

Idaho Water Rights and Ash Park Water Users' Association

Purpose and Codes that Relate to Association

March 27, 2002

Ash Park Water User's Association provides an organization to help property owners maintain their rights to irrigation water. The association also assists in helping property owner(s) to understand the Idaho's water codes, provides a rotation schedule for user water times, resolves misunderstanding with neighbors, Boise City, and Ada County. We also help ensure that new development protects new neighbors without harming the current land use by current neighbors or placing new projects or current owners at risk for water damage. The Association helps water users understand the individual property owner responsibilities.

Water users are responsible for their own ditch cleaning, ditch and headgate maintenance. The **ditch owner is anyone or organization that has an open or closed ditch on their property or along the property right-a-way without regard to whether the property owner elects to use their water rights.**

Ash Park Water User's Association water rights are established under Idaho's beneficial use method.

Ash Park Water User's Association will enforce the Laws of Lateral Ditch water user per the Idaho State Statues.

Idaho Water Rights

Article 15, Section 3, of the Idaho Constitution states: The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied, except that the state may regulate and limit the use thereof for power purposes.

An Idaho Water Right Primer

The general rule of thumb for Idaho water rights is: if you intend to put public waters to some form of beneficial use, it is against the law to do so without a valid water right. The exception is water for domestic use where, under specific conditions, a recorded water right is not required. Idaho law provides for civil penalties for appropriating water without a valid water right.

Can a water right be changed?

The point of diversion, place of use, period of use or nature of use of a **water right may be changed** so long as the **change does not result in injury to the rights of other appropriators.**

However, after May 26, 1969, any person wishing to **make a change in use of the water right** must file an application with **IDWR for approval** of the change.

Idaho Statues

TITLE 18 CRIMES AND PUNISHMENTS CHAPTER 43 IRRIGATION WORKS

18-4305. INTERFERENCE WITH HEADGATE -- CUTTING BANKS OF STREAM. If any obstruction shall be wilfully and maliciously placed on any overflow gauge in any stream of water which is used for irrigation and is under control of a water master, and such obstruction retards or impedes the free overflow of the water of such stream, thereby increasing the pressure against a headgate through which water is diverted by means of such dam, or if any headgate regulated by a water master shall be removed, broken, injured or interfered with so as to disturb the distribution of the water as regulated by the water master, or if any bank of the natural stream, the water of which is being used for irrigation and is being distributed by a water master, shall be cut away so as to increase the flow of water from such stream, thereby interfering with the distribution of the water as regulated by a water master, the person or persons so interrupting the flow of said water as aforesaid, shall be guilty of a misdemeanor.

TITLE 18 CRIMES AND PUNISHMENTS CHAPTER 43 IRRIGATION WORKS

18-4306. INJURIES TO DITCHES AND APPURTENANCES. Any person or persons, who shall cut, break, damage, or in any way interfere with any ditch, canal, headgate, or any other works in or appurtenant thereto, the property of another person, corporation, or association of persons, and whereby water is conducted to any place for beneficial use or purposes, and when said canal, headgate, ditch, dam, or appurtenance is being used or is to be used for said conduct of water, shall be guilty of a misdemeanor.

TITLE 18 CRIMES AND PUNISHMENTS CHAPTER 43 IRRIGATION WORKS

18-4310. NEGLECT TO DELIVER WATER -- INTERFERENCE WITH DELIVERY. Any superintendent or any person having control or charge of the said ditch, canal or conduit, who shall wilfully neglect or refuse to deliver water as provided in chapter 9, of title 42, or person or persons who shall prevent or interfere with the proper delivery of water to the person or persons having a right thereto, shall be guilty of a misdemeanor; and the owner or owners of such ditch, canal or conduit shall be liable in damages to the person or persons deprived of the use of water to which they were entitled as provided in said chapter 9.

TITLE 18
CRIMES AND PUNISHMENTS
CHAPTER 43
IRRIGATION WORKS

18-4301. INTERFERENCE WITH DITCHES, CANALS OR RESERVOIRS. Every person who shall, without authority of the owner or managing agent, and with intent to defraud, take water from any canal, ditch, flume or reservoir, used for the purpose of holding or conveying water for manufacturing, agricultural, mining, or domestic uses, or who shall, without like authority, raise, lower, or otherwise disturb, any gate or other appurtenance thereof used for the control or measurement of water, or who shall empty or place, or cause to be emptied or placed, into any such canal, ditch, flume, or reservoir, any rubbish, filth, or obstruction to the free flow of water, is guilty of a misdemeanor.

TITLE 18
CRIMES AND PUNISHMENTS
CHAPTER 43
IRRIGATION WORKS

18-4302. WASTING WATER USED FOR IRRIGATION. Any person or persons, who shall wilfully or wantonly waste any of the waters of any stream, the waters of which are used for irrigation, to the detriment of any claimant of such water for irrigation purposes, by diverting the same for an unnecessary use or purpose, or by allowing such water to waste by running into depressions or dry channels so that the same cannot be used for irrigation, nor reach the original channel of the stream from which it has been diverted, are guilty of a misdemeanor.

TITLE 18
CRIMES AND PUNISHMENTS
CHAPTER 43
IRRIGATION WORKS

18-4304. WRONGFUL DIVERSION OF WATER. Any person who without the consent of the water master of the district, diverts any water from a ditch or channel where it has been placed, or caused or left to run by the water master or his deputies, or who shuts or opens any ditch, gate or dam, or in any way impedes or increases the flow of water in any stream or ditch diverting water from a stream, while the same is under the charge of a water master, or who cuts away any embankment of a stream, whereby the water of such stream is diverted, or breaks, injures, or removes any gate, flume or other device used for the equitable distribution of the water of such stream by the water master, shall be guilty of a misdemeanor.

TITLE 31
COUNTIES AND COUNTY LAW
CHAPTER 38
ZONING REGULATIONS

31-3805. DELIVERY OF WATER. (1) When either a **subdivision** within the meaning of chapter 13, title 50, Idaho Code, or a subdivision subject to a more restrictive county or city zoning ordinance is proposed within the state of Idaho, and all or any part of said subdivision would be **located within the boundaries of an existing irrigation district or other canal company, ditch association, or like irrigation water delivery entity**, hereinafter called "irrigation entity" for the purposes of this chapter, no subdivision plat or amendment to a subdivision plat or any other plat or map recognized by the city or county for the division of land will be accepted, approved, and recorded unless:

(a) The water rights appurtenant and the assessment obligation of the lands in said subdivision which are within the irrigation entity have been transferred from said lands or excluded from an irrigation entity by the owner thereof; or by the person, firm or corporation filing the subdivision plat or amendment to a subdivision plat or any other plat or map recognized by the city or county for the division of land; or

(b) The owner or person, firm or corporation filing the subdivision plat or amendment to a subdivision plat or any other plat or map recognized by the city or county for the division of land has provided for underground tile or other like satisfactory underground conduit for lots of one (1) acre or less, or a suitable system for lots of more than one (1) acre which will deliver water to those landowners within the subdivision who are also within the irrigation entity, with the following appropriate approvals:

(i) For **proposed subdivisions within the incorporated limits of a city**, the **irrigation system must be approved by the city zoning authority or the city council, as provided by city ordinance, with the advice of the irrigation entity charged with the delivery of water to said lands.**

(2) (a) **In the event that the provisions of either subsection (1)(a) or (1)(b) of this section have not been complied with, the assessments of the irrigation entity for operation, maintenance, construction, and other valid charges permitted by statute shall in no way be affected.** Any person, firm or corporation or any other person offering such lots in such subdivision for sale, or selling such lot shall, prior to the sale, advise the purchaser in writing as follows:

(i) That suitable water deliveries have not been provided; and

(ii) **That the purchaser of the lot must remain subject to all assessments levied by the irrigation entity; and**

(iii) **That the individual purchaser shall be responsible to pay such legal assessments; and**

(iv) **That the assessments are a lien on the land within the irrigation entity; and**

(v) That the purchaser may at a future date petition the appropriate irrigation entity for exclusion from the irrigation district.

(b) A disclosure statement executed by the purchasers and duly acknowledged, containing the representations required in this subsection of this section, shall be obtained by the seller at the time of receipt of the earnest money from the purchaser, and affixed to the proposed sales contract and a **copy thereof shall be forwarded to the appropriate irrigation entity.**

TITLE 42
IRRIGATION AND DRAINAGE -- WATER
RIGHTS AND RECLAMATION
CHAPTER 38
ALTERATION OF CHANNELS OF STREAMS

42-3806. EXISTING RIGHTS UNAFFECTED -- WHERE PERMIT NOT REQUIRED. This act shall not operate or be so construed as to impair, diminish, control or divest any existing or vested water rights acquired under the laws of the state of Idaho or the United States, nor to interfere with the diversion of water from streams under existing or vested water right or water right permit for irrigation, domestic, commercial or other uses as recognized and provided for by Idaho water laws. No permit shall be required from a water user or his agent to clean, maintain, construct in, or repair any stream channel, diversion structure, canal, ditch, or lateral. No permit shall be required from a water user or his agent to remove any obstruction from any stream channel, if such obstruction interferes with, or is likely to interfere with, the delivery of, or use of, water under any existing or vested water right, or water right permit.

TITLE 18
CRIMES AND PUNISHMENTS
CHAPTER 39
HIGHWAYS AND BRIDGES

18-3907. OBSTRUCTION OF HIGHWAYS. Any person who obstructs, injures or damages any public road, street or highway, either by placing obstruction therein or by digging in, deepening or deviating the water of any stream, or by placing any obstruction in any ditch or stream within or along any public road, street or highway, or by placing or constructing any obstruction, ditch or embankments upon his own or other lands, so as to make or cause any water to flow upon or impair any public road, street or highway, or rides or drives upon and along the sidewalk of any road, street or highway, whenever such sidewalk has been graded or graveled, located or designated by any order of the board of commissioners or city council, or prepared in any other manner dedicating and designating the same for and to that particular use and purpose, either by the property owner or by the public, or in any other manner injures or obstructs any public road, street or highway, is guilty of a misdemeanor.

TITLE 18
CRIMES AND PUNISHMENTS

CHAPTER 39
HIGHWAYS AND BRIDGES

18-3908. FLOODING HIGHWAYS. Any person who runs water across any public highway, road or street, without first constructing a good and sufficient ditch or ditches to convey the same, or who fails to bridge such ditch or ditches, or to keep such bridge or ditches in good repair, and all persons, companies or corporations who suffer any water used by them for the purpose of irrigation, or any other purposes, to flow into or upon any public highway, road or street, in any other manner than that authorized by law, are guilty of a misdemeanor, and upon conviction thereof must be fined in any sum not less than one dollar (\$1.00) nor more than fifty dollars (\$50.00), together with the costs of suit, and for a second offense, double said fine and costs; and it is hereby made the duty of all road supervisors, constables and marshals, to make complaint before the proper court, for violations of this section, whenever notified or having knowledge thereof.

TITLE 18
CRIMES AND PUNISHMENTS
CHAPTER 39
HIGHWAYS AND BRIDGES

18-3914. VIOLATION A MISDEMEANOR. A violation of this chapter and regulations authorized by this act is a misdemeanor.

TITLE 50
MUNICIPAL CORPORATIONS
CHAPTER 18
CITY IRRIGATION SYSTEMS

50-1809. CONTROL OF DITCHES. To fully carry into effect the purposes of sections 50-1801 through 50-1835 every city shall have power to construct, enlarge, diminish, alter or change all irrigation ditches, aqueducts, pipelines, flumes, canals or laterals within its corporate limits that may be necessary to convey, control, distribute, apportion and regulate such irrigation water to the inhabitants thereof in accordance herewith.

TITLE 18
CRIMES AND PUNISHMENTS
CHAPTER 43
IRRIGATION WORKS

18-4308. CHANGE OF LATERAL DITCH OR BURIED IRRIGATION CONDUIT. Where any lateral ditch has heretofore been, or may hereafter be, constructed across or beneath the lands of another, the person or persons owning or controlling the said land, shall have the right at his own expense to change said lateral ditch or buried irrigation conduit to any other part of said land, but such change must be made in such a manner as not to impede the flow of the water

therein, or to otherwise injure any person or persons using or interested in such lateral ditch or buried irrigation conduit. Any increased operation and maintenance shall be the responsibility of the landowner who makes the change. A landowner shall also have the right to bury the ditch of another in pipe on the landowner's property, provided that the pipe, installation and backfill reasonably meet standard specifications for such materials and construction, as set forth in the Idaho standards for public works construction or other standards recognized by the city or county in which the burying is to be done. The right and responsibility for operation and maintenance shall remain with the ditch owner, but the landowner shall be responsible for any increased operation and maintenance costs, including rehabilitation and replacement, unless otherwise agreed in writing with the ditch owner.

In the event that the ditch, lateral, buried irrigation conduit, or canal is owned by an organized irrigation district, canal company, ditch association, or other irrigation entity, the written permission of the entity must first be obtained before a ditch, lateral, buried irrigation conduit, or canal is changed or placed in buried pipe by the landowner. While a ditch owner shall have no right to relocate his ditch on the property of another without permission, a ditch owner shall have the right to place his ditch in a buried conduit within the easement or right-of-way on the property of another in accordance with standard specifications for pipe, materials, installation and backfill, as set forth in the Idaho standards for public works construction or other standards recognized by the city or county in which the burying is to be done, and so long as the pipe and the construction is accomplished in a manner that the surface of the owner's property and the owner's use thereof is not disrupted and is restored to the condition of adjacent property as expeditiously as possible, but not to exceed five (5) days after the start of construction. A landowner shall have the right to direct that the conduit be relocated to a different route than the route of the ditch, provided that the landowner shall agree in writing to be responsible for any increased construction or future maintenance costs necessitated by said relocation. Maintenance of the buried conduit shall be the responsibility of the ditch owner. No more than five (5) days after the start of construction, a landowner or ditch owner who buries a ditch in pipe shall record the location and specifications of the buried irrigation conduit, including primary and secondary easements, in the county in which the burying is done, and shall provide the irrigation entity that supplies water to the ditch, with a copy of such location and specifications and the construction plans utilized. The irrigation entity shall keep and maintain such records and have them available for the public.

TITLE 18
CRIMES AND PUNISHMENTS
CHAPTER 43
IRRIGATION WORKS

18-4309. UNAUTHORIZED TAMPERING WITH MEASURING DEVICES. Every person who shall wilfully waste water for irrigation, or who shall wilfully open, close, change or disturb, or interfere with, any headgate or water box or valve or measuring or regulating device, without authority, shall be guilty of a misdemeanor. The water masters or their assistants, within their district, shall have the power to arrest any person or persons offending, and turn them over to the

sheriff or the nearest peace officer of the county in which such offense is committed, and immediately upon delivering such person so arrested into the custody of either of such officers, it shall be the duty of the water master making such arrest to make complaint, in writing and under oath, before the proper justice of the peace, or the probate judge of such county, against the person so arrested.

TITLE 31
COUNTIES AND COUNTY LAW
CHAPTER 38
ZONING REGULATIONS

31-3805. DELIVERY OF WATER. (1) When either a subdivision within the meaning of chapter 13, title 50, Idaho Code, or a subdivision subject to a more restrictive county or city zoning ordinance is proposed within the state of Idaho, and all or any part of said subdivision would be located within the boundaries of an existing irrigation district or other canal company, ditch association, or like irrigation water delivery entity, hereinafter called "irrigation entity" for the purposes of this chapter, no subdivision plat or amendment to a subdivision plat or any other plat or map recognized by the city or county for the division of land will be accepted, approved, and recorded unless

(a) The water rights appurtenant and the assessment obligation of the lands in said subdivision which are within the irrigation entity have been transferred from said lands or excluded from an irrigation entity by the owner thereof; or by the person, firm or corporation filing the subdivision plat or amendment to a subdivision plat or any other plat or map recognized by the city or county for the division of land; or

(b) The owner or person, firm or corporation filing the subdivision plat or amendment to a subdivision plat or any other plat or map recognized by the city or county for the division of land has provided for underground tile or other like satisfactory underground conduit for lots of one (1) acre or less, or a suitable system for lots of more than one (1) acre which will deliver water to those landowners within the subdivision who are also within the irrigation entity, with the following appropriate approvals

(i) For proposed subdivisions within the incorporated limits of a city, the irrigation system must be approved by the city zoning authority or the city council, as provided by city ordinance, with the advice of the irrigation entity charged with the delivery of water to said lands.

(ii) For proposed subdivisions located outside incorporated cities but within a negotiated area of city impact pursuant to chapter 65, title 67, Idaho Code, or within one (1) mile outside the incorporated limits of any city, both city and county zoning authorities and city council and county commissions must approve such irrigation system in accordance with section 50-1306, Idaho Code. In addition, the irrigation entity charged with the delivery of water to said lands must be advised regarding the irrigation system.

(iii) For proposed subdivisions located outside an area of city impact in counties with a zoning ordinance, the delivery system must be approved by the appropriate county zoning authority, and the county commission with the advice of the

irrigation entity charged with the delivery of water to said lands.

(iv) For proposed subdivisions located outside an area of city impact in counties without a zoning ordinance, such irrigation system must be approved by the board of county commissioners with the advice of the irrigation entity charged with the delivery of water to said lands.

(2) (a) In the event that the provisions of either subsection (1)(a) or (1)(b) of this section have not been complied with, the assessments of the irrigation entity for operation, maintenance, construction, and other valid charges permitted by statute shall in no way be affected. Any person, firm or corporation or any other person offering such lots in such subdivision for sale, or selling such lot shall, prior to the sale, advise the purchaser in writing as follows

- (i) That suitable water deliveries have not been provided; and
- (ii) That the purchaser of the lot must remain subject to all assessments levied by the irrigation entity; and
- (iii) That the individual purchaser shall be responsible to pay such legal assessments; and
- (iv) That the assessments are a lien on the land within the irrigation entity; and
- (v) That the purchaser may at a future date petition the appropriate irrigation entity for exclusion from the irrigation district.

(b) A disclosure statement executed by the purchasers and duly acknowledged, containing the representations required in this subsection of this section, shall be obtained by the seller at the time of receipt of the earnest money from the purchaser, and affixed to the proposed sales contract and a copy thereof shall be forwarded to the appropriate irrigation entity.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 1
APPROPRIATION OF WATER -- GENERAL PROVISIONS

42-109. CHANGE IN COURSE OF DITCH -- WHEN PROHIBITED. Whenever any ditch or canal has been constructed for the purpose of conveying water and selling the same for irrigating purposes, it is unlawful for the owner or owners of said ditch or canal to change the line of said ditch or canal so as to prevent or interfere with the use of water from said ditch or canal, by any one who, prior to the proposed change, had used water for irrigating purposes from said ditch or canal.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 11
RIGHTS OF WAY

42-1101. RIGHTS OF LANDOWNERS TO WATER. All persons, companies and corporations owning or claiming any lands situated on the banks or in the vicinity of any stream, are entitled to the use of the waters of such stream for the purpose of irrigating the land so held or claimed.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 11
RIGHTS OF WAY

42-1102. OWNERS OF LAND -- RIGHT TO RIGHT-OF-WAY. When any such owners or claimants to land have not sufficient length of frontage on a stream to afford the requisite fall for a ditch, canal or other conduit on their own premises for the proper irrigation thereof, or where the land proposed to be irrigated is back from the banks of such stream, and convenient facilities otherwise for the watering of said lands cannot be had, such owners or claimants are entitled to a right-of-way through the lands of others, for the purposes of irrigation. The right-of-way shall include, but is not limited to, the right to enter the land across which the right-of-way extends, for the purposes of cleaning, maintaining and repairing the ditch, canal or conduit, and to occupy such width of the land along the banks of the ditch, canal or conduit as is necessary to properly do the work of cleaning, maintaining and repairing the ditch, canal or conduit with personnel and with such equipment as is commonly used, or is reasonably adapted, to that work. The right-of-way also includes the right to deposit on the banks of the ditch or canal the debris and other matter necessarily required to be taken from the ditch or canal to properly clean and maintain it, but no greater width of land along the banks of the canal or ditch than is absolutely necessary for such deposits shall be occupied by the removed debris or other matter. Provided, that in the making, constructing, keeping up and maintenance of such ditch, canal or conduit, through the lands of others, the person, company or corporation, proceeding under this section, and those succeeding to the interests of such person, company or corporation, must keep such ditch, canal or other conduit in good repair, and are liable to the owners or claimants of the lands crossed by such work or aqueduct for all damages occasioned by the overflow thereof, or resulting from any neglect or accident (unless the same be unavoidable) to such ditch or aqueduct.

The existence of a visible ditch, canal or conduit shall constitute notice to the owner, or any subsequent purchaser, of the underlying servient estate, that the owner of the ditch, canal or conduit has the right-of-way and incidental rights confirmed or granted by this section. This section shall apply to ditches, canals or other conduits existing on the effective date of this act, as well as to ditches, canals or other conduits constructed after such effective date.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 11
RIGHTS OF WAY

42-1106. RIGHT OF EMINENT DOMAIN. In case of the refusal of the owners or claimants of any lands, through which any ditch, canal or conduit is proposed to be made or constructed, to

allow passage thereof, the person or persons desiring the right of way may proceed as in the law of eminent domain.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 11
RIGHTS OF WAY

42-1107. RIGHT OF WAY FOR DRAINS. Whenever the owner or owners of any parcel or parcels of land desire to construct a drain for the purpose of carrying off surplus water, and they cannot agree among themselves or with the parties who own land below through which it is expedient to carry the drain in order to reach a natural waterway, then proceedings may be had in the same manner as in cases of eminent domain affecting irrigating works of diversion, and the right of way for such drains shall be regarded as equal to that of irrigation canals.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 12
MAINTENANCE AND REPAIR OF DITCHES

42-1201. DITCHES TO BE KEPT FULL. Every person, company or corporation owning or controlling any ditch, canal or conduit for the purpose of irrigation shall, during the time from April first to the first day of November of each year, keep a flow of water therein sufficient to the requirements of such persons as are properly entitled to the use of water therefrom: provided, however, that when the public streams or other natural water sources from which the water is obtained is [are] too low and inadequate for that purpose, or when the board of directors or governing body of an organization or entity furnishing water deem it in the best interests of that organization or entity to adjust the dates of availability and provide for termination of irrigation water, then such ditch, canal or conduit shall be kept with as full a flow of water therein as may be practicable, subject, however, to the rights of priority from the streams or other natural sources as provided by law.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 12
MAINTENANCE AND REPAIR OF DITCHES

42-1202. MAINTENANCE OF DITCH. The owners or persons in control of any ditch, canal or

conduit used for irrigating purposes shall maintain the same in good order and repair, ready to deliver water by the first of April in each year, and shall construct the necessary outlets in the banks of the ditches, canals or conduits for a proper delivery of water to persons having rights to the use of the water.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 12
MAINTENANCE AND REPAIR OF DITCHES

42-1203. MAINTENANCE OF EMBANKMENTS. The owner or owners of any irrigating ditch, canal or conduit shall carefully keep and maintain the embankments thereof in good repair, in order to prevent the water from wasting during the irrigation season, and shall not at any time permit a greater quantity of water to be turned into said ditch, canal or conduit than the banks thereof will easily contain or than can be used for beneficial or useful purposes; it being the meaning of this section to prevent the wasting and useless discharge and running away of water.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 12
MAINTENANCE AND REPAIR OF DITCHES

42-1204. PREVENTION OF DAMAGE TO OTHERS. The owners or constructors of ditches, canals, works or other aqueducts, and their successors in interest, using and employing the same to convey the waters of any stream or spring, whether the said ditches, canals, works or aqueducts be upon the lands owned or claimed by them, or upon other lands, must carefully keep and maintain the same, and the embankments, flumes or other conduits, by which such waters are or may be conducted, in good repair and condition, so as not to damage or in any way injure the property or premises of others. The owners or constructors have the right to enter the land across which the right-of-way extends, for the purposes of cleaning, maintaining and repairing the ditch, canal or conduit, and to occupy such width of the land along the banks of the ditch, canal or conduit as is necessary to properly do the work of cleaning, maintaining and repairing the ditch, canal or conduit with personnel and with such equipment as is commonly used, or is reasonably adapted, to that work. The right-of-way also includes the right to deposit on the banks of the ditch or canal the debris and other matter necessarily required to be taken from the ditch or canal to properly clean and maintain it, but no greater width of land along the banks of the canal or ditch than is absolutely necessary for such deposits shall be occupied by the removed debris or other matter.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 12
MAINTENANCE AND REPAIR OF DITCHES

42-1206. REPAIR OF COMMUNITY DITCHES. Where a ditch is common property, or there is a common right to the use of the water of a ditch without payment therefor, and any labor or materials are necessary for the repair or cleaning of the ditch, or any gate or flume thereon or thereunto belonging, the watermaster of the district may make a fair pro rata assessment of labor or materials against the inhabitants of the district claiming the use of such water, according to the benefits received by each; and if any person so assessed neglects or refuses, for the period of three (3) days after notice so to do from the watermaster or his deputy, to furnish his just proportion of the necessary labor or materials, according to such assessment, he must pay his pro rata in cash, to be recovered, with costs, in an action by the watermaster in his own name.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 12
MAINTENANCE AND REPAIR OF DITCHES

42-1207. CHANGE OF LATERAL DITCH OR BURIED IRRIGATION CONDUIT. Where any lateral ditch or buried irrigation conduit has heretofore been, or may hereafter be, constructed across or beneath the lands of another, the person or persons owning or controlling said land shall have the right at their own expense to change said lateral ditch or buried irrigation conduit to any other part of said land, but such change must be made in such a manner as not to impede the flow of the water therein, or to otherwise injure any person or persons using or interested in such lateral ditch or buried irrigation conduit. Any increased operation and maintenance shall be the responsibility of the landowner who makes the change. A landowner shall also have the right to bury the ditch of another in pipe on the landowner's property, provided that the pipe, installation and backfill reasonably meet standard specifications for such materials and construction, as set forth in the Idaho standards for public works construction or other standards recognized by the city or county in which the burying is to be done. The right and responsibility for operation and maintenance shall remain with the ditch owner, but the landowner shall be responsible for any increased operation and maintenance costs, including rehabilitation and replacement, unless otherwise agreed in writing with the ditch owner.

In the event that the ditch, lateral, buried irrigation conduit, or canal is owned by an organized irrigation district, canal company, ditch association, or other irrigation entity, the written permission of the entity must first be obtained before a ditch, lateral, buried irrigation conduit, or canal is changed or placed in buried pipe by the landowner. While a ditch owner shall have no right to relocate his ditch on the property of another without permission, a ditch owner shall have the right to place his ditch in a buried conduit within the easement or right-of-way on the property of another in accordance with standard specifications for pipe, materials, installation and backfill, as set forth in the Idaho standards for public works construction or other standards recognized by the city or county in which the burying is to be done, and so long as the pipe and the construction is accomplished in a manner that the surface of the owner's property and the owner's use thereof is not disrupted and is restored to the condition of adjacent property as expeditiously as possible, but not to exceed five (5) days after the start of construction.

A landowner shall have the right to direct that the conduit be relocated to a different route than the route of the ditch, provided that the landowner shall agree in writing to be responsible for any increased construction or future maintenance costs necessitated by said relocation. Maintenance of the buried conduit shall be the responsibility of the ditch owner. No more than five (5) days after the start of construction, a landowner or ditch owner who buries a ditch in pipe shall record the location and specifications of the buried irrigation conduit, including primary and secondary easements, in the county in which the burying is done, and shall provide the irrigation entity that supplies water to the ditch, with a copy of such location and specifications and the construction plans utilized. The irrigation entity shall keep and maintain such records and have them available for the public.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 12
MAINTENANCE AND REPAIR OF DITCHES

42-1208. RIGHTS-OF-WAY NOT SUBJECT TO ADVERSE POSSESSION. Rights-of-way of irrigation districts, Carey act operating companies, nonprofit irrigation entities, and lateral ditch associations, are not subject to adverse possession, and no person shall prevent free access of authorized personnel on rights-of-way or construct any obstruction on rights-of-way in an effort to adversely possess said right-of-way.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 13
LATERAL DITCH WATER USERS' ASSOCIATIONS

42-1301. ORGANIZATION -- OFFICERS -- RULES. Where three (3) or more parties take water from same canal or reservoir at the same point to be conveyed to their respective premises for any distance through a lateral or distributing ditch or laterals or distributing ditches such parties shall constitute a water users' association known as "Water Users' Association of Lateral or Laterals." Such water users' association may meet and organize at any time after thirty (30) days after this chapter shall take effect, and shall meet annually thereafter between January first and the last Monday in March of each year, at the call of the secretary of such association, said secretary to give ten (10) days' notice by mail of such annual meeting; provided that if for any reason the secretary should fail to call a meeting, then the annual meeting of such association shall be held on the last Monday in March of each year. At such annual meetings each water user shall be entitled to one (1) vote in person, for each inch and a fractional vote for each fraction of an inch of water which such water user is entitled to receive from such laterals, and a corporation shall vote by one (1) of its officers designated by it. Such association shall organize by the election of a chairman, vice-chairman and a secretary-treasurer, which officers shall also constitute the board of directors of such association, and shall hold office for one (1) year and

until their successors are elected. Such association at the annual meeting shall also elect a manager of said lateral or laterals to be known as "lateral manager" for the succeeding season and shall fix the compensation of said manager, and of all officers. Such association may adopt such rules and regulations for the management of said lateral or laterals or distributing ditch or ditches and the delivery of water therefrom as they deem best, and may, by majority vote, if it be deemed for the best interests of the association, combine one or more laterals and abandon laterals not in use, and do any and all things not in conflict with the provisions of this chapter or the laws of this state wherein the best interests of the association will be furthered.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 13
LATERAL DITCH WATER USERS' ASSOCIATIONS

42-1303. LATERAL DITCHES -- REPAIRS, IMPROVEMENTS, AND MAINTENANCE -- ASSESSMENT OF COSTS. Immediately after the annual meeting of any such association the directors thereof and the lateral manager shall make an examination of the lateral or distributing ditch or ditches, and make an estimate as to the cost of the necessary repairs and improvements thereon, and the maintenance thereof for the succeeding season, including the compensation of officers and lateral manager and such total cost and charges shall be assessed pro rata to each water user from said lateral, in the following manner, if agricultural land in proportion to the water which the owner is entitled to receive from such lateral or ditch, and if lots within any city or village, then the assessment may be made upon the basis of each lot, the same to be uniform upon lots of the same size. The improvement, repair and maintenance of any such lateral or distributing ditch shall be under the direction of the directors of the association.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 13
LATERAL DITCH WATER USERS' ASSOCIATIONS

42-1304. ASSESSMENTS -- NOTICE -- PENALTIES FOR DELINQUENCY. On or before the fifteenth day of April in each year the secretary of the association shall notify each water user of the amount assessed against him for that year as herein authorized, and the same shall be due and payable on the first day of May of each year and if not so paid on or before the fifteenth day of June of such year, a penalty of ten per cent (10%) shall be added thereto, and the total amount due shall then draw interest at the rate of ten per cent (10%) per annum from said fifteenth day of June of such year until paid.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 13
LATERAL DITCH WATER USERS' ASSOCIATIONS

42-1306. COLLECTION AND DISBURSEMENT OF FUNDS. The lateral manager shall collect all assessments so made and pay the same to the secretary [secretary]-treasurer taking his receipt therefor. The secretary-treasurer of this association shall keep the funds of the association in the name of the association and shall draw warrants or checks thereon to pay the costs and expenses of the management of said lateral as herein provided for upon the order of the board of directors, and shall perform such other duties as the association may prescribe.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 13
LATERAL DITCH WATER USERS' ASSOCIATIONS

42-1307. ACTION FOR ASSESSMENT -- ATTORNEYS' FEES. In case any assessment, as herein provided for is due and unpaid the association may sue to collect the same, in the name of its secretary-treasurer as such, in any court of competent jurisdiction, and in addition to the amount due including all penalties and interest, and all costs incurred in said action, may collect a reasonable attorney's fee in such action to be fixed by the court.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 17
DEPARTMENT OF WATER RESOURCES -- WATER RESOURCE BOARD

42-1778. WATER RIGHTS ENFORCEMENT ACCOUNT. (1) The water rights enforcement account is hereby created and established in the agency asset fund.
(2) All moneys in the water rights enforcement account are reserved, set aside, appropriated and made available until expended as may be directed by the director of the department of water resources in carrying out a water rights enforcement program.

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 ten dollars (\$10.00) 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, association or corporation, or the right to a lien for the same, which does or may hereafter otherwise exist, is not impaired by this chapter.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 22
OPERATING COMPANIES -- LIEN FOR MAINTENANCE CHARGES

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.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 29
DRAINAGE DISTRICTS

42-2945. CONNECTIONS BY PRIVATE DRAINS -- COSTS. Any person or corporation owning land within said district shall have a right to connect any private drains or ditches for the proper drainage of such land with said system, and in case any person or corporation shall desire to drain such lands into said system, and shall find it necessary, in order to do so, to procure the right of way over the land of another, or others, and if consent thereto cannot be procured from such person or persons, then such landowner may present in writing a request to the board of commissioners of said district, setting forth therein the necessity of being able to connect his private drainage with said system, and pray therein that said system be extended to such point as he may designate in said writing, and immediately thereon said board of commissioners shall cause a petition to be filed in the district court for and in the name of said drainage district, requesting, in said petition, that said system be extended as requested, setting forth therein the necessity thereof and praying that leave be granted by the board to extend the system in accordance with the prayer of said petition, and the proceedings in such case, upon the presentation of such petition and the hearing thereof shall be, in all matters, the same as in the hearing and presentation of the original petition, for the establishment of the original system of drainage in said district, as far as applicable.

The costs in such proceedings shall be paid from the assessment of benefits to be made on the lands of the person or persons benefitted by such extension, and the assessment and compensation for the right of way, damages and benefits and payment of damages and compensation, and the collection of the assessments for benefits shall be the same as in the proceedings under the original petition, and the construction of the said extension shall be made under the same provisions as the construction of the original improvement; and all things that may be done or performed in connection therewith shall be, as near as may be applicable, in accordance with the provisions already set forth herein for the establishment and construction of said original improvement: provided, that such petitioner or petitioners shall, at the time of filing such petition by said drainage commissioners, enter into a good and sufficient bond to said drainage district, in the full penal sum of [five hundred dollars (]\$500.00[)], with two (2) or more sureties to be approved by the court, conditioned for the payment of all costs in case the prayer of said petitioner shall not be granted, which bond shall be filed in said court.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 29

DRAINAGE DISTRICTS

42-2947. USE OF NATURAL WATERCOURSES AND PREVIOUSLY CONSTRUCTED WORKS. The whole or any portion of any natural watercourse which drains any district established under this chapter, or the whole or any portion of any ditch or drainage system already constructed or partially constructed prior to the passage of this chapter, or which may be constructed subsequent thereto, may be improved and completed as a system under the provisions of this chapter: provided, that the owner or owners of any land upon or in which any drainage system has been established or constructed in whole or in part or which may hereafter be constructed in whole or in part, may take advantage of the provisions of this chapter to organize same as a drainage district, for the purpose of completing same or for the purpose of making provision for the payment or funding of any indebtedness incurred in the construction of such system, or either; and providing for the maintenance thereof. The procedure to be followed in such case shall be the same as is herein provided for the organization of a drainage district in the first instance to the extent that same is applicable to the situation: provided, that the necessary changes and substitutions therein may be made: provided further, that in the improvement of any natural watercourse, the rights of the public therein for the purpose of navigation shall not be in any way impaired.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 29
DRAINAGE DISTRICTS

42-2981. CERTAIN PUBLIC AND PRIVATE LANDS LIABLE FOR COSTS AND EXPENSE OF DRAINAGE -- COLLECTION OF DRAINAGE CHARGES. Lands, whether public or private, which have been developed for commercial, industrial, recreational, residential, governmental or highway purposes, and from which surface water or seepage drain into the irrigation or drainage system of any person or persons, canal company, irrigation district, drainage district, or ditch owners' association, shall be liable for a proportionate share of the cost and expense of operating, maintaining, repairing and replacing the portions of such system which are used or allocated for drainage purposes. Drainage charges for any such lands which are not subject to the regular assessment powers of the person or entity owning or controlling the system shall be billed to, and shall be paid promptly by, the governmental unit owning the land. If the lands are privately owned, the drainage charges shall be billed to, and shall be paid promptly by the county in which the lands are located, and such charges shall be included in the county budget as a separate fund for drainage, the tax for which shall be levied against all privately owned lands in the county which are benefitted by such drainage and which are not subject to the regular assessment powers of the owner of the irrigation or drainage system.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 7

HEADGATES AND MEASURING DEVICES

42-701. INSTALLATION AND MAINTENANCE OF CONTROLLING WORKS AND MEASURING DEVICES BY WATER APPROPRIATORS -- PROCEDURE UPON FAILURE TO INSTALL AND MAINTAIN -- MEASURING AND REPORTING OF DIVERSIONS -- PENALTY FOR FAILURE TO COMPLY -- ENFORCEMENT PROCEDURE -- REPORT FILING FEE. (1) The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the director of the department of water resources suitable headgates and controlling works at the point where the water is diverted. Each device shall be of such construction that it can be locked and kept closed by the watermaster or other officer in charge, and shall also be of such construction as to regulate the flow of water at the diversion point. Each such appropriator shall construct and maintain, when required by the director of the department of water resources, a rating flume or other measuring device at such point as is most practical in such canal, ditch, wellhead or pipeline for the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said canal, ditch, wellhead or pipeline from the stream, well or other source of public water. Plans for such headgates, rating flumes or other measuring devices shall be approved by the department of water resources.

(2) If an appropriator determines that installation and maintenance of a measuring device required by the director would be burdensome for his diversion, the appropriator may, upon approval of the director, execute an agreement with the director and submit to the director such information and technical data concerning the diversion and pumping facilities as the director determines necessary to establish the relationship of power usage to water withdrawal by any pump used to divert public water.

(3) Any appropriator or user of the public waters of the state of Idaho that neglects or refuses to construct or maintain such headgates, controlling works, or measuring devices, or has not executed an agreement in lieu of a measuring device as provided in subsection (2) of this section, upon receiving ten (10) days' notice from the director of the department of water resources within which to begin and diligently pursue to completion the construction or installation of the required device or devices or to begin and diligently pursue to completion a remedy to such defects as exist in accordance with said notice, then the director of the department of water resources may order the duly qualified and acting watermaster of the water district to shut off and refuse to deliver at the point of diversion, the water owned by such appropriator or user until the user does construct and maintain such headgates, controlling works or measuring devices or remedy the defects which exist or the director may take action pursuant to section 42-1701B, Idaho Code, to enforce the requirement to construct, install or maintain such devices.

(4) The appropriators or users of the public waters of the state of Idaho shall be given a reasonable time within which to complete construction of such headgates, controlling works or measuring devices, depending upon the size and extent thereof, when due diligence has been used in the prosecution of such work.

(5) All appropriators of the public waters of the state of Idaho who are given thirty (30) days' written notice by the director prior to the beginning of the irrigation season but no later than March 15 of any year, shall measure their water diversions and report said

diversions annually thereafter on a form approved by the director of the department of water resources. Such report shall include a legal description of the point of diversion, the number assigned to each water right diverting from the public waters of the state, the maximum authorized rate of diversion, the maximum rate at which diversions have been made during the reporting period, the total volume diverted during the reporting period, and a description of the physical changes to the diversion works that have been made during the reporting period. The appropriator shall furnish each year the depth to water in any well prior to commencement of pumping, the depth to water during the pumping period, and the pressure in the pipe distribution system during diversion if the well is not free flowing. When the director of the department of water resources determines that any person is in substantial violation of any provision of this section or any rule, permit, condition of approval or order issued or promulgated pursuant to this section, the director may commence an administrative enforcement action by issuing a written notice of violation in accordance with the provisions of section 42-1701B, Idaho Code.

Subsections (5) and (6) of this section shall not apply to

- (a) any appropriator or water user with respect to a water right included in an active water district created pursuant to chapter 6, title 42, Idaho Code, the annual report of which meets the reporting requirements of section 42-708, Idaho Code;
- (b) any irrigation district or ground water district having shown to the satisfaction of the director that they are currently making and recording sufficient measurements of their diversions with measuring methods acceptable to the director and upon their agreement to provide an annual report of their diversions to the director in substantially the same form as required in section 42-708, Idaho Code; and
- (c) any water right included in an active water measurement district created pursuant to this chapter.

(6) The director of the department of water resources shall collect a report processing fee of twenty-five dollars (\$25.00) per diversion required to be reported, including those diversions covered by an agreement in lieu of a measuring device as provided in subsection (2) of this section. Such fee shall be submitted with the annual report of diversions and well data. All such fees received by the department shall be deposited in the water administration account created pursuant to section 42-238a, Idaho Code, for use by the department to collect, analyze and report water use information and to regulate water withdrawal and use.

(7) All domestic uses, as defined in section 42-111, Idaho Code, and all stock watering uses, as defined in section 42-1401A, Idaho Code, shall be exempt from the measuring device installation and maintenance, measuring and reporting requirements of this section.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 9
DISTRIBUTION OF WATER TO CONSUMERS

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.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 9
DISTRIBUTION OF WATER TO CONSUMERS

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.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 9
DISTRIBUTION OF WATER TO CONSUMERS

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 herein above 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 [(30)] 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.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 9
DISTRIBUTION OF WATER TO CONSUMERS

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.

TITLE 42

IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 9
DISTRIBUTION OF WATER TO CONSUMERS

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.

TITLE 45
LIENS, MORTGAGES AND PLEDGES
CHAPTER 5
LIENS OF MECHANICS AND MATERIALMEN

45-501. RIGHT TO LIEN. Every person, otherwise unsecured in whole or in part, performing labor upon, or furnishing materials to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dike, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power, or any other structure, or who grades, fills in, levels, surfaces or otherwise improves any land, or who performs labor in any mine or mining claim, and every professional engineer or licensed surveyor under contract who prepares or furnishes designs, plans, plats, maps, specifications, drawings, surveys, estimates of cost, on-site observation or supervision, or who renders any other professional service whatsoever for which he is legally authorized to perform in connection with any land or building development or improvement, or to establish boundaries, has a lien upon the same for the work or labor done or professional services or materials furnished, whether done or furnished at the instance of the owner of the building or other improvement or his agent; and every contractor, subcontractor, architect, builder or any person having charge of any mining claim, or of the construction, alteration or repair, either in whole or in part, of any building or other improvement, as aforesaid, shall be held to be the agent of the owner for the purpose of this chapter provided, that the lessee or lessees of any mining claim shall not be considered as the agent or agents of the owner under the provisions of this chapter.

TITLE 50
MUNICIPAL CORPORATIONS
CHAPTER 18
CITY IRRIGATION SYSTEMS

50-1801. CITY IRRIGATION SYSTEM AUTHORIZED. Any city within the state of Idaho is hereby authorized, in the whole or part of the city to establish a city irrigation system and to extend the boundaries within which it will supply and deliver irrigation water; to acquire by purchase, contract, eminent domain or otherwise and to operate, maintain, construct, improve, enlarge and extend an irrigation system to supply water to a part or all of the lands, lots, parcels

and pieces of real estate within the limits of such city; to acquire by appropriation, purchase, contract, eminent domain or by any other lawful means not herein enumerated any of the public or private waters of the state of Idaho whether such waters are surface or subterranean waters; to acquire, extend, enlarge, maintain and operate any canals, ditches, conduits and rights of way for ditches, canals and conduits by contract, deed, eminent domain or any other lawful means for the use of such city in supplying water to and distributing the same throughout the city.

TITLE 50
MUNICIPAL CORPORATIONS
CHAPTER 18
CITY IRRIGATION SYSTEMS

50-1802. CITY CONTROL -- PETITION. Every city in the state of Idaho shall have the power by and through its council, upon a petition signed by a majority of the owners or representatives of owners of real property within any city receiving water by distribution from any ditch or canal, whether such ditch or canal be privately or otherwise controlled: to regulate, control and supervise the distribution of all water used by the inhabitants thereof for irrigation purposes; to convey the same by ditches, laterals, pipes, aqueducts, flumes, culverts or other feasible means, through the public streets, avenues and alleys; to apportion such irrigation water among such inhabitants; to regulate the distribution, and otherwise supervise, control and distribute such irrigation water in such a way as to promote the general welfare of the inhabitants of such city.

The Idaho Department of Water Resources state office is located in Boise.

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