

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 20
RECLAMATION OF CAREY ACT LANDS

42-2001. ACCEPTANCE OF THE CAREY ACT. The state of Idaho accepts the conditions of section 4 of an act of congress, entitled "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1894, and for other purposes," approved August 18, 1894, and the acts amendatory thereof, together with all the grants of land to the state under the provisions of the aforesaid act and its amendments.

The selection, management and disposal of said land shall be vested in the department of water resources.

[(42-2001) 1895, p. 215, secs. 1, 2; reen. 1899, p. 282, ch. 2, secs. 1, 2; reen. R.C. & C.L., sec. 1613; am. 1919, ch. 8, sec. 44, p. 67; C.S., sec. 2996; I.C.A., sec. 41-1701.]

42-2002. DUTIES OF DEPARTMENT. The department of water resources shall receive and file all proposals for the construction of irrigation works to reclaim lands selected under the provisions of this chapter; keep for public inspection maps or plats, on a scale of two (2) inches to the mile, of all lands selected; receive entries of settlers on these lands, and hear or receive the final proof of their reclamation; and do any and all work required in carrying out the provisions of this chapter. It shall have authority to administer oaths whenever necessary in the performance of its duties.

[(42-2002) 1895, p. 215, ch. 2, sec. 5; reen. 1899, p. 282, ch. 2, sec. 5; modified 1905, p. 131, sec. 30; compiled and reen. R.C. & C.L., sec. 1614; C.S., sec. 2997; I.C.A., sec. 41-1702.]

42-2003. PROPOSALS TO CONSTRUCT IRRIGATION WORKS. Any person, company of persons, association or incorporated company, constructing, having constructed or desiring to construct, ditches, canals or other irrigation works to reclaim land under the provisions of this chapter, shall file with the department of water resources a request for the selection, on behalf of the state, by the department, of the land to be reclaimed designating said land by legal subdivisions.

This request shall be accompanied by a proposal to construct the ditch, canal or other irrigation works necessary for the complete reclamation of the land asked to be selected. The proposal shall be prepared in accordance with the rules of the department of water resources of Idaho as adopted by the director and with the regulations of the department of the interior; and shall be accompanied by the certificate of the director of the department of water resources that application for permit to appropriate water has been filed in its office, together with the department's report thereon. It shall state the source of water supply, the location and dimensions of the proposed works, the estimated cost thereof, the price and terms per acre at which perpetual water rights will be sold to settlers on the land to be reclaimed, said perpetual rights to embrace a proportionate interest in the canal or other irrigation works, together with all the rights and franchises attached thereto, and whether the applicants intend to apply for settlement of the lands under the provisions of section 42-2013A, Idaho Code.

In the case of incorporated companies it shall state the name of the company, the purpose of its incorporation, the names and places of residence of its directors and officers, the amount of its authorized and of its paid up capital. If the applicant is not an incorporated company, the proposal shall set forth the name or names of the party or parties, and such other facts as will enable the director to determine his or their financial ability to carry out the proposed undertaking.

[(42-2003) 1895, p. 215, ch. 2, sec. 6; reen. 1899, p. 282, ch. 2, sec. 6; reen. R.C. & C.L., sec. 1615; C.S., sec. 2998; I.C.A., sec. 41-1703; am. 1974, ch. 164, sec. 1, p. 1397.]

42-2004. CERTIFIED CHECK TO ACCOMPANY PROPOSAL. A certified check for a sum not less than \$250 nor more than \$2500, as may be determined by the rules of the department, shall accompany each request and proposal, the same to be held as a guaranty of the execution of the contract with the state, in accordance with its terms, by the party submitting such proposal, in case of the approval of the same and the selection of the land by the department, and to be forfeited to the state in case of failure of said parties to enter into a contract with the state in accordance with the provisions of this chapter.

[(42-2004) 1895, p. 215, ch. 2, sec. 7; reen. 1899, p. 282, ch. 2, sec. 7; reen. R.C. & C.L., sec. 1616; C.S., sec. 2999; I.C.A., sec. 41-1704.]

42-2005. APPLICATION FOR APPROPRIATION PERMIT TO BE FILED. The person, company of persons, association or incorporated company making application to the department of water resources for the selection of lands by the state, shall have filed with the department an application for a permit to appropriate water for the reclamation of the lands described in his request. This application for a permit shall be of a form prescribed by the department of water resources, and shall be accompanied by two (2) copies of a map of the land to be selected, and it shall show accurately the location and dimensions of the proposed irrigation works. The maps of the lands and proposed irrigation works shall be prepared in accordance with the regulations of the department of water resources of the state of Idaho and the rules of the department of the interior.

[(42-2005) 1895, p. 215, ch. 2, sec. 8; reen. 1899, p. 282, ch. 2, sec. 8; reen. R.C. & C.L., sec. 1617; C.S., sec. 3000; I.C.A., sec. 41-1705.]

42-2006. SUBMISSION OF PROPOSAL TO DEPARTMENT. Immediately upon the receipt of any request and proposal, as designated in section 42-2003, it shall be the duty of the department to examine the same and ascertain if it complies with its rules and the regulations of the department of the interior. If it does not, it is to be returned for correction; but, if it does so comply, the department shall examine the same and make a written report, stating whether or not the proposed works are feasible, whether the proposed diversion of the public waters of the state will prove beneficial to the public interest; whether there is sufficient unappropriated water in the source of supply; and whether or not a permit to divert and appropriate water through the proposed works has been approved by the department; whether the capacity of the proposed works is adequate to reclaim the land described; whether or not the proposed cost of construction is reasonable; and whether or not the maps filed in its office comply with the requirements of said

department and the regulations of the department of the interior; also whether or not the lands proposed to be irrigated are desert in character and such as may properly be set apart under the provisions of the aforesaid act of congress and the rules and regulations of the department of the interior thereunder.

[(42-2006) 1895, p. 215, ch. 2, sec. 9; reen. 1899, p. 282, ch. 2, sec. 9; modified 1905, p. 131, sec. 30; compiled and reen. R.C. & C.L., sec. 1618; C.S., sec. 3001; I.C.A., sec. 41-1706.]

42-2007. ACTION BY THE DEPARTMENT ON PROPOSAL FOR SEGREGATION. It shall be the duty of the department to satisfy itself as to the financial ability of the applicant to do the things which will be required to be done in the event the application is approved.

In case of approval, the department shall file in the local land office a request for the withdrawal of the land described in said proposal.

No request on which the department of water resources has reported adversely, either as to the water supply, the feasibility of the construction, the cost or capacity of the works or as to the character of the lands sought to be irrigated, shall be approved by the department.

[(42-2007) 1895, p. 215, ch. 2, sec. 10; reen. 1899, p. 282, ch. 2, sec. 10; modified 1905, p. 131, sec. 30; compiled and reen. R.C., sec. 1619; am. 1917, ch. 104, sec. 1, p. 379; reen. C.L., sec. 1619; C.S., sec. 3002; I.C.A., sec. 41-1707.]

42-2008. ADVERSE REPORT BY DEPARTMENT. In case the department of water resources shall report adversely upon the proposed irrigation works, or where requests and proposals are not approved by the department, the said department shall notify the parties making such proposal of such action and the reasons therefor. The parties so notified shall have sixty (60) days in which to submit a satisfactory proposal; but the department may, at its discretion, extend the time to six (6) months.

[(42-2008) 1895, p. 215, ch. 2, sec. 11; reen. 1899, p. 282, ch. 2, sec. 11; compiled and reen. R.C. & C.L., sec. 1620; C.S., sec. 3003; I.C.A., sec. 41-1708.]

42-2009. CONTRACT FOR CONSTRUCTION OF RECLAMATION WORKS. Upon the withdrawal of the land by the department of the interior, it shall be the duty of the department of water resources to enter into a contract with the parties submitting the proposal, which contract shall contain complete specifications of the location, dimensions, character and estimated cost of the proposed ditch, canal or other irrigation works, the amount of water per acre which said works will make available at the water user's headgate, the price and terms per acre at which such works and perpetual water rights shall be sold to settlers and the price and terms upon which the state is to dispose of the lands to settlers. This contract shall not be entered into on the part of the state until the withdrawal of the lands by the department of the interior and the filing of a satisfactory bond on the part of the proposed contractor, which bond shall be in a penal sum equal to five per cent (5%) of the estimated cost of the works, and shall be conditioned for the faithful performance of the provisions of the contract with the state.

Should it appear at any time, in the judgment of the department of water resources, that the water supply of the party or parties with which such contract had been made, is inadequate to properly and sufficiently irrigate

the lands so proposed in said contract to be irrigated, or that water rights have been sold to the full carrying capacity of the proposed ditch, canal or other irrigation works, or that water rights have been sold by said party or parties to the full amount or in excess of the actual appropriation of water made by said party or parties or to the full amount or in excess of the supply of water made actually available by said parties, then in that event the department of water resources shall have the right to enter an order forbidding said parties from making any further or additional sales of water rights or of shares of stock in any company representing or evidencing water rights, and after the entry of such order all further or additional sales of such water or water rights, shares of stock and contracts to sell the same made by said party or parties shall be null and void, and said department of water resources shall have the power to refuse to issue entryman's certificates thereon. This section shall apply to contracts heretofore made as well as contracts hereafter to be made by the department.

[(42-2009) 1895, p. 215, ch. 2, sec. 12; reen. 1899, p. 282, ch. 2, sec. 12; reen. R.C., sec. 1621; am. 1917, ch. 104, sec. 1, p. 379; reen. C.L., sec. 1621; am. 1919, ch. 70, secs. 1, 2, p. 247; C.S., sec. 3004; I.C.A., sec. 41-1709.]

42-2010. CONTRACT FOR CONSTRUCTION -- LIMITATIONS ON TERMS. No contract shall be made by the department which requires a greater time than five (5) years for the construction of the works, but such time may be extended by the department for a period not exceeding three (3) years. All contracts shall state that the work shall begin within six (6) months from date of contract; that at least one-tenth (1/10) of the construction work shall be completed within two (2) years from the date of said contract and that the construction shall be prosecuted diligently and continuously to completion. A failure to complete the works within the time required by the contract, or an extension thereof as herein provided, shall forfeit to the state all rights under the same.

This section shall apply to contracts heretofore made as well as to contracts hereafter to be made by the department.

[(42-2010) 1895, p. 215, ch. 2, sec. 13; reen. 1899, p. 282, ch. 2, sec. 13; reen. R.C., sec. 1622; am. 1911, ch. 35, secs. 1, 2, p. 75; reen. C.L., sec. 1622; C.S., sec. 3005; I.C.A., sec. 41-1710.]

42-2011. FORFEITURE OF CONTRACT FOR CONTRACTOR'S DEFAULT -- SALE OF PROJECT. Upon the failure of any parties having contracts with the state for the reclamation of lands segregated under the Carey Act to commence the construction of such ditches, canals or other irrigation works within the time specified by the contract or to perform all of the requirements of said contract within the time specified in said contract with the state to the satisfaction of the director of the department of water resources, it shall be the duty of the director to give such parties written notice of such failure, and if, after a period of sixty (60) days from the sending of such notice, they shall have failed to proceed with the work or to conform to the provisions of their contract with the state, the bond and contract of such parties and all works constructed thereunder shall be at once and thereby forfeited to the state.

It shall be the duty of the director at once so to declare and give notice once each week for a period of four (4) weeks in some newspaper of general circulation in the county in which the work is situated and in one (1)

newspaper at the state capital in like manner and for a like period of the forfeiture of said contract, and that upon a fixed day proposals will be received at the office of the department for the purchase of ditches, canals, other irrigation works, water rights and all other rights, privileges and benefits obtained under the provisions of the said contract and for the performance of the provisions of said contract with the state. The time for receiving said bids shall be at least sixty (60) days subsequent to the issuing of the last notice of forfeiture. Upon the request of any bidder the director shall specify in particular the needful things to be done in order to accomplish the substantial and satisfactory performance of said contract, and the director may require good and sufficient bond for such performance before confirming such sale. The money received by the department from the sale under the provisions of this section shall first be applied to the expenses incurred by the state in the forfeiture and disposal and to satisfying the bond, and the surplus, if any exists, shall be paid into the Carey Act trust fund created under section 42-2018, Idaho Code.

[(42-2011) 1895, p. 215, ch. 2, sec. 14; reen. 1899, p. 282, ch. 2, sec. 14; modified 1905, p. 131, sec. 30; compiled and reen. R.C., sec. 1623; am. 1917, ch. 104, p. 380; compiled and reen. C.L., sec. 1623; C.S., sec. 3006; I.C.A., sec. 41-1711; am. 1974, ch. 164, sec. 2, p. 1397; am. 2001, ch. 183, sec. 18, p. 628.]

42-2012. STATE NOT TO BE RESPONSIBLE FOR WORK. Nothing in this chapter shall be construed as authorizing the director to obligate the state to pay for any work constructed under any contract, or to hold the state in any way responsible to settlers for the failure of contractors to complete the work according to the terms of their contracts with the state.

[(42-2012) 1895, p. 215, ch. 2, sec. 15; reen. 1899, p. 282, ch. 2, sec. 15; reen. R.C. & C.L., sec. 1624; C.S., sec. 3007; I.C.A., sec. 41-1712; am. 1974, ch. 164, sec. 3, p. 1397.]

42-2013. ENTRY, SETTLEMENT, AND CULTIVATION OF LANDS -- PUBLICATION OF NOTICE OF OPENING -- PREFERENCE TO EX-SERVICE PERSONS. Immediately upon the withdrawal of any land for the state by the department of the interior, and the inauguration of work by the contractor, it shall be the duty of the director of the department of water resources, by publication once each week in some newspaper of the county in which said lands are situated, and one (1) newspaper at the state capital, for a period of four (4) weeks, to give notice that said land, or any part thereof as the director in his discretion may deem is for the best interests of the state, is open for settlement, the price for which said land will be sold to settlers by the state and the contract price at which settlers can purchase water rights or shares in such works provided, however, that in said notice two (2) dates of opening shall be stated, the first of which shall be at least thirty (30) days prior to the second. Said notice shall state that at the first opening only ex-service persons may participate in the entry and selection of land, and that on the day of opening all those present will be allowed to make a selection by lot, the method of drawing by lot to be determined by the director of the department of water resources; and that said notice shall state that due proof that they are ex-service persons, will be required of all applicants for the entry and selection of land at the first opening, and shall state what proof will be required.

For the purpose of any drawing and/or selection of land for entry under this section or section 42-2013A, Idaho Code, a husband and wife shall be allowed to join their entries and receive a total of three hundred twenty (320) acres in one drawing or selection. A spouse of an ex-service person, whether or not an ex-service person, shall be considered an ex-service person for the purpose of joining entries under the ex-service person preference granted in this act.

[(42-2013) 1899, p. 282, ch. 2, sec. 16; am. 1901, p. 191, sec. 6; reen. R.C. & C.L., sec. 1625; C.S., sec. 3008; am. 1921, ch. 156, sec. 1, p. 348; I.C.A., sec. 41-1713; am. 1974, ch. 164, sec. 4, p. 1397.]

42-2013A. PREFERENCE. Any other provision of this chapter notwithstanding, any person or group of persons proposing a project as provided in section 42-2003, Idaho Code, who intend to apply for settlement and entry of the lands for which the project is proposed, shall be given the right of first selection and entry before any lands in the project are opened by the director for settlement as provided in section 42-2013, Idaho Code. This section shall apply to any lands for which a project is proposed regardless of the number of acres proposed to be included.

[42-2013A, as added by 1974, ch. 164, sec. 5, p. 1397.]

42-2014. APPLICATION TO ENTER -- PREFERENCE TO EX-SERVICE PERSON -- "EX-SERVICE PERSON" DEFINED. Any citizen of the United States or any person having declared his intention to become a citizen of the United States may make application under oath, to the department of water resources, to enter any of said land in an amount not to exceed the maximum number of acres for which such person is permitted to apply by federal law for any one (1) person: provided, that ex-service persons as herein defined shall have a thirty (30) day preference right of entry upon any and all lands opened for entry by the state of Idaho under this act; and such application shall set forth that the person desiring to make such entry does so for the purpose of actual reclamation, cultivation and settlement in accordance with the act of congress and the laws of this state relating thereto, and that the applicant has never received the benefit of the provisions of this chapter to an amount greater than the maximum number of acres for which such person is permitted to apply by federal law, including the number of acres specified in the application under consideration.

Each application shall be accompanied by evidence of the applicant's ability to meet standards of personal financial responsibility or acceptable personal credit backing or membership in a group as provided in section 42-2003, Idaho Code, and said group shall establish composite financial responsibility and/or acceptable credit. Such standards shall be prescribed by the director by rule and regulation. Such application must be accompanied by a certified copy of a contract for a perpetual water right, made and entered into by the party making application with the person, company or association who has been authorized by the director to furnish water for the reclamation of said lands; and if said applicant has at any previous time entered lands under the provisions of this chapter he shall so state in his application, together with description, date of entry and location of said land. The director shall thereupon file in his office the application and papers relating thereto, and, if allowed, issue a certificate of location to the applicant. All applications for entry shall be accompanied by the payment of five dollars (\$5.00) per acre, which shall be paid as a partial

payment on the land if the application is allowed; and all certificates when issued shall be recorded in a book to be kept for the purpose. If the application is not allowed, the five dollars (\$5.00) per acre accompanying it shall be refunded to the applicant. The director shall dispose of all lands accepted by the state under the provisions of this chapter at a uniform price of ten dollars (\$10.00) per acre, half to be paid at the time of entry and the remainder at the time of making final proof by the settler: provided further, that the term ex-service person as used in this act is hereby defined to mean any person who was regularly enlisted, inducted or commissioned, and who served on active duty in any branch of the armed forces of the United States during any period of war recognized by the United States department of veterans affairs for the purpose of awarding federal veterans benefits as may be defined in title 38, U.S. code, chapter 1, section 101(11), and is a citizen of the United States and a bona fide resident of the state of Idaho preceding the date of such opening.

[(42-2014) 1895, p. 215, ch. 2, sec.17; reen. 1899, p. 282, ch. 2, sec. 17; reen. R.C. & C.L., sec. 1626; C.S., sec. 3009; am. 1921, ch. 156, sec. 2, p. 348; I.C.A., sec. 41-1714; am. 1945, ch. 167, sec. 1, p. 250; am. 1949, ch. 106, sec. 1, p. 195; am. 1969, ch. 469, sec.5, p. 1346; am. 1974, ch. 164, sec. 6, p. 1397; am. 1976, ch. 109, sec. 1, p. 433; am. 1977, ch. 41, sec. 1, p. 73; am. 1991, ch. 219, sec. 1, p. 523; am. 1992, ch. 53, sec. 3, p. 158.]

42-2015. STATE LAND OFFICIALS AND EMPLOYEES NOT TO ENTER LAND. It shall be unlawful for any state official or state employee or appointee of this state having anything to do, directly or indirectly, with the disposal of Carey Act or other public lands of this state, during his or her term of office, to enter, file upon, or make application to enter or file upon any Carey Act lands of this state.

[(42-2015) 1911, ch. 51, sec. 1, p. 117; reen. C.L., sec. 1626a; C.S., sec. 3010; I.C.A., sec. 41-1715.]

42-2016. DUTY OF DEPARTMENT. It shall be unlawful for the department of water resources, or for any public officer or agent of the state having immediate charge of the filing and entering and distribution of Carey Act lands, during his term of office, to issue to any of the persons indicated in the preceding section any certificate of entry or filing heretofore referred to in the preceding section.

[(42-2016) 1911, ch. 51, sec. 2, p. 117; reen. C.L., sec. 1626b; C.S., sec. 3011; I.C.A., sec. 41-1716.]

42-2017. PENALTY FOR VIOLATING PRECEDING SECTIONS. Any of said officers, employees, appointees or agents aforesaid who shall violate any of the provisions of the two (2) preceding sections shall be punished by a fine not to exceed \$1000, or by imprisonment in the penitentiary of the state of Idaho for a term not to exceed five (5) years.

[(42-2017) 1911, ch. 51, sec. 3, p. 117; reen. C.L., sec. 1626c; C.S., sec. 3012; I.C.A., sec. 41-1717.]

42-2018. CAREY ACT TRUST FUND -- CONTINUING APPROPRIATION. As provided in the act of congress all moneys received by the department of water resources from the sale of lands selected under the provisions of this chapter shall be deposited with the state treasurer, and such sums as may be neces-

sary shall be available for the payment of the expenses of the department of water resources incurred in carrying out the provisions of this chapter.

Such expenses shall be paid by the state controller in the manner provided by law, upon vouchers duly approved by the state board of examiners, for the work performed under the direction of the department of water resources; and any balance remaining over and above the expense necessary to carry out the provisions of this chapter shall constitute a trust fund in the hands of the state treasurer to be used only for the reclamation of other arid lands; provided, however, that any funds in the hands of the state treasurer in excess of fifty thousand dollars (\$50,000) may be loaned by the department of finance in the manner and form prescribed by the laws of this state for the loan of school funds; provided, also, that said department of finance shall have and is hereby granted power and authority to sell, transfer or assign said securities, or any part thereof, whenever said department of water resources shall determine that the Carey Act fund has use for, and needs, the money aforesaid in carrying out the purposes of the trust imposed upon the state by the laws of the state or United States. No sale, transfer or assignment, aforesaid, shall be made by said department of finance for less than the face value and accrued interest of said securities.

[(42-2018) 1895, p. 215, ch. 2, sec. 18; reen. 1899, p. 282, ch. 2, sec. 18; am. R.C., sec. 1627; am. 1911, ch. 219, sec. 1, p. 701; C.L., sec. 1627; C.S., sec. 3013; I.C.A., sec. 41-1718; am. 1969, ch. 466, sec. 6, p. 1326; am. 1994, ch. 180, sec. 84, p. 484.]

42-2019. PROOF OF RECLAMATION AND SETTLEMENT -- PATENT. Within one (1) year after any person, company, or persons, association or incorporated company authorized to construct irrigation works under the provisions of this chapter shall have notified the settlers under such works that they are prepared to furnish water for the full irrigation season under the terms of their contract with the state, which notice, however, must first have been served upon the director of the department of water resources, who must cause an investigation of said works to be made, which shall include a report thereon by an engineer of the department; the said settler shall cultivate and reclaim not less than one-sixteenth (1/16) part of the land filed upon, and within two (2) years after the said notice, the settler shall have actually irrigated and cultivated not less than one-eighth (1/8) of the land filed upon, and within three (3) years from the date of said notice, the settler, or if the settler be in the armed forces of the United States at such time, then any person designated by him, shall appear before the director of the department of water resources, a judge or clerk of any court of record within the state, and make final proof of reclamation, settlement and occupation, which proof shall embrace evidence that he is the owner of shares in the works which entitle him to a water right for his entire tract of land sufficient in volume for the complete irrigation and reclamation thereof; that he has been an actual settler thereon and has cultivated and irrigated not less than one-eighth (1/8) part of said tract; and such further proof, if any, as may be required by the regulations of the department of the interior and the department of water resources of the state of Idaho as promulgated by the director: provided, that any settler, after having made application for entry on such land, or acquired the entry by assignment before entering the service, enters the armed forces of the United States as defined as ex-service person in section 42-2014, Idaho Code, may deduct the actual time he was in such service from the time he would otherwise be required to be an

actual settler thereon, and provided further, that it shall not be necessary for such ex-service person to show proof of having actually cultivated or irrigated any portion of such land or placed any improvements thereon if such settler has been in actual service in the armed forces as herein defined for one (1) year, or more, or (who) has been honorably discharged from the service, after having made application for entry, or acquired the assignment thereof before entering the service.

All proof so received shall be submitted to the director of the department of water resources, and shall be accompanied by the final payment for said land, and, upon approval of the same by the director, the settler shall be entitled to his patent. If the land shall not be embraced in any patent theretofore issued to the state by the United States, the proofs shall be forwarded to the secretary of the interior, with the request that a patent to said lands be issued to the state.

When the works designed for the irrigation of lands under the provisions of this chapter shall be so far completed as to actually furnish an ample supply of water in a substantial ditch or canal to reclaim any particular tract or tracts of such lands, the state of Idaho shall, through the department of water resources, make proof of such fact and shall apply for a patent to such lands in the manner provided in the regulations of the department of the interior.

[(42-2019) 1895, p. 215, ch. 2, sec. 19; reen. 1899, p. 282, ch. 2, sec. 19; am. 1901, p. 191, sec. 7; am. 1905, p. 95, sec. 1; am. R.C., sec. 1628; am. 1911, ch. 201, sec. 1, p. 666; reen. C.L., sec. 1628; C.S., sec. 3014; I.C.A., sec. 41-1719; am. 1945, ch. 188, sec. 1, p. 294; am. 1974, ch. 164, sec. 7, p. 1397.]

42-2020. SETTLEMENT AFTER NOTICE OF AVAILABILITY OF WATER. Where land was unentered at the time that the person, company or corporation authorized to construct irrigation works under the provisions of this chapter gave notice to the settlers under such works that they were prepared to furnish water under the term of their contract with the state, then such settlers or any new entryman entering land after such notice shall have the same time in which to make cultivation, proof and reclamation as is provided in section 42-2019, that is to say, that the time shall start from the date of entry instead of from the date of the notice given.

[(42-2020) R.C., sec. 1628a, as added by 1913, ch. 125, sec. 1, p. 472; reen. C.L., sec. 1628a; C.S., sec. 3015; I.C.A., sec. 41-1720.]

42-2021. FINAL PROOF AFTER DEATH OF ENTRYMAN. In all cases where lands have been entered under the provisions of section 42-2014 where entryman or his assignee has died prior to making final proof of reclamation, settlement and occupation, proof of reclamation may be made by an executor, administrator, heir or devisee, and proof of settlement may be made by such person or persons, or by an agent thereof. Any such entry may be devised or shall descend as other real estate.

[(42-2021) 1911, ch. 14, sec. 1, p. 30; reen. C.L., sec. 1628b; C.S., sec. 3016; I.C.A., sec. 41-1721.]

42-2022. ISSUANCE OF PATENT. Upon the issuance of a patent to any lands by the United States to the state, notice shall be forwarded to the settler upon such land. It shall be the duty of the department of water resources to issue a patent to said lands from the state to the settler.

[(42-2022) 1895, p. 215, ch. 2, part of sec. 20; reen. 1899, p. 282, ch. 2, sec. 20; reen. R.C. & C.L., sec. 1629; C.S., sec. 3017; I.C.A., sec. 41-1722.]

42-2023. LANDS ELIMINATED FROM PROJECT -- REPAYMENT OF FEES, COMMISSIONS, AND PURCHASE MONEYS -- REPAYMENT UPON CANCELLATION OF ENTRY. In all cases where it shall, upon due proof being made, appear to the satisfaction of the director of the department of water resources that persons have made entry under what is commonly known as the Carey Act Laws of the state of Idaho, and have paid to the state of Idaho any fees, commissions or purchase moneys as required by the laws of the state of Idaho relating to Carey Act entries, which entries were, and the lands embraced in such entries have been, by order of the state board of land commissioners, the director of the department of water resources, or final decree of a court of competent jurisdiction, eliminated from the Carey Act project or segregation of which it was a part, and such order of elimination or judgment is based upon the ground that the water supply was deficient, and the entry is canceled or relinquished, the treasurer of the state of Idaho is authorized to repay to such persons or their legal representatives the fees, commissions and purchase moneys so paid by them, upon proper showing and presentation of such claim.

[(42-2023) 1921, ch. 52, sec. 1, p. 83; I.C.A., sec. 41-1723.]

42-2024. MANNER OF REPAYMENT. Such claim shall be paid from the funds herein appropriated by warrant drawn by the state controller upon the treasurer of the state upon allowance of a verified claim by the state board of examiners in the manner provided by law, but no claim shall be allowed except the approval of the director of the department of water resources be indorsed thereon.

[(42-2024) 1921, ch. 52, sec. 2, p. 83; I.C.A., sec. 41-1724; am. 1994, ch. 180, sec. 85, p. 484.]

42-2025. APPURTENANCY OF WATER RIGHTS. The water rights to all lands acquired under the provisions of this chapter shall attach to and become appurtenant to the land as soon as title passes from the United States to the state.

[(42-2025) 1895, p. 215, ch. 2, part of sec. 20; reen. 1899, p. 282, ch. 2, sec. 20; reen. R.C., sec. 1629; reen. C.L., sec. 1629a; C.S., sec. 3018; I.C.A., sec. 41-1725.]

42-2026. LIEN FOR PURCHASE PRICE OF WATER RIGHT. Any person, company or association, furnishing water for any tract of land, shall have a first and prior lien on said water right and land upon which said water is used, for all deferred payments for said water right; said lien to be in all respects prior to any and all other liens created or attempted to be created by the owner and possessor of said land; said lien to remain in full force and effect until the last deferred payment for the water right is fully paid and satisfied according to the terms of the contract under which said water right was acquired.

[(42-2026) 1895, p. 215, ch. 2, part of sec. 20; reen. 1899, p. 282, ch. 2, sec. 20; reen. R.C., sec. 1629; reen. C.L., sec. 1629c; C.S., sec. 3019; I.C.A., sec. 41-1726.]

42-2027. RECORD OF WATER CONTRACT. The contract for the water right upon which the aforesaid lien is founded shall be recorded in the office of the recorder of the county where said land is situate.

[(42-2027) 1895, p. 215, ch. 2, part of sec. 20; reen. 1899, p. 282, ch. 2, sec. 20; am. R.C., sec. 1629; reen. C.L., sec. 1629b; C.S., sec. 3020; I.C.A., sec. 41-1727.]

42-2028. FORECLOSURE OF LIEN. Upon default of any of the deferred payments secured by any lien under the provisions of this chapter, the person, company of persons, association or incorporated company, holding or owning said lien, may foreclose the same according to the terms and conditions of the contract granting and selling to the settler the water right.

[(42-2028) 1895, p. 215, ch. 2, part of sec. 20; reen. 1899, p. 282, ch. 2, sec. 20; reen. R.C., sec. 1629; reen. C.L., sec. 1629d; C.S., sec. 3021; I.C.A., sec. 41-1728.]

42-2029. FORECLOSURE SALE. All sales shall be advertised in a newspaper of general circulation, published in the county where said land and water right is situate, for three (3) consecutive weeks, and shall be sold to the highest bidder at the front door of the courthouse of the county, or such place as may be agreed upon by the terms of the aforesaid contract. And the sheriff of said county shall in all such cases give all notices of sale, and shall sell all such lands and water rights, and shall make and execute a certificate of sale to the purchaser thereof.

[(42-2029) 1895, p. 215, ch. 2, part of sec. 20; reen. 1899, p. 282, ch. 2, sec. 20; reen. R.C., sec. 1629; reen. C.L., sec. 1629f; C.S., sec. 3023; I.C.A., sec. 41-1730; am. 1974, ch. 164, sec. 8, p. 1397.]

42-2030. FORECLOSURE SALE -- LIMITATION ON BID OF LIENHOLDER. At such sale no person, company of persons, association or incorporated company, owning and holding any lien, shall bid in or purchase any land or water right at a greater price than the amount due on said deferred payment for said water right and land, and the costs incurred in making the sale of said land and water right.

[(42-2030) 1895, p. 215, ch. 2, part of sec. 20; reen. 1899, p. 282, ch. 2, sec. 20; reen. R.C., sec. 1629; reen. C.L., sec. 1629f; C.S., sec. 3023; I.C.A., sec. 41-1730.]

42-2031. RECORD OF CERTIFICATE OF SALE. Upon issuing any certificate of sale it shall be the duty of the sheriff to file for record in the office of the recorder of the county where such land is situated, a certified copy of such certificate of sale.

[(42-2031) 1895, p. 215, ch. 2, part of sec. 20; reen. 1899, p. 282, ch. 2, sec. 20; am. R.C., part of sec. 1629; reen. C.L., sec. 1629g; C.S., sec. 3024; I.C.A., sec. 41-1731.]

42-2032. DISPOSITION OF PROCEEDS OF SALE. Where such land and water rights are not purchased by the lienholder at such foreclosure sale, it shall be the duty of the sheriff to first pay the lienholder out of the proceeds of such sale, the amount of the lien, together with all interest, costs and fixed charges thereon, and to pay any balance remaining to the person against whom such lien has been foreclosed, and for his services in such cases the sheriff shall receive the same fees as are provided by the law in civil cases.

[(42-2032) 1895, p. 215, ch. 2, part of sec. 20; reen. 1899, p. 282, ch. 2, sec. 20; reen. R.C., sec. 1629; reen. C.L., sec. 1629h; C.S., sec. 3025; I.C.A., sec. 41-1732.]

42-2033. REDEMPTION BY OWNER. At any time within nine months after the foreclosure sale by the sheriff of the land and water rights aforesaid, the original owner against whom the lien has been foreclosed, may apply to the person, company of persons, association or incorporated company, purchasing at such sale, to redeem such land and water rights and the purchaser shall assign the certificate of sale of such land and water rights to such original owner, upon the payment by him within such nine months, of the amount of the lien for which the same was sold at such foreclosure sale, together with the interest, costs and fixed charges thereon. In case the original owner shall redeem the land and water rights sold as aforesaid, he shall file for record in the office of the recorder, the certificate of sale assigned to him by the purchaser as aforesaid, upon his redemption of such land and water rights.

[(42-2033) 1895, p. 215, ch. 2, part of sec. 20; reen. 1899, p. 282, ch. 2, sec. 20; am. R.C., sec. 1629; reen. C.L., sec. 1629i; C.S., sec. 3026; I.C.A., sec. 41-1733.]

42-2034. REDEMPTION PURCHASE BY PROSPECTIVE SETTLER. Where the lienholder becomes the purchaser at such foreclosure sale, if such land and water rights are not redeemed by the original owner within nine (9) months, then at any time within three (3) months after the expiration of such nine (9) months, any person desiring to settle upon and use such land and water rights, may apply to the purchaser at such foreclosure sale to redeem such land and water rights, and such purchaser shall assign the certificate of sale of such land and water rights to the person desiring to redeem the same, upon the payment by him, within such three (3) months, of the amount of the lien for which the same was sold at such foreclosure sale, together with the interest, costs and fixed charges thereon. In case the land and water rights shall be redeemed by any person other than the original owner, the sheriff shall, upon presentation of such certificate, issue a deed for such land and water rights to the person so redeeming the same.

[(42-2034) 1895, p. 215, ch. 2, part of sec. 20; reen. 1899, p. 282, ch. 2, sec. 20; reen. R.C., sec. 1629; reen. C.L., sec. 1629j; C.S., sec. 3027; I.C.A., sec. 41-1734.]

42-2035. SHERIFF'S DEED TO PURCHASER ON FORECLOSURE. If the land and water rights shall not be redeemed by any person within the times and in the manner hereinbefore provided, it shall be the duty of the sheriff, upon presentation of the certificate of sale by the original purchaser, to issue a deed to such purchaser.

[(42-2035) 1895, p. 215, ch. 2, part of sec. 20; reen. 1899, p. 282, ch. 2, sec. 20; reen. R.C., sec. 1629; reen. C.L., sec. 1629k; C.S., sec. 3028; I.C.A., sec. 41-1735.]

42-2036. RIGHTS OF WAY FOR CANALS. The maps in the office of the department of water resources of the lands selected under the provisions of this chapter shall show the location of the canals or other irrigation works approved in the contract with the department, and all lands filed upon shall be subject to the rights of way of such canals or irrigation works. Each right of way shall embrace the entire width of the canal and such additional width

as may be required for its proper operation and maintenance, the width of right of way to be specified in the contracts provided for in this chapter.

[(42-2036) 1895, p. 215, ch. 2, sec. 21; reen. 1899, p. 282, ch. 2, sec. 21; reen. R.C. & C.L., sec. 1630; C.S., sec. 3029; I.C.A., sec. 41-1736.]

42-2037. DEPARTMENT TO PRESCRIBE RULES -- REPORTS OF CONTRACTORS -- WAIVER OF RULES. The department of water resources shall provide suitable rules for the filing of proposals for constructing irrigation works, and for the entry of and payment for the land by settlers, and for the forfeiting of entry by settlers upon failure to comply with the provisions of this chapter. There shall be kept in the office of the department, for public inspection, copies of all maps, plats, contracts for the construction of irrigation works, and of the entries of lands by settlers.

The department shall require from each person, company of persons, association or incorporated company engaged in the construction of irrigation works, under the provisions of this chapter, an annual report, to be submitted to the department on or before November first of each year. This report shall show the number of water rights sold, the number of users of water under said irrigation works, the legal subdivisions of land for which water is to be furnished, the names of the officers of the company, the acreage of land which the said irrigation works are prepared to supply with water, and such other data as the department sees fit to require.

The rules required by this section may be waived in the case of irrigation works being constructed by a person, colony or association of persons to furnish water for land settled upon and being reclaimed by themselves.

[(42-2037) 1895, p. 215, ch. 2, sec. 22; reen. 1899, p. 282, ch. 2, sec. 22; reen. R.C. & C.L., sec. 1631; C.S., sec. 3030; I.C.A., sec. 41-1737.]

42-2038. FEES OF DEPARTMENT -- DUTIES OF EMPLOYEES. The director shall prescribe the duties of all its employees and shall collect the following fees:

(1) For filing an application requesting temporary withdrawal--each project application shall be accompanied by the guaranteed deposit required by section 42-2004, Idaho Code, and by a one hundred dollar (\$100) nonrefundable application fee.

(2) For filing an application for segregation of lands--each project application shall be accompanied by the guaranteed deposit required by section 42-2004, Idaho Code, unless the required guaranteed deposit has already been made with an application requesting temporary withdrawal, and by a nonrefundable application fee to be based upon an estimate by the director of the department's cost of reviewing the project feasibility reports including any necessary on-site inspections of the project. However, in no case shall the application fee be less than five hundred dollars (\$500) nor exceed ten dollars (\$10.00) per acre of land requested to be segregated.

(3) For filing detailed project plans and specifications and entering a contract to construct the project works--the detailed plans and specifications and the proposed contract for construction of works for the project shall be accompanied by a nonrefundable fee to be based upon an estimate by the director of the department's costs of reviewing the detailed plans and specifications and the proposed contract, and for inspection of project construction. However, in no case shall the fee be less than five hundred dol-

lars (\$500) nor exceed ten dollars (\$10.00) per acre of land segregated for the project.

(4) For filing applications to enter project lands--each application to enter project lands shall be accompanied by the payment on the land required by section 42-2014, Idaho Code, and by a one hundred dollar (\$100) nonrefundable application for entry fee.

(5) In administering the charges authorized in paragraphs (2) and (3) above, the director shall make every effort to group project studies and in every way take that action which will minimize the fees charged to the settlers. The money collected for fees shall be paid to the treasurer of the state and by him credited to the fund created by virtue of this chapter. No fee shall be required of any state agency proposing to construct a project under this act.

[(42-2038) 1895, p. 215, ch. 2, sec. 23; reen. 1899, p. 282, ch. 2, sec. 23; reen. R.C. & C.L., sec. 1632; C.S., sec. 3031; I.C.A., sec. 41-1738; am. 1974, ch. 164, sec. 9, p. 1397; am. 1981, ch. 314, sec. 1, p. 659.]

42-2039. RESTORATION OF LANDS AUTHORIZED. The legislature hereby recognizes and acknowledges the need to assure replacement of the grazing and wildlife land uses displaced by Carey Act developments. In order to facilitate such replacements, any settlers having contracts with the state for reclamation of lands segregated under the Carey Act shall include grazing and wildlife restoration work in total or in part to the maximum expenditure of five dollars (\$5.00) per acre for grazing restoration and one dollar (\$1.00) per acre for wildlife restoration as a legitimate and necessary cost of the reclamation effort. The settlers are hereby authorized to subcontract with the bureau of land management, or any party designated by the bureau, for the purpose of accomplishing this restoration work. Payment by the Carey Act settlers for the restoration work shall be at the time the settler is granted patent to the lands developed. The director of the department of water resources is hereby authorized and directed to accept restoration expenditures as bona fide land development costs of the company up to an amount not to exceed five dollars (\$5.00) per acre for grazing restoration and one dollar (\$1.00) per acre for wildlife restoration.

In the event that no suitable lands are available for restoration as grazing lands as provided herein, the director is authorized to so certify, and the payment in lieu of restoration shall be made directly to the person with previous grazing rights to the land under Carey Act development.

In those instances where a Carey Act project application is filed for land on which any livestock watering improvements, established trail rights, or recent successful reseedings of less than five (5) years usage are in place and functional at the time of the filing, then these watering improvements, trail rights or reseedings shall be replaced in kind notwithstanding costs in excess of the limitation of five dollars (\$5.00) imposed herein. The director of the department of water resources shall be responsible for the negotiation and determination of the values in excess of five dollars (\$5.00) per acre which are involved in qualifying water improvements, trail rights or recent reseedings and to whom the payments for excess values shall be made.

[42-2039, as added by 1975, ch. 61, sec. 1, p. 127; am. 1976, ch. 109, sec. 2, p. 434.]

42-2040. SUITS BY DEPARTMENT. All suits or actions under the provisions of this chapter, shall be brought by the director of the department of water resources.

[(42-2040) 1895, p. 215, ch. 2, sec. 25; reen. 1899, p. 282, ch. 2, sec. 25; reen. R.C. & C.L., sec. 1634; C.S., sec. 3033; I.C.A., sec. 41-1740; am. 1974, ch. 164, sec. 11, p. 1397.]

42-2041. INDIAN HILLS PROJECT -- LEGISLATIVE FINDING. The legislature finds and declares that the development and settlement of arid lands under the Carey Act as provided in chapter 20, title 42, Idaho Code, and development of Carey Act projects by the Idaho water resource board are in the public interest.

[42-2041, added 1976, ch. 306, sec. 1, p. 1049.]

42-2042. AUTHORIZATION -- FINANCING. Pursuant to section 42-1756, Idaho Code, the Idaho water resource board is authorized to plan, finance, construct, acquire, operate, own, maintain, and be the project sponsor and developer of a water resource development project as provided in the provisions of the Carey Act and to use the water resource board revolving development fund and revenues or other additions thereto from any source, including, but not limited to, proceeds from loans secured by project revenues, to finance or guarantee the funding of said project. Said project is known as the Indian Hills project, which is located in Owyhee county approximately two (2) miles southwest of Hammett, Idaho. The Idaho water resource board is authorized by this act to proceed with the project on the basis identified and approved by the Idaho water resource board in the proposal submitted, pursuant to section 42-1734(11), Idaho Code, to the governor of Idaho on November 25, 1974; and the Idaho water resource board is further authorized to proceed in accordance with and exercise the authority for issuance of revenue bonds as provided in section 42-1734(17), Idaho Code. The Idaho water resource board is further authorized to own, sell, convey, mortgage, pledge or incumber the lands for said project and do all things necessary for the construction and completion of said project including the acquisition of all necessary real and personal property in connection therewith, together with all necessary pumping and water distribution works and facilities at the site of such water project and all other necessary and related structures and equipment, and, in addition to the powers conferred elsewhere on the Idaho water resource board, to issue and sell revenue bonds under the provisions of sections 42-1739 through 42-1749, Idaho Code, pledging thereto the revenues which the board shall derive from such water project, and such other revenues as may come into the water resource board revolving development fund from any source whatsoever, including, but not limited to, any tax funds pledged or dedicated to the water resource board revolving development fund, in order to pay the costs of planning, financing, acquiring, construction, operation and maintenance of such water project. The water resource board is further authorized to charge and collect such fees and assessments necessary for payment and reimbursement for all the costs of said project and the water resource board shall have a first and prior lien upon all lands of the project and water rights now appurtenant or to become appurtenant to said lands and water distribution facilities; said lien shall be in all respects prior to any and all other liens no matter how created or attempted to be created by the owner or possessor of the project lands or by law, and shall remain in full

force and effect until the last deferred payment for water rights and project facilities is fully paid and satisfied according to the terms of the contract under which water is acquired for said project by persons making entry upon said lands.

[42-2042, added 1976, ch. 306, sec. 2, p. 1049; am. 2006, ch. 126, sec. 2, p. 364.]

42-2043. SOURCE OF LANDS. If the lands in the project area become available to the state of Idaho by direct grant from the United States, other than through provisions of the Carey Act, the Idaho water resource board is authorized to proceed, as set forth in this act, as though the project were under the provisions of the Carey Act.

[42-2043, added 1976, ch. 306, sec. 3, p. 1050.]

42-2044. EXEMPTION FROM APPROPRIATION RESTRICTIONS. The development of the water project authorized in this act is hereby declared to be exempt from the provision expressed in the last sentence of Section 1 of Chapter 470, Idaho Laws of 1969.

[42-2044, added 1976, ch. 306, sec. 4, p. 1050.]