

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 9
DISTRIBUTION OF WATER TO CONSUMERS

42-901. APPOINTMENT OF WATERMASTER -- APPOINTMENT BY COURT. It shall be the duty of those owning or controlling any ditch, canal or lateral to appoint a superintendent or watermaster, whose duty it shall be to measure the water from such ditch, canal or lateral through the outlet of those entitled thereto, according to his or her pro rata share: provided, that any vicinity or neighborhood, the inhabitants of which use the waters of any ditch, canal or lateral for the purpose of irrigation, or have or claim a common right to the waters of any ditch or lateral for such purposes, provided the waters so claimed or used have not been allotted to the individual users thereof, shall constitute a water district.

Any one or more of said joint owners so using the water of any ditch, canal or lateral as aforesaid, when the appointment of a watermaster can not be agreed upon, may petition the judge of the district court in whose district the ditch, canal or lateral may be located for the appointment of a watermaster for said ditch, canal or lateral, and shall set forth in said petition the facts of his or her ownership in said ditch, canal or lateral; the ownership and interest of all other joint owners; the location and length of said ditch, canal or lateral, and requesting said district court to appoint a watermaster to take charge of the same. Upon due notice being given to all of the water users under said ditch, canal or lateral, and after hearing before said court, it shall be the duty of the judge of said district court if he deem it necessary or equitable in order that the rights of all water users under said ditch, canal or lateral may be protected, to appoint a watermaster for the ditch, canal or lateral described in the petition. Said watermaster to receive such compensation as the court in his judgment may deem adequate, and shall be paid in the same manner as is provided for the payment of watermasters under chapter 5 [6] of this title, and shall perform the same duties and have the same power and authority as other watermasters appointed or elected in accordance with the provisions of this code.

[(42-901) 1899, p. 380, sec. 17; reen. R.C., sec. 3284; am. 1909, p. 104, sec. 1; reen. C.L., sec. 3284; C.S., sec. 5626; I.C.A., sec. 41-801.]

42-902. INJURING DITCH OR HEADGATE -- TRIPLE DAMAGES. Any person who, without the consent of the watermaster of the district, diverts any water from the ditch or channel where it was placed, or caused, or left to run by the watermaster or his deputies, or who shuts or opens any ditch, gate or dam with intent so to divert any water, and thereby deprive any person of the use of the same during any part of the time he is entitled to such use, or who, without the consent of the watermaster, cuts any ditch or the banks thereof, or breaks or destroys any gate or flume, is liable in a civil action to any person injured thereby in three times the actual damage sustained in consequence of any such wrongful act or acts.

[(42-902) 1881, p. 275; R.S., sec. 3205; am. R.C. & C.L., sec. 3285; C.S., sec. 5627; I.C.A., sec. 41-802.]

42-903. HEADGATES AND MEASURING DEVICES -- WATER COMPANIES TO FURNISH. Any person, association or corporation delivering or distributing

water under any fixed annual charge or rental shall provide the necessary gates and measuring devices to render possible and practicable a measurement of the quantity of water being delivered to any consumer (or number of consumers using a common lateral or distributing ditch); and the price charged for the annual use of the water so distributed shall be in proportion to the quantity of water delivered from the works of such person, association or corporation. Such measuring devices shall be of such a character, and provided with such gauges or scales, that the quantity of water being delivered at any time can be ascertained by inspection; and shall be of such general plan as shall meet with the approval of the department of water resources, which shall inspect any such devices whenever possible to ascertain their character, and the department shall furnish such general information and instructions to any consumer, or the watermaster of any number of consumers of water, as may be necessary to enable him to ascertain the quantity of water flowing through any such measuring device.

[(42-903) 1897, p. 127, sec. 2; compiled R.C. & C.L., sec. 3286; C.S., sec. 5628; I.C.A., sec. 41-803.]

42-904. DIVISION OF LAND INTO CLASSES BY PRIORITY. When any ditch, canal or reservoir delivering or distributing water to several users has one or more rights or priorities by reason of enlargements made from time to time, the right of the land being irrigated by such works shall be divided into classes; rights of the first class belonging to those lands reclaimed between the dates of the first and second priorities or rights of such works; rights of the second class belonging to those lands reclaimed between the dates of the second and third priorities of such works; rights of any other class being determined in like manner; but all the rights belonging to the same class shall be equal and subject alike to the regulations of their respective class.

[(42-904) 1901, p. 191, sec. 9a; reen. R.C. & C.L., sec. 3287; C.S., sec. 5629; I.C.A., sec. 41-804.]

42-905. POINT OF DELIVERY. Any person, association or corporation which may contract to deliver a certain quantity of water to any party or parties, shall deliver the same to such party or parties, together with a reasonable and necessary allowance for loss by evaporation and seepage, at some convenient point on the main ditch, canal or reservoir of said person, association or corporation, or on any branch or lateral thereof belonging to the owner or owners of such ditch, canal or reservoir.

[(42-905) 1895, p. 174, part of sec. 17; reen. R.C. & C.L., sec. 3288; C.S., sec. 5630; I.C.A., sec. 41-805.]

42-906. AMOUNT AND LIEN OF RENTAL OR MAINTENANCE. The amount to be paid by said party or parties for the delivery of said water, which amount may be fixed by contract, or may be as provided by law, is a first lien upon the land for the irrigation of which said water is furnished and delivered. But if the title to said tract of land is in the United States or the state of Idaho, then the said amount shall be a first lien upon any crop or crops which may be raised upon said tract of land, which said lien shall be recorded and collected as provided by law for other liens in this state. And any mortgage or other lien upon such tracts of land that may hereafter be given shall in all cases be subject to the lien for price of water as provided in this section.

[(42-906) 1895, p. 174, part of sec. 17; reen. R.C., sec. 3288; reen. C.L., sec. 3288a; C.S., sec. 5631; I.C.A., sec. 41-806.]

42-907. DUTIES OF CONSUMERS -- APPOINTMENT OF MANAGER OF DISTRIBUTING LATERAL. Where two (2) or more parties take water from said ditch, canal or reservoir at the same point, to be conveyed to their respective premises for any distance through the same lateral or distributing ditch, such parties shall, on or before April first of each year, select some person to have charge during the succeeding season of the distribution of water from such lateral, whose duty it shall be to ascertain and see that the amount of water to which each of the parties interested is entitled is properly apportioned and distributed. It shall be his further duty to see that the said person, association or corporation, contracting to furnish such water shall deliver the amount as provided in section 42-905, [Idaho Code,] and in case of dispute between such person and the said person, association or corporation as to the quantity of water to be delivered, or the amount actually delivered, the matter shall be referred to the department of water resources. The parties entitled to said water shall keep their ditches and laterals in good condition for carrying and distributing the same. In case the parties entitled to the use of water as in this section stated shall neglect or refuse to perform the duties imposed upon them by this section, they shall have no cause for damage against the person, association or corporation furnishing said water for failure to properly furnish and distribute the same.

[(42-907) 1895, p. 174, part of sec. 17; reen. R.C., sec. 3288; reen. C.L., sec. 3288b; C.S., sec. 5632; I.C.A., sec. 41-807.]

42-908. MANAGER OF DISTRIBUTING LATERAL -- ALTERNATIVE METHOD OF SELECTION. Wherever two or more persons take water from any main ditch, canal or reservoir, at the same point, to be conveyed to their respective premises for any distance through the same lateral or distributing ditch, as provided in section 42-905, [Idaho Code,] the person to be selected by such parties on or before April first of each year, as provided in section 42-907, [Idaho Code,] may be selected and appointed by a written instrument designating such person, signed by the majority of such persons so using the said ditch for their said water, and filed with the watermaster or other managing agent or director of such main canal, ditch or reservoir.

[(42-908) 1909, p. 108, sec. 1; reen. C.L., sec. 3288c; C.S., sec. 5633; I.C.A., sec. 41-808.]

42-909. MANAGER OF DISTRIBUTING LATERAL -- APPOINTMENT BY DISTRICT WATERMASTER -- BY DIRECTORS OF IRRIGATION DISTRICT -- PAYMENT OF COMPENSATION. If two (2) or more parties taking water from any main ditch, canal or reservoir at the same point to be conveyed to their respective premises for any distance, through the same lateral or distributing ditch, do not select a manager for said lateral, as provided in section 42-907[, Idaho Code,] or section 42-908, [Idaho Code,] the watermaster of the water district, shall on the written demand of any one or more of said parties, appoint a manager for said lateral, who shall have and exercise all the powers and perform all of the duties of a manager of the distributing lateral as provided in section 42-910[, Idaho Code]: provided, that if an irrigation district is owner of the main ditch, canal or reservoir, then the board of directors of such district shall, upon such demand, make such appointment.

The compensation of said manager shall be fixed by said watermaster, and shall be paid in the manner provided by section 42-910[, Idaho Code,] for the payment of expenses incurred by him. If not paid, it may be collected, with other damages in the action provided by said section: provided, that if an irrigation district is the owner of the main ditch, canal or reservoir, the board of directors of such district shall fix the compensation of said manager; and at the end of the irrigation season upon the request of such manager the secretary of such district shall prorate the amount of such compensation among the several parties taking water through such lateral, or distributing ditch upon the basis of the number of acres irrigated by each, and mail each a statement of the amount prorated to such party, requesting that remittance be made to such secretary for and on behalf of such manager. In the event such parties or either of them, not later than the date when irrigation district assessments are delinquent, remit to such secretary, he shall, upon receiving same, and without making any entry in his books of account, deliver it to such manager. Should such parties or either of them fail or refuse at such time to remit to said secretary, then such manager may collect as hereinbefore provided.

[(42-909) C.S., sec. 5633-A, as added by 1925, ch. 99, sec. 1, p. 144; am. 1929, ch. 45, sec. 1, p. 57; am. 1931, ch. 62, sec. 1, p. 105; I.C.A., sec. 41-809.]

42-910. DUTIES OF MANAGER OF DISTRIBUTING LATERAL -- ASSESSMENT OF REPAIR AND MAINTENANCE COSTS -- APPEALS. Such person shall be known as the manager of such distributing lateral for the season for which he is selected, and in addition to the powers granted to him by section 42-907[, Idaho Code,] he shall have power to require of each user of such lateral such user's proportion of the amount of labor, material or money reasonably necessary for the proper repair and maintenance of such lateral, and to require measuring weirs, head-gates and checks to be installed for distributing the water among the users, and each user of such lateral shall furnish his proportion of such labor, material or money upon three (3) days' notice so to do, and, in default of so doing, such manager may employ other labor in his place, or furnish the material or money necessary, and such user shall pay to the manager the reasonable value of such material or labor so furnished by the manager, upon demand, in case of default in payment by such user the said manager may sue and collect the same in any court of competent jurisdiction, and in addition to all costs, the court shall allow said manager his reasonable attorney's fees incurred in that behalf.

In the event such water user or water users shall not furnish his or their respective share of such labor, material or money within three (3) days after notice so to do, as hereinabove provided, then said manager may, if he elects, notify the association or corporation delivering water into said distributing lateral of the failure, neglect or refusal of said water users or any of them to furnish his or their respective share of such labor, material or money for the proper repair and maintenance of such lateral or for the furnishing and installation of measuring weirs, head-gates and checks, and upon receipt of such notice said association or corporation may, if it chooses to do so, proceed to furnish all labor, material and money necessary for the proper repair and maintenance of such lateral and for the furnishing and installation of measuring weirs, head-gates and checks, or it may, if it chooses so to do, proceed to repair and maintain said laterals and furnish and install such measuring weirs, head-gates and

checks as it shall deem necessary or proper for the distribution of water among the several water users. The cost of such repair and maintenance and the cost of furnishing and installing such measuring devices, head-gates, and checks shall be apportioned among the several water users on the basis of benefits derived therefrom by said water users, and the said association or corporation furnishing said funds or doing the aforesaid things or any of them shall within thirty days after completion thereof give each of such water users written notice of the amount or amounts to be paid by him and demand payment thereof. Should the water users or any of them desire to contest the assessment and apportionment made by such association or corporation, appeal may be taken from such assessment and apportionment to the district court in the county where the principal office of said association or corporation is located within ten (10) days after receipt of said notice and demand for payment, in the same manner as in the case of appeals from the boards of county commissioners. In case of appeal any sum or sums determined by said district court to be due, or in the event no appeal is taken then any sum or sums determined by such association or corporation to be due from any water users, shall be paid by such water user within ninety (90) days and the said association or corporation may refuse to deliver any water to any such water user until the amount due shall have been paid in full.

[(42-910) 1909, p. 108, sec. 2; reen. C.L., sec. 3288d; C.S., sec. 5634; I.C.A., sec. 41-810; am. 1939, ch. 213, sec. 1, p. 435.]

42-911. USERS OF WATER DEFINED. The term "users of water" from a community ditch shall be understood to include the owner of the land on which the water is used, or any tenant or other person in possession and control of said premises.

[(42-911) 1909, p. 108, sec. 3; reen. C.L., sec. 3288e; C.S., sec. 5635; I.C.A., sec. 41-811.]

42-912. COMPANY TO FURNISH WATER ON DEMAND. Any person, company or corporation owning or controlling any canal or irrigation works for the distribution of water under a sale or rental thereof, shall furnish water to any person or persons owning or controlling any land under such canal or irrigation works for the purpose of irrigating such land or for domestic purposes, upon a proper demand being made and reasonable security being given for the payment thereof: provided, that no person, company or corporation shall contract to deliver more water than such person, company or corporation has a title to, by reason of having complied with the laws in regard to the appropriation of the public waters of this state.

[(42-912) 1899, p. 380, sec. 19; reen. R.C. & C.L., sec. 3289; C.S., sec. 5636; I.C.A., sec. 41-812.]

42-913. APPLICATION FOR WATER. Any person or persons owning or controlling land which has or has not been irrigated from any such canal, shall on or before January first of any year, inform the owner or person in control of such canal whether or not he desires the water from said canal for the irrigation of land during the succeeding season, stating also the quantity of water needed. In distributing water from any such canal, ditch or conduit during any season, preference shall be given to those applications for water for land irrigated from said canal the preceding season, and a surplus of water, if any there be, shall be distributed to the lands in the numerical order of the applications for it. But no demand for the purchase of a so called per-

petual water right, or any contract fixing the annual charges or the quantity of water to be used per acre, shall be imposed as a condition precedent to the delivery of water annually as provided in this chapter; but the consumer of water shall be the judge of the amount and the duty of the water required for the irrigation of his land; and the annual charges to be made and to be fixed under the further provisions of this title, shall hereafter be based upon the quantity of water delivered to consumers, and shall not in any case depend upon the number of acres irrigated by means of such amount of water delivered.

[(42-913) 1899, p. 380, sec. 20; reen. R.C. & C.L., sec. 3290; C.S., sec. 5637; I.C.A., sec. 41-813.]

42-914. SALE OR RENTAL CONSTITUTES A DEDICATION -- DOMESTIC PURPOSES CONSTRUED -- LIABILITY FOR VIOLATION. Whenever any waters have been or shall be appropriated or used for agricultural or domestic purposes under a sale, rental or distribution thereof, such sale, rental or distribution shall be deemed an exclusive dedication to such use upon the tract of land for which such appropriation or use has been secured, and, whenever such waters so dedicated shall have once been sold, rented or distributed to any person who has settled upon or improved land for agricultural purposes with the view of receiving the benefit of such water under such dedication, such person, his heirs, executors, administrators, successors or assigns, shall not thereafter be deprived of the annual use of the same when needed for agricultural or domestic purposes upon the tract of land for which such appropriation or use has been secured, or to irrigate the land so settled upon or improved, upon payment therefor, and compliance with such equitable terms and conditions as to the quantity used and times of use as may be prescribed by law. "Domestic purposes" shall not be construed to include any manner of land irrigation. Any person, association or corporation violating any of the provisions of this section, shall be liable for all damage to any party or parties injured thereby, which damage shall be determined by the proper court.

[(42-914) 1895, p. 174, sec. 14; reen. R.C. & C.L., sec. 3291; C.S., sec. 5638; I.C.A., sec. 41-814.]

42-915. CONSUMER'S TITLE NOT AFFECTED BY TRANSFER OF DITCH. When any payment is made under the terms of a contract, by means of which payment a perpetual right to the use of water necessary to irrigate a certain tract of land is secured, said water right shall forever remain a part of said tract of land, and the title to the use of said water can never be affected in any way by any subsequent transfer of the canal or ditch property or by any foreclosure or any bond, mortgage or other lien thereon; but the owner of said tract of land, his heirs or assigns, shall forever be entitled to the use of the water necessary to properly irrigate the same, by complying with such reasonable regulations as may be agreed upon, or as may from time to time be imposed by law. And said payment for said water right shall be a release of any bond or mortgage upon the canal property of the person or company from whom such right is purchased or their successors or assigns, to the amount of such water right thus purchased and paid for, and said person or company from whom such water right is purchased shall furnish to the party or parties purchasing such right a release, or a good and sufficient bond for a release, from said mortgage or bonded indebtedness to the amount of the water right thus purchased.

[(42-915) 1895, p. 174, sec. 16; reen. R.C. & C.L., sec. 3292; C.S., sec. 5639; I.C.A., sec. 41-815.]

42-916. LIABILITY FOR WASTE OF WATER. No person entitled to the use of water from any such ditch or canal, must, under any circumstances, use more water than good husbandry requires for the crop or crops that he cultivates; and any person using an excess of water, is liable to the owner of such ditch or canal for the value of such excess; and in addition thereto, is liable for all damages sustained by any other person, who would have been entitled to the use of such excess water, as fixed by this section.

[(42-916) 1881, p. 273; R.S., sec. 3190; reen. R.C. & C.L., sec. 3293; C.S., sec. 5640; I.C.A., sec. 41-816.]