RIGHTS INSIDE THE DISTRICT BY AN IRRIGATION DISTRICT WHERE THE LANDOWNER CANNOT RECEIVE WATER THROUGH THE IRRIGATION SYSTEM. An irrigation district shall have the right to lease, to any municipality, municipal provider, public utility or domestic water users organization which furnishes water service to lands lying within the district, or to any other entity providing water service for uses other than culinary purposes those water rights which the landowner does not receive through the irrigation system of the district because the landowner has no ditch, pipeline or other transmission facility for carrying water from the district's system to his land.

[43-338, added 1983, ch. 68, sec. 4, p. 152; am. 1997, ch. 401, sec. 3, p. 1278.]

43-339. NO LEVY AGAINST LANDS WHERE WATER RIGHTS ARE LEASED. After the effective date of a lease by which a water right or any portion thereof is leased by an irrigation district under the authority granted by section [43-335](#) or [43-338](#), Idaho Code, the district shall not levy tolls or assessments for any purpose against the lands for which that water right is held by the district, so long as the lease remains in effect, and any toll or assessment levied in violation of this section shall be void and of no effect whatsoever.

[43-339, added 1983, ch. 68, sec. 5, p. 152.]

43-340. USE OF MONEYS RECEIVED FOR LEASED WATER RIGHTS. All payments of rent received by an irrigation district under a lease of water rights authorized by section [43-335](#) or [43-338](#), Idaho Code, shall belong to the district,

and it shall not be obligated to reimburse electing landowners for any such rental payments, and such payments shall be deemed to have been received by the district in lieu of tolls or assessments which otherwise would have been levied against the lands for which landowners have elected not to receive water or against the lands to which water cannot be delivered.

[43-340, added 1983, ch. 68, sec. 6, p. 153.]

43-341. EFFECT ON WATER RIGHTS BY LEASING. Use of water under a lease authorized by this act shall not constitute abandonment, or be grounds for forfeiture, of the water right, and shall not be deemed a change in the place of use or in the nature of the use of the water. Any change in the point or points of diversion of water shall require approval of the director of the department of water resources as provided in section [42-222](#), Idaho Code, but the director shall not be required to determine whether a water right has been abandoned or forfeited, in whole or in part, before approving any change in the point of diversion.

[43-341, added 1983, ch. 68, sec. 7, p. 153.]

43-342. LANDOWNER MAY NOT RECEIVE WATER FROM THE DISTRICT AFTER AGREEING TO LEASE WATER RIGHTS. After the effective date of any lease by an irrigation district under the authority granted by section [43-335](#), Idaho Code, no landowner who has elected not to receive water from the district and who owns land from which the water right has been leased and who has actual knowledge of the lease, shall use water from the community ditch, if any, by which water is carried from the district's system to his land. Any landowner violating this section shall be liable for all costs reasonably incurred by the district in enforcing the provisions of this section.

[43-342, added 1983, ch. 68, sec. 8, p. 153.]

43-343. AUTHORITY TO CONSTRUCT AND OPERATE GROUND WATER RECHARGE PROJECT. Any irrigation district heretofore or hereafter organized under the laws of this state, having received and affirmatively acted upon a petition to construct a ground water recharge improvement project in the manner provided by sections [43-328](#), [43-329](#) and [43-330](#), Idaho Code, is authorized by section [42-234](#), Idaho Code, to file an application with the department of water resources to appropriate the unappropriated waters of the state for the purpose of recharging ground water basins within the district to aid in the efficient irrigation of district lands. Upon approval of the application for permit by the director of the department of water resources, the district shall proceed in the manner provided by the irrigation district laws of the state to construct and operate the 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 of the department of water resources pursuant to sections [42-203A](#) and [42-234](#), Idaho Code.

[43-343, added 1985, ch. 120, sec. 4, p. 295; am. 2009, ch. 242, sec. 5, p. 744.]