

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 25
TRANSFER AND LEASE OF CAREY ACT WATER RIGHTS

42-2501. RIGHT TO TRANSFER RECOGNIZED. The owner of any lands to which a water right has been made appurtenant pursuant to the provisions or operation of the act of congress of the United States known as the Carey Act may transfer such water right, in whole or in part, to other land owned by him which can be served and irrigated by the same Carey act irrigation system and may, by sale, or by lease for a period not exceeding one year, transfer such water right or any portion thereof to another for use upon or in connection with any such other lands, in the manner and on the condition set forth in this chapter.

[(42-2501) 1917, ch. 159, sec. 1, p. 484; reen. C.L. 130:1; am. 1919, ch. 171, sec. 1, p. 544; C.S., sec. 3052; am. 1925, ch. 94, sec. 1, p. 134; I.C.A., sec. 41-2101.]

42-2502. INSTRUMENT OF CONVEYANCE -- EXECUTION -- RECORDATION. The transfer of a water right, in whole or in part, made by such person to other lands so owned by him shall be evidenced by a written instrument executed and acknowledged by such person as other conveyances of real estate, reciting therein the facts, stating the amount of the right transferred and describing the land from which and the land to which the transfer is to be made, and the transfer of a water right or any portion thereof from one person to another shall be evidenced by a written instrument containing similar recitals and executed and acknowledged in like manner by the grantor or lessor.

All of such instruments shall be recorded in the office of the county recorder of the county or counties where the land is situated from which such right is transferred and also in the office of the county recorder of the county or counties where the land is situated to which such right is transferred, and to all of such instruments the recording acts of the state shall apply.

[(42-2502) 1917, ch. 159, sec. 2, p. 484; reen. C.L. 130:2; C.S., sec. 3053; I.C.A., sec. 41-2102.]

42-2503. CONSENT OF CAREY ACT OPERATING COMPANY TO TRANSFER. Before the transfer of a water right shall take effect under this chapter a person interested therein must apply to the board of directors of the corporation operating such Carey Act irrigation system for consent to the making of such transfer, and if such consent is given a resolution showing the same and the extent or portion of the right to be transferred shall be adopted by said board and a copy thereof, with proper reference to the date of its passage, shall be incorporated in the instrument evidencing such transfer, and upon the recording of such instrument, as provided in section 42-2502, [Idaho Code,] such transfer shall be complete.

[(42-2503) 1917, ch. 159, sec. 4, p. 484; compiled and reen. C.L. 130:4; C.S., sec. 3054; I.C.A., sec. 41-2103.]

42-2504. TRANSFER OF WATER RIGHT -- APPROVAL BY DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES. If the board of directors of the corporation operating such Carey Act systems shall refuse its consent to the transfer of such

water right, a written application for permission to make the same, showing the description of the land from which and of the land to which it is proposed to transfer such water right and the amount of the water right to be so transferred and the reasons for such transfer, shall be presented to the director of the department of water resources who shall promptly make an investigation of the matter and determine whether and to what extent the canal system and the other water users thereunder shall be affected or prejudiced if such transfer is allowed.

If said director of the department of water resources finds that such transfer of water right, in the manner and to the extent applied for, will not be prejudicial to said corporation or to the other water users under said irrigation system he shall issue his certificate approving the transfer, the same to be in duplicate, one part of which shall be filed with the secretary of such corporation; the other shall be delivered to the persons applying for such transfer and recorded in connection with the instrument of conveyance or lease, and if he finds that such transfer should be made only upon certain terms and conditions, then he shall prescribe and specify the terms and conditions, upon which the transfer shall be allowed, and if they are complied with to his satisfaction, he shall issue his certificate to that effect, the same being in duplicate as herein provided.

If said director of the department of water resources decides against such transfer, then he shall make his written report, giving the reasons for such decision. Any person or the board of directors of such Carey Act corporation may contest the decision of the director pursuant to section 42-1701A(3), Idaho Code.

[(42-2504) 1917, ch. 159, sec. 5, p. 484; reen. C.L. 130:5; am. 1919, ch. 171, sec. 3, p. 544; C.S., sec. 3055; I.C.A., sec. 41-2104; am. 1980, ch. 238, sec. 19, p. 549.]

42-2505. APPEAL FROM DECISION OF DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES. If any person or the board of directors of such Carey Act corporation shall feel aggrieved by the final decision of the director following a hearing held pursuant to section 42-1701A(3), Idaho Code, such person or board may seek judicial review pursuant to section 42-1701A(4), Idaho Code.

[(42-2505) 1917, ch. 159, sec. 6, p. 484; am. C.L., 130:6; am. 1919, ch. 171, sec. 4, p. 545; C.S., sec. 3056; I.C.A., sec. 41-2105; am. 1980, ch. 238, sec. 20, p. 550.]

42-2506. FEE FOR DECISION ON APPLICATION FOR TRANSFER OF WATER RIGHT. For his services in passing upon an application for the transfer of a water right under this chapter and making his certificate or report based thereon said director of the department of water resources shall be entitled to receive from the applicant the sum of ten dollars (\$10.00) for each day or portion thereof necessarily required by him to do the work besides his actual and necessary expenses incurred in connection therewith, but shall receive no other compensation.

[(42-2506) 1917, ch. 159, sec. 7, p. 484; reen. C.L. 130:7; am. 1919, ch. 171, sec. 5, p. 545; C.S., sec. 3057; I.C.A., sec. 41-2106.]

42-2507. TRANSFER OF STOCK CERTIFICATES EVIDENCING WATER RIGHT. When a transfer of a water right or of a portion thereof is made effectual under this chapter otherwise than by lease the certificate or certificates evidencing the ownership thereof shall be surrendered to the corporation, and the offi-

cers of the corporation shall issue new certificates to the person or persons entitled thereto, specifying the land or lands to which the water right is appurtenant after such transfer and the amount of such right which is appurtenant to any of said lands.

[(42-2507) 1917, ch. 159, sec. 8, p. 484; reen. C.L. 130:8; C.S., sec. 3058; I.C.A., sec. 41-2107.]

42-2508. EFFECT OF LEASE UPON APPURTENANCY. A lease of a water right or of a portion thereof shall not change the appurtenancy of such right, but the same shall remain an appurtenant of the land of the lessor, subject only to the rights of the lessee to make use of the same.

[(42-2508) 1917, ch. 159, sec. 9, p. 484; reen. C.L. 130:9; C.S., sec. 3059; I.C.A., sec. 41-2108.]

42-2509. RIGHTS OF LIENHOLDERS PROTECTED. No water right or any portion thereof shall be transferred from one tract of land to another under the provisions of this chapter where there is a valid existing mortgage or other lien or encumbrance on the land to which such water right is appurtenant without the consent of the holder of such mortgage or other lien or encumbrance, which consent shall be evidenced by an instrument in writing executed and acknowledged as other instruments relating to the conveyance of real estate.

[(42-2509) 1917, ch. 159, sec. 10, p. 484; reen. C.L. 130:10; C.S., sec. 3060; I.C.A., sec. 41-2109.]