

42-1405. Summary supplemental adjudication of water rights. — Where the priority rights upon any stream, canal or reservoir in this state shall have been determined by decree of any court of competent jurisdiction, and thereafter it shall appear that any person or corporation having the right to the use of any part of said water was not included in said decree as a party thereto, and said right was not determined thereby, or that any person who subsequent thereto has acquired any right to the use of such waters, any such person or corporation may have such right adjudicated in the following manner:

He may bring an action in the district court of the county wherein such decree was entered against the watermaster having charge of the distribution of the water of said stream, canal or reservoir in which said party claims an interest, or if there be no watermaster thereof, then against the department of water resources; that the said party shall in his complaint, set out his own right as he is now required to do in cases involving the right of priority of use of water, and he shall further set forth his acceptance as binding upon him of the said decree and the findings of fact and conclusions of law upon which it is based. Thereupon summons shall issue out of said court in said cause and be served upon said defendant. The plaintiff in said action shall cause to be published once a week for not less than three (3) weeks a notice of the pendency and purpose of said action in such newspaper or newspapers as the judge of said district court may order, which notice shall contain the title of the court and the cause, the name of the stream, canal or reservoir in the waters of which said plaintiff claims an interest, the date of priority claimed by him and the date and short title (being usually the name of the first plaintiff and the first defendant) of the decree theretofore entered, fixing the permanent rights in said stream, canal or reservoir. After the expiration of the time fixed by said order, said cause may be brought on for hearing in open court, and any party interested may appear and defend against said right. The court by its decree in said action shall determine the rights of said plaintiff in accordance with the proof submitted but subject to the terms of the original decree hereinbefore referred to: provided, that the right thus established shall not be deemed adjudicated, but prima facie merely, and may be attacked by suit brought in a court of competent jurisdiction at any time by any person deeming himself aggrieved thereby. The court shall charge all costs arising under said action to the party bringing the same, unless the defendant personally shall be guilty of mismanagement or bad faith in the action or defense. Whereupon water shall be distributed to him in accordance therewith and in the same manner as though he had had his said right included in said decree. The plaintiff, any party to said original decree, or any person interested, may appeal from the decree entered in the action hereby authorized to be brought, and the statutes governing new trial and appeal and the procedure in connection therewith shall govern so far as applicable: provided, however, if the plaintiff appeals or moves for a new trial, notice thereof and of the date fixed for the settlement of any reporter's transcript, bill of exceptions, or any other matter required to be settled, shall be served by the publication of such notice or notices for three (3) weeks in such

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newspaper as the judge of said district may by order direct. The proposed draft of such reporter's transcript, or other matter required to be settled, or bill of exceptions, shall be filed with the clerk of said court and such filing shall be sufficient service thereof. The transcript and briefs upon appeal shall be served as in other civil cases. [1911, ch. 224, § 1, p. 708; am. 1915, ch. 34, § 18, p. 112; reen. C. L., § 4623a; C. S., § 7036; I. C. A., § 41-1305.]

Compiler's notes. The name of the department of water administration (formerly the department of reclamation) has been changed to the department of water resources on the authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 20, § 28 (§ 42-1801a).

The words inclosed in parentheses so appeared in the act.

Cross ref. Appeal, tit. 13. New trial, I.R.C.P., Rule 59.

Cited in: *Wyllie v. Kent* (1915), 28 Idaho 16, 152 P. 194; *Independent Irr. Co. v. Baldwin* (1926), 43 Idaho 371, 252 P. 489; *Parke v. Bell* (1975), 97 Idaho 67, 539 P.2d 995.

ANALYSIS

Application of section.

Definitions.

Effect of decree.

Jurisdiction of courts.

Nature of action.

Parties.

Proof of right.

Application of Section.

This section does not confer jurisdiction to enter summary decree adjudicating right to use water claimed to have been developed and not part of the natural and public waters of the state. *Union Cent. Life Ins. Co. v. Albrethsen* (1930), 50 Idaho 196, 294 P. 842.

In action for adjudication of priorities in well waters tributary to lake, complaint was not demurrable because of failure to join all users of water from lake as defendants since users not party to action were not bound by provisions of statute authorizing action and could not be injured by judgment therein, while intervening users had an ample opportunity to protect their rights as if suit had been brought under statute requiring that all water users be made parties. *Owsley Canal Co. v. Henninger* (1945), 66 Idaho 485, 162 P.2d 389.

Definitions.

The word "acquired" necessarily means more than acquisition from a previous water owner whose rights had been adjudicated because the purchaser would be bound by the decree as to his predecessor in interest. *Owsley Canal Co. v. Henninger* (1945), 66 Idaho 485, 162 P.2d 389.

The term "waters" is used in the generic sense and therefore includes all water distributed by the watermaster. *Owsley Canal*

Co. v. Henninger (1945), 66 Idaho 485, 162 P.2d 389.

Effect of Decree.

Decree does not adjudicate any right but simply gives prima facie right to delivery of so much water. *Mays v. District Court* (1921), 34 Idaho 200, 200 P. 115.

Decree may be attacked by action brought in court of competent jurisdiction, at any time, by any aggrieved party. *Mays v. District Court* (1921), 34 Idaho 200, 200 P. 115.

Anyone bringing action under this section must accept former decree as binding upon him. *Mays v. District Court* (1921), 34 Idaho 200, 200 P. 115.

While this section refers to former decree as fixing permanent rights in stream, language means permanent between parties to decree or permanent in effect, as distinguished from prima facie effect of remedy herein provided. *Mays v. District Court* (1921), 34 Idaho 200, 200 P. 115.

Decree void under this section affected rights of no one, raised an estoppel against no one, and did not have effect of making drain ditch appurtenant to land. *Union Cent. Life Ins. Co. v. Albrethsen* (1930), 50 Idaho 196, 294 P. 842.

Jurisdiction of Courts.

One had right to invoke jurisdiction of courts to protect his right to use of water for irrigation purposes and secure adjudication of priority as against others and such right of action existed independent of statute. *Mays v. District Court* (1921), 34 Idaho 200, 200 P. 115.

Everything necessary to give jurisdiction must appear by the record in proceedings under this section. *Union Cent. Life Ins. Co. v. Albrethsen* (1930), 50 Idaho 196, 294 P. 842.

The district court of county, in which was located all water wherein priority rights had been determined by federal court decree, had jurisdiction to fix priorities of canal company's appropriations of additional waters tributary under permits subsequently granted it by state to bore wells, as well as those of other users of such waters whose priorities had not been fixed. *Owsley Canal Co. v. Henninger* (1945), 66 Idaho 485, 162 P.2d 389.

Nature of Action.

Remedy provided by this section is not exclusive. *Mays v. District Court* (1921), 34

Idaho 200, 200 P. 115; *Harvey v. Deseret Sheep Co.* (1925), 40 Idaho 450, 234 P. 146.

Action to ascertain and decree extent and priority of right to use of water partakes of nature of action to quiet title to real estate (see § 6-401). *Mays v. District Court* (1921), 34 Idaho 200, 200 P. 115.

Actions under this section are not brought against other water users but against administrative officers who distribute it. *Mays v. District Court* (1921), 34 Idaho 200, 200 P. 115.

Parties.

Where the United States was interested in a contract with an irrigation district and such district brought an action for an adjudication of its water rights, which were affected by said contract, the United States was an indispensable party to such suit, and this was true notwithstanding the fact that the secretary of the interior was made a party, and that the contract in question was made and executed through and by him, and neither was the situation changed by the fact that there had been prior decree of the state court adjudicating such rights wherein the secretary was a party defendant. *American Falls Reservoir Dist. No. 2 v. Crandall* (1936), 82 Fed. 2d 973.

Construction company becoming equitable owner of irrigation works upon completion of system had sufficient interest to maintain action for supplemental adjudication of water rights though no formal conveyance was made until after commencement of action. *Big Wood Canal Co. v. Chapman* (1927), 45 Idaho 380, 263 P. 45.

Watermaster holds over until his successor is elected or appointed and has qualified, and when office has not thus been vacated, he is proper party defendant. *Big Wood Canal Co. v. Chapman* (1927), 45 Idaho 380, 263 P. 45.

Proof of Right.

Water rights are valuable property, and a claimant seeking a decree of a court to confirm his right to the use of water by appropriation must present sufficient evidence to enable the court to make definite and certain findings as to the amount of water actually diverted and applied, as well as the amount necessary for the beneficial use for which the water is claimed. *Head v. Merrick* (1949), 69 Idaho 106, 203 P.2d 608.

Collateral References.

See collateral references, § 42-1401.

42-1406. Action to adjudicate water rights. — The director of the department of water resources, upon his own initiative or upon petition signed by five (5) or more or a majority of the users of water from any water system requesting a determination of the rights of the various users of water from that system, if he deems that the public interest and necessity will be served by a determination of the water rights, shall be authorized to designate all of [or] any part of a water system which shall include streams, lakes, ground waters, or any other body of water, tributaries and contributory sources thereto and commence an action in the district court for the adjudication of the water rights of the water system. [I. C., § 42-1406, as added by 1969, ch. 279, § 4, p. 822.]

Compiler's notes. The bracketed word "or" was inserted by the compiler.

Section 3 of S.L. 1969, ch. 279 repealed § 42-1404.

The name of the director of the department of water administration (formerly the state reclamation engineer) has been changed to

the director of the department of water resources on the authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 20, § 28 (§ 42-1801a).

Collateral References.

93 C.J.S., Waters, §§ 194-205.

42-1407. Action commenced — Notice — Investigation — Order. — The director of the department of water resources shall commence the action by filing a petition in a district court in which any part of the water system is located describing the boundaries of the water system and requesting authorization for the commencement of an adjudication of the water rights from the water system. Upon filing a petition with the district court, the director of the department of water resources shall cause notice to be