

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 13
LATERAL DITCH WATER USERS' ASSOCIATIONS

42-1301. ORGANIZATION -- OFFICERS -- RULES. When three (3) or more parties each own or possess and control land with appurtenant water rights which each are entitled to receive from the same point or points of delivery in a canal or reservoir, or from the same point or points of diversion from waters of the state, to be conveyed to their respective premises for any distance through the same lateral or distributing ditch or laterals or distributing ditches that are not operated and maintained by an irrigation district, canal company or other water delivery organization, such parties shall be members of and shall constitute a water users' association known as "Lateral Water Users' Association." Such water users' association may meet and organize at any time after thirty (30) days after this chapter shall take effect, and shall meet annually thereafter between January 1 and the last Monday in March of each year, at the call of the secretary of such association, said secretary to give ten (10) days' notice by mail of such annual meeting; provided that if for any reason the secretary should fail to call a meeting, then the annual meeting of such association shall be held on the last Monday in March of each year. At such annual meetings each water user shall be entitled to one (1) vote in person, for each inch and a fractional vote for each fraction of an inch of water which such water user is entitled to receive from such laterals, and a corporation shall vote by one (1) of its officers designated by it. Such association shall organize by the election of a chairman, vice-chairman and a secretary-treasurer, which officers shall also constitute the board of directors of such association, and shall hold office for one (1) year and until their successors are elected. Such association at the annual meeting shall also elect a manager of said lateral or laterals to be known as "lateral manager" for the succeeding season and shall fix the compensation of said manager, and of all officers. Such association may adopt such rules and regulations for the management of said lateral or laterals or distributing ditch or ditches and the delivery of water therefrom as they deem best, and may, by majority vote, if it be deemed for the best interests of the association, combine one (1) or more laterals and abandon laterals not in use, and do any and all things not in conflict with the provisions of this chapter or the laws of this state wherein the best interests of the association will be furthered.

[(42-1301) 1927, ch. 213, sec. 1, p. 295; I.C.A., sec. 41-1201; am. 1941, ch. 99, sec. 1, p. 178; am. 1947, ch. 172, sec. 1, p. 429; am. 2015, ch. 80, sec. 1, p. 202.]

42-1302. LATERAL MANAGER -- ELECTION -- DUTIES. Should any water users' association at its annual meeting fail to elect a lateral manager or fix his compensation such lateral manager may be elected by the board of directors of such association, who may also fix his compensation. The manager of any lateral shall, in addition to the duties prescribed by the association, perform all duties fixed for such lateral manager under the provisions of sections 42-907 and 42-910, [Idaho Code,] except as modified by this chapter.

[(42-1302) 1927, ch. 213, sec. 2, p. 295; I.C.A., sec. 41-1202.]

42-1303. LATERAL DITCHES -- REPAIRS, IMPROVEMENTS, AND MAINTENANCE -- ASSESSMENT OF COSTS. The operation, improvement, repair and maintenance of any such lateral or distributing ditch shall be under the direction of the directors of the association. Following the association's annual meeting, the association's directors and the lateral manager shall examine the lateral or laterals or distributing ditch or ditches, and prepare an estimate of the total cost to operate, repair, improve and maintain the lateral or laterals or ditch or ditches to properly deliver water to the water users' lands during the succeeding season, including the compensation of officers and lateral manager. Such total cost shall be assessed to each water user either (1) in the proportion which the quantity of water the water user is entitled to receive from such lateral or ditch bears to the total quantity of water which all association water users are entitled to receive therefrom, or (2) if the water user's land consists of a lot or lots within a city or village, then the assessment may be made upon the basis of each lot, the same to be uniform upon lots of the same size.

[(42-1303) 1927, ch. 213, sec. 3, p. 295; I.C.A., sec. 41-1203; am. 2015, ch. 80, sec. 2, p. 202.]

42-1304. ASSESSMENTS -- NOTICE -- PENALTIES FOR DELINQUENCY. On or before the fifteenth day of April in each year the secretary of the association shall notify each water user of the amount assessed against him for that year as herein authorized, and the same shall be due and payable on the first day of May of each year and if not so paid on or before the fifteenth day of June of such year, a penalty of ten per cent (10%) shall be added thereto, and the total amount due shall then draw interest at the rate of ten per cent (10%) per annum from said fifteenth day of June of such year until paid.

[(42-1304) 1927, ch. 213, sec. 4, p. 295; I.C.A., sec. 41-1204; am. 1977, ch. 247, sec. 1, p. 724.]

42-1305. DELINQUENT USERS NOT ENTITLED TO WATER. No water user shall be entitled to demand or receive water from said lateral whenever any such assessment is due and unpaid, and the lateral manager shall not distribute any water to such water user while delinquent in such payment except upon order of the board of directors of the association who shall have authority to cause such water to be delivered: provided, the water user shall give such security for the payment of such assessment against him as shall be required by the board of directors.

[(42-1305) 1927, ch. 213, sec. 5, p. 295; I.C.A., sec. 41-1205.]

42-1306. COLLECTION AND DISBURSEMENT OF FUNDS. The lateral manager shall collect all assessments so made and pay the same to the secretary-treasurer taking his receipt therefor. The secretary-treasurer of this association shall keep the funds of the association in the name of the association and shall draw warrants or checks thereon to pay the costs and expenses of the management of said lateral as herein provided for upon the order of the board of directors, and shall perform such other duties as the association may prescribe.

[(42-1306) 1927, ch. 213, sec. 6, p. 295; I.C.A., sec. 41-1206.]

42-1307. ACTION FOR ASSESSMENT -- ATTORNEYS' FEES. In case any assessment, as herein provided for is due and unpaid the association may sue to collect the same, in the name of its secretary-treasurer as such, in any court

of competent jurisdiction, and in addition to the amount due including all penalties and interest, and all costs incurred in said action, may collect a reasonable attorney's fee in such action to be fixed by the court.

[(42-1307) 1927, ch. 213, sec. 7, p. 295; I.C.A., sec. 41-1207.]

42-1308. APPOINTMENT OF LATERAL MANAGER BY DIRECTOR OF DEPARTMENT OF WATER RESOURCES. (1) In the event that the water users or the board of directors of any lateral or ditch association do not meet and elect a lateral manager as provided for in this chapter or a lateral manager is not selected as otherwise provided by law, then, the director of the department of water resources may appoint and fix the compensation of a lateral manager, upon the written petition of a water user alleging that water is not being apportioned and distributed properly among the users from the ditch or lateral and that the rights of the water user are being injured thereby.

(2) If the water users also have failed to elect association officers, the lateral manager appointed by the director may exercise the duties of the association officers, including the making and collection of assessments, but not the borrowing of money, as is necessary to achieve the proper allocation and distribution of water from the ditch or lateral and without regard to the statutory dates for the performance of these duties.

(3) The lateral manager appointed by the director shall hold office only for the period of time fixed by the order of appointment and in no event beyond the remainder of the year in which appointed.

(4) If the lateral is located within a water district established pursuant to chapter 6, title 42, Idaho Code, the director shall advise the district watermaster of the receipt of the petition and invite the watermaster to make recommendations concerning the need for appointment of a lateral manager and the person to be appointed.

(5) Upon receipt of a petition filed pursuant to subsection (1) of this section, the director shall make a reasonable effort to provide written notice of the petition to any irrigation district, canal company, or other water distribution entity that supplies water to the lateral, and to all persons having rights to the use of water from the lateral. Except in the case of serious threat of imminent injury to person or property, the director shall allow fourteen (14) days for written response to the petition.

(6) Based upon a review of the petition, the responses thereto, the recommendations of the watermaster, if any, and any investigation by the department of water resources, the director shall issue an order with findings either appointing a lateral manager or declining to appoint a lateral manager. Any person aggrieved by the order of the director shall be entitled to request a hearing before the director pursuant to section 42-1701A, Idaho Code.

[42-1308, added 1999, ch. 217, sec. 1, p. 577.]

42-1309. ASSOCIATION AUTHORIZED TO BORROW MONEY, MORTGAGE OR PLEDGE ASSETS. Lateral ditch water users' associations are expressly authorized to borrow money from any private or governmental source, to be repaid over a period of years, and to levy assessments over such period of years for the purpose of repaying said loan, and they are also authorized and empowered to mortgage and/or pledge any of the assets of said associations as security for said loan; providing, however, that before any money can be borrowed or any mortgage or pledge can be made and entered into, all members of said association shall be notified of an election by two (2) weekly publications

in a legally authorized newspaper, as defined in section 60-106, Idaho Code, within the county in which the association is located, said notice to provide that an election is being called to determine whether or not the association shall be authorized to borrow money and mortgage and/or pledge its assets, and shall also state the date, time and place of said election, which shall be held within ten days after the date of the last publication of said notice.

If a majority of the total outstanding shares shall vote at said election in favor of borrowing said money and mortgaging and/or pledging said assets, then said association, through its president and secretary, shall be authorized to borrow said money and mortgage and/or pledge its assets.

[42-1309, as added by 1957, ch. 59, sec. 1, p. 101.]

42-1310. LATERAL DITCHES -- REPAIRS, IMPROVEMENTS AND MAINTENANCE BY IRRIGATION DELIVERY ENTITIES. In the event that a water users' association of lateral or laterals has not been constituted on a particular lateral or distributing ditch pursuant to this chapter, any individual water user taking water from a canal or reservoir to be conveyed to their respective premises for any distance through such lateral or distributing ditch may authorize the irrigation delivery entity providing water to the lateral or ditch to perform any necessary repairs, improvements, or maintenance to the lateral or ditch. The irrigation delivery entity may agree to perform such work only if it has duly adopted a bylaw authorizing such work to be done for its individual water users, or adopts a resolution authorizing the work. In performing such work, the irrigation delivery entity shall have the same rights and privileges to enter the land across which the right-of-way extends, for the purposes of cleaning, maintaining and repairing the lateral or ditch, and to perform such work, as does the individual water user authorizing the work. By performing such work, the irrigation delivery entity does not assume ownership of the lateral or ditch, or responsibility for or incur liability for any injury to person or property caused by an act or omission of the individual water user authorizing the work, or of any other person. When such work has been authorized, the irrigation entity shall assess the individual water user for the annual cost of any necessary repairs, improvements, or maintenance performed on the lateral or ditch, in addition to the assessments that are levied for the delivery of water to the individual water user, and the same provisions shall apply with regard to delinquent assessments as in the case of assessments levied for the delivery of water. Nothing in this section shall affect the authority of a water users' association of lateral or laterals from assessing its members for work authorized under this chapter.

[42-1310, added 2004, ch. 147, sec. 1, p. 477.]

42-1311. AMOUNT AND LIEN OF ASSESSMENTS. The amount assessed against each water user, together with any penalties and interest, shall be a lien upon the water user's land that is entitled to receive water from the point or points of delivery in the canal or reservoir, or from the point or points of diversion from waters of the state, that supplies the association's lateral or ditch. The lien shall be recorded and collected in accordance with subsections (2) through (5) of section 45-810, Idaho Code, governing homeowner's association liens, except that the lien may be continued in force for a period of time not to exceed three (3) years and may be extended not to exceed three (3) additional years. The lien provided for in this section shall

have priority according to its date of recordation, except as to other liens described in titles 42 and 43, Idaho Code.

[42-1311, added 2015, ch. 80, sec. 3, p. 203.]

42-1312. WITHDRAWAL FROM LATERAL WATER USERS' ASSOCIATION. A water user may withdraw from the association by providing written notice and proof that the water user's land is no longer entitled to receive water from the point or points of delivery in the canal or reservoir, or from the point or points of diversion from waters of the state, that supplies the association's lateral or ditch. Withdrawal shall not affect any lien recorded against the water user's land pursuant to section 42-1311, Idaho Code, prior to withdrawal.

[42-1312, added 2015, ch. 80, sec. 4, p. 203.]

42-1313. WATER USER DEFINED. As used in this chapter, "water user" means each person or entity that is a member of a lateral water users' association because they own or possess and control land that is entitled to receive water from the point or points of delivery in the canal or reservoir, or from the point or points of diversion from waters of the state, that supplies the association's lateral or ditch.

[42-1313, added 2015, ch. 80, sec. 5, p. 203.]