

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 26
SALE OF WATER RIGHTS

42-2601. PETITION FOR CERTIFICATE OF AUTHORITY TO SELL WATER RIGHTS. All persons, copartnerships, associations of persons, companies and corporations now owning or hereafter acquiring or constructing any irrigation works or reservoirs, dams, canals or other structures designed or used wholly or in part for storing, carrying or otherwise conserving or furnishing water for irrigation purposes, shall, before selling any water right therein or right to use water from such works, file with the department of water resources of the state of Idaho a map showing the location of such works and the lands to be reclaimed therefrom and the plans and specifications of construction, duly certified under oath as true and correct by a licensed engineer of the state of Idaho, and such other information as may be necessary to enable the department of water resources to determine the capacity of such irrigation works and the number of acres which may be irrigated therefrom, together with a petition for a certificate of authority to sell water rights in such works. Such petition shall state the name and address of the owner of such works, and the terms upon which water rights will be sold, and the lands which can be irrigated from such system, and there shall be attached to such petition a copy of the form of contract or deed which it is proposed to give to the purchasers of water rights in such works as evidence of their title to such water and of their interest in such works.

[(42-2601) 1909, p. 335, sec. 1; reen. C.L. 241:1; C.S., sec. 3061; I.C.A., sec. 41-2201.]

42-2602. EXAMINATION OF WORKS BY DEPARTMENT OF WATER RESOURCES. The department of water resources upon receipt of such petition shall proceed to make a report as early as the same can conveniently be made, showing the capacity of said system, the water supply and the amount of water per acre required for the proper irrigation of such lands. For the purpose of making such report and determining the capacity of the said system and the amount of land which can reasonably be irrigated therefrom, the department of water resources shall make such examination of such irrigation works, lands and water supply as in its judgment may be necessary to make a full report thereon, and it may make such examination by a duly appointed assistant or assistants.

[(42-2602) 1909, p. 335, sec. 2; reen. C.L. 241:2; C.S., sec. 3062; I.C.A., sec. 41-2202.]

42-2603. JURISDICTION OF DEPARTMENT OF WATER RESOURCES. The report of the department of water resources shall be considered at the first meeting of the department held thereafter, together with such other information and data in relation to such irrigation works as has been filed with the department, and the said department shall thereupon determine the number of water rights, units or shares of water which may be sold in such works or irrigation system, and the number of acres which may be irrigated therefrom, and the form of contract or deed which shall be given to the purchasers thereof; and the department shall issue to the owners of such irrigation works a certificate in appropriate form, certifying or showing the number of water rights,

units or shares of water which may be sold in such works, as then constructed, and the number of acres which may be irrigated therefrom, and the form of contract or deed which shall be given to the purchasers of water rights therein. Such certificate, or a duly certified copy thereof, shall be recorded in the county recorder's office in each county in which lands are situated for which water rights are sold in such irrigation works, prior to the sale of any water rights therein, provided that no such certificate shall be issued unless and until the department of water resources has had available and has considered reliable data and records of stream flow and water supply appertaining to the water desired to be sold, covering a period of at least five (5) years.

[(42-2603) 1909, p. 335, sec. 3; reen. C.L. 241:3; C.S., sec. 3063; I.C.A., sec. 41-2203; am. 1935, ch. 138, sec. 1, p. 334.]

42-2604. WATER CONTRACTS AND DEEDS. All contracts and deeds for the sale of water rights shall be of the form approved by the department of water resources, as provided in section 42-2603, [Idaho Code,] and all such contracts or deeds shall be numbered plainly and consecutively; and it shall be the duty of the owner of such irrigation works to file for record in the proper county recorder's office all such contracts or deeds, or duplicate copies thereof, in the order in which the same are issued to purchasers.

[(42-2604) 1909, p. 335, sec. 4; reen. C.L. 241:4; C.S., sec. 3064; I.C.A., sec. 41-2204.]

42-2605. PENALTIES FOR UNAUTHORIZED SALE OF WATER RIGHTS. Any pretended deed, contract or other instrument conveying or pretending to convey water rights in such irrigation works prior to the filing of such certificate in the county recorder's office or in excess of the water rights or amount of water authorized to be sold by the department, as shown by the certificate or certificates so issued and filed for record, shall be absolutely null and void, and the owner of such irrigation works, or those claiming to be the owner thereof and the officers, agents and representatives of any such owner or claimant, or those claiming to be the officers, agents or representatives of any such owner or claimant, who shall make or attempt to make any deed, contract or agreement relative to the sale of water rights in such irrigation works, or for the furnishing of water therefrom, prior to the filing of such certificate, or in excess of the capacity of such irrigation works, as shown by the certificate or certificates of the department of water resources, or who shall violate any of the provisions of section 42-2604, [Idaho Code,] shall be jointly, severally and personally liable upon and for all such contracts and agreements and for any and all damages, directly or indirectly sustained by the purchasers of water rights or interests in such irrigation works, through the failure of such owner or claimant, or of the officers, agents and representatives of such owner or claimant or of those claiming to be the officers, agents or representatives of the owner or claimant, to comply with the provisions of this chapter, and in addition thereto, every such owner, claimant, officer, agent or representative shall be guilty of a misdemeanor, punishable by a fine of not less than \$100 nor more than \$300, or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment.

[(42-2605) 1909, p. 335, sec. 5; reen. C.L. 241:5; C.S., sec. 3065; I.C.A., sec. 41-2205.]

42-2606. EXPENSES PAYABLE FROM CAREY ACT TRUST FUND. All expenses incurred by the department of water resources and its assistant or assistants in carrying out the provisions of this chapter shall be paid out of the fund created from the sale of lands under the act of congress commonly known as the Carey Act.

[(42-2606) 1909, p. 335, sec. 6; reen. C.L. 241:6; C.S., sec. 3066; I.C.A., sec. 41-2206.]

42-2607. IRRIGATION DISTRICTS EXEMPTED. Irrigation districts organized under the laws of the state of Idaho, are hereby exempted from the provisions of this chapter.

[(42-2607) 1909, p. 335, sec. 7; reen. C.L. 241:7; C.S., sec. 3067; I.C.A., sec. 41-2207; am. 1935, ch. 138, sec. 2, p. 334.]

42-2608. ANNUAL STATEMENT. All parties authorized to sell water rights or shares in irrigation works under a certificate or certificates issued as provided in section 42-2603[, Idaho Code,] shall file annually on or before the first day of January with the department of water resources an annual report showing the number of water rights or shares of water sold in such irrigation works and the number of acres irrigated therefrom, until the full capacity of such irrigation works as shown by such certificate or certificates, has been sold.

[(42-2608) 1909, p. 335, sec. 8; reen. C.L. 241:8; C.S., sec. 3068; I.C.A., sec. 41-2208.]