

TITLE 42  
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 22  
OPERATING COMPANIES -- LIEN FOR MAINTENANCE CHARGES

42-2201. MAINTENANCE CHARGES -- RIGHT TO COLLECT -- BASIS OF ASSESSMENT -- LIEN. Any corporation heretofore organized or any corporation that shall hereafter be organized for the operation, control or management of an irrigation project or canal system, or for the purpose of furnishing water to its shareholders, and not for profit or hire, the control of which is actually vested in those entitled to the use of the water from such irrigation works for the irrigation of the lands to which the water from such irrigation works is appurtenant, shall have the right to levy and collect from the holders or owners of all land to which the water and water rights belonging to or diverted by said irrigation works are dedicated or appurtenant regardless of whether water is used by such owner or holder, or on or for his land; and also from the holders or owners of all other land who have contracted with such company, corporation or association of persons to furnish water on such lands, regardless of whether such water is used or not from said irrigation works, reasonable administrative charges, tolls, assessments and charges for the purpose of maintaining and operating such irrigation works and conducting the business of such company, corporation or association and meeting the obligations thereof, which tolls, assessments and charges shall, after projecting the revenue to be derived from an administrative charge of not to exceed fifty dollars (\$50.00) to be levied against each holder of a stock certificate of the company:

(1) Be equally and ratably levied and may be based upon the number of shares or water rights held or owned by the owner of such land as appurtenant thereto; or

(2) May be based upon the amount of water used or said tolls, assessments and charges may be based on:

(a) A combination of a charge of a fixed amount per share for annual operation and maintenance and a charge for a fixed minimum amount of water per share, whether used or not, plus an additional charge based on the estimated amount of water to be delivered over the minimum, as requested by the farmer, including the energy costs of said excess delivery; or

(b) A combination of a charge for energy costs, based on the amount of water delivered, and a separate charge for all other operation and maintenance costs, based on the number of shares or water rights; or

(3) May be based upon any other method of assessment fairly allocating the costs of operating and maintaining the irrigation works which has been approved by the affirmative vote of at least two-thirds (2/3) of the shares entitled to vote at any annual, regular or special meeting of the shareholders at which the question of approving the method of assessment is brought properly before the meeting.

Such company, corporation or association of persons shall have a first and prior lien, except as to the lien of taxes, upon the land to which such water and water rights are appurtenant, or upon which it is used, said lien to be perfected, maintained and foreclosed in the manner set forth in this chapter: provided, that any right to levy and collect tolls, administrative charges, assessments and charges by any person, company of persons, associ-

ation or corporation, or the right to a lien for the same, which does or may hereafter otherwise exist, is not impaired by this chapter.

[(42-2201) added 1913, ch. 120, sec. 1, p. 464; reen. C.L. 129:2; am. 1919, ch. 115, sec. 1, p. 401; C.S., sec. 3040; am. 1925, ch. 107, sec. 2, p. 153; I.C.A., sec. 41-1901; am. 1980, ch. 196, sec. 1, p. 432; am. 1993, ch. 108, sec. 1, p. 276; am. 2016, ch. 132, sec. 1, p. 396.]

42-2201A. AUTHORIZATION FOR OTHER ASSESSMENT. The board of directors of a corporation which utilizes section 42-2201, Idaho Code, as the basis of their water stock assessments, after direction by a resolution of a majority of the stockholders at the annual meeting, may:

(1) Make no assessment, or a lesser assessment against:

(a) Shares of corporate stock representing water appurtenant to acres contracted in a federal cropland set-aside program;

(b) Shares of stock appurtenant to parcels of five (5) acres or less where the stockholder maintains his principal residence and where water cannot be delivered through no fault of the irrigation entity or the stockholder; or

(c) Accept an assignment of up to five (5) shares of the corporation's stock appurtenant to parcels of five (5) acres or less where the stockholder maintains his principal residence and where water cannot be delivered through no fault of the irrigation entity or the stockholder, provided the stockholder will assign ownership of the shares to the corporation together with a title insurance policy or an executed indemnification protecting the corporation from outstanding liens.

(2) To assess and collect for extra water diverted over and above the amount originally estimated and paid for pursuant to the corporation's assessment pursuant to section 42-2201, Idaho Code, which extra water was diverted during the irrigation season, by mailing a supplemental assessment at the end of the irrigation season to collect for extra water diverted which was in excess of preseason estimates, to refund as necessary or credit against future assessments if the final charge is less than the amount previously paid. The board of directors collects or pays interest on overages and underages as appropriate from the due date of the supplemental assessment. Interest on said overages and underages shall not exceed twelve percent (12%) per annum.

[42-2201A, added 1993, ch. 108, sec. 2, p. 277.]

42-2202. STATEMENT TO BE FILED WITH COUNTY RECORDER. Any company, corporation or association claiming the benefits of this chapter shall, on or before the first day of April of each year, file for record with the county recorder of the county or counties in which the land lies to be affected, a statement in writing containing the name of such company, corporation or association, the general or common name of such canal system and irrigation works, or a general description of the same sufficient for identification, the amount of such charge for such year, and the date or dates when payable.

[(42-2202) 1913, ch. 120, sec. 2, p. 465; reen. C.L. 129:3; C.S., sec. 3041; I.C.A., sec. 41-1902.]

42-2203. FILING OF CLAIM OF LIEN. On or after the first day of November and prior to the first day of January thereafter, the company, corporation or association, claiming the benefit of the lien herein provided, as against any parcel of land upon which the tolls, assessments and charges shall not

have been paid, shall file for record with the county recorder for the county in which such land is situated, a statement containing the name of such company, corporation or association, the general or common name of the canal systems or irrigation works, or a general description of the same sufficient for identification, a statement of the lien claimant's demand, after deducting all just credits and offsets, a description of the particular tracts or parcels of land to be charged with the lien sufficient for identification, with the name of the owner, or reputed owner, if known, of each particular tract or parcel, which claim must be verified by the oath of the claimant or its attorney or agent, to the effect that affiant believes the same to be just: provided, that the claim or claims for liens against all land upon which the same is claimed for one year, may be made in one or more instruments, regardless of the number of owners, reputed owners or proprietors.

[(42-2203) 1913, ch. 120, sec. 3, p. 465; reen. C.L. 129:4; C.S., sec. 3042; I.C.A., sec. 41-1903.]

42-2204. DUTIES OF COUNTY RECORDER. The county recorder must record the statements mentioned in this chapter in a book kept by him for that purpose, and such record must be indexed, as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds or other instruments.

[(42-2204) 1913, ch. 120, sec. 4, p. 466; reen. C.L. 129:5; C.S., sec. 3043; I.C.A., sec. 41-1904.]

42-2205. LIMITATION OF LIEN. No lien provided for in this chapter binds any land for a longer period than three (3) years after the filing of the statement mentioned in section 42-2203, Idaho Code, unless proceedings be commenced in a proper court within that time to enforce such lien.

[(42-2205) 1913, ch. 120, sec. 5, p. 466; reen. C.L. 129:6; C.S., sec. 3044; I.C.A., sec. 41-1905; am. 2013, ch. 60, sec. 1, p. 136.]

42-2206. FORECLOSURE PROCEEDINGS RELATE ONLY TO WATER OR WATER RIGHTS. In the event that the owner or holder or occupant of the premises upon which water has been purchased or contracted for, has not, at the time of the filing of the claim of lien provided for in section 42-2203, received title to the premises so occupied or held by him, and liens are filed as provided for in this chapter, the proceedings for foreclosure herein provided for shall relate only to the said water or water rights and the said water or water rights shall be sold in like manner as if title to the premises had been acquired by the holder or occupant of said land, or the owner or holder of the said water right or water appurtenant to said land.

[(42-2206) 1919, ch. 115, sec. 2, p. 402; C.S., sec. 3045; I.C.A., sec. 41-1906.]

42-2207. FORECLOSURE OF LIEN. Proceedings in the way of civil action in the district courts may be commenced and maintained to enforce the lien herein provided, which proceedings may embrace one or more parcels of land, or one or more landowners, or reputed landowners; and except as otherwise provided herein, the provisions of the Idaho laws relating to civil actions, new trials and appeals, are applicable to and constitute the rules of practice in proceedings under this chapter; and except as otherwise provided, the nature and effect of a judgment of foreclosure shall be the same as the foreclosure of a first real estate mortgage: provided, that the sale

of such land under foreclosure shall pass to the purchaser, all ditch and water rights appurtenant thereto, and the interests, including corporate stock, of the owner or holder of such land in such corporation, company or association.

[(42-2207) 1913, ch. 120, sec. 6, p. 466; reen. C.L. 129:7; C.S., sec. 3046; I.C.A., sec. 41-1907.]

42-2208. INTEREST ON DELINQUENT ASSESSMENTS. All charges levied under the provisions of this chapter shall draw interest at twelve per cent (12%) per annum from the time when due and payable, to the entry of judgment of foreclosure, and the right of lien shall extend to such interest and the costs of foreclosure.

[(42-2208) 1913, ch. 120, sec. 7, p. 466; reen. C.L. 129:8; C.S., sec. 3047; I.C.A., sec. 41-1908; am. 1933, ch. 101, sec. 1, p. 162; am. 1974, ch. 28, sec. 1, p. 979; am. 1982, ch. 89, sec. 1, p. 164.]

42-2209. RELEASE OF LIEN. It shall be the duty of the company, corporation or association of persons filing a lien statement as provided in section 42-2203, to cause a release of the same upon the records of the county where filed, in the same manner and with like penalties for failure as is or may be provided by law in case of real estate mortgages.

[(42-2209) 1913, ch. 120, sec. 10, p. 467; reen. C.L. 129:9; C.S., sec. 3048; I.C.A., sec. 41-1909.]

42-2210. INTERPRETATION. This chapter shall not be held to affect the rights of any person, corporation, company or association of persons to charge or collect tolls, charges or assessments to which it may be otherwise entitled; nor the right of a corporation to make assessments upon its stock according to law; nor the obligation of a stockholder or member of any corporation or association otherwise created; nor any other lien or right of lien given by the laws of this state, or otherwise.

[(42-2210) 1913, ch. 120, sec. 9, p. 466; reen. C.L. 129:10; C.S., sec. 3049; I.C.A., sec. 41-1910.]

42-2211. SECURING SUPPLEMENTAL WATER -- ANNUAL LEVIES -- DELIVERY OF WATER UPON PAYMENT. Any corporation of the character described in this chapter, in order to secure additional water for the irrigation of the lands of its stockholders to supplement their natural flow rights, by the construction of dams or other works and the storing or impounding of winter flow, or flood, or other waters, may contract with the United States bureau of reclamation, public works administration, reconstruction finance corporation, resettlement administration or any other federal agency or instrumentality, or with any person, agency or corporation, for the construction of necessary works, or the loan of moneys for such construction, and may provide in such contract that said corporation will annually levy an assessment against its stockholders sufficient in amount to pay all obligations created by such contract, as the same mature, and will collect the same as tolls, and may provide that no part of such supplementary water shall be delivered to any stockholder until his annual toll and assessment levied with respect to such supplemental water has been paid. Any corporation so contracting shall not deliver such supplemental water to any stockholder or user except upon payment in full of such annual toll and assessment; provided, however, that no such contract may be entered into by any corporation unless and until

its board of directors shall have been authorized so to do by resolution of its stockholders adopted at a regular or special meeting thereof. Nothing herein contained shall be construed to in any way affect or impair any rights such corporation now has under the law to levy and collect assessments for corporate purposes.

[42-2211, added 1937, ch. 234, sec. 1, p. 420.]

42-2212. CONDEMNATION FUNDS FOR FUTURE EXPENSES -- PERMANENT TRUST FUND -- INVESTMENT. When any corporation organized for the operation, control or management of an irrigation project or canal system, or for the purpose of furnishing water to its shareholders and not for profit or hire, shall receive through condemnation proceedings, or by contract made under threat of such proceedings, any funded amount to meet increased maintenance and operation expenses in future years as opposed to funds received as compensation for expenses incurred or to be incurred for the reconstruction or relocation of irrigation works, such funded amount shall constitute a permanent trust fund in the treasury of such company, and as such it shall be kept separate and apart from other funds of the company and such funded amount shall be invested by the board of directors of such company under the standards specified in the Prudent Man Investment Act as set forth in chapter 5, title 68, Idaho Code.

[42-2212, added 1965, ch. 186, sec. 1, p. 393.]

42-2213. ACCUMULATED SURPLUS FUNDS -- INVESTMENT. When any corporation organized for the operation, control or management of an irrigation project or canal system, or for the purpose of furnishing water to its shareholders and not for profit or hire, shall have accumulated, out of assessment funds or otherwise, reasonable reserves for emergency, contingent or non-recurring expenses and charges, the funds held in such reserves may be invested by the board of directors of such company under the standards specified in the Prudent Man Investment Act as set forth in chapter 5, title 68, Idaho Code.

[42-2213, added 1965, ch. 186, sec. 2, p. 393.]