

given shall in all cases be subject to the lien for price of water as provided in this section. [1895, p. 174, part of § 17; reen. R.C., § 3288; reen. C.L., § 3288a; C.S., § 5631; I.C.A., § 41-806.]

**Cross ref.** Land mortgaged to secure state endowment funds, § 43-2007.

**Cited in:** Portneuf-Marsh Valley Canal Co. v. Brown, 274 U.S. 630, 47 S. Ct. 692, 71 L. Ed. 1243 (1927).

#### ANALYSIS

Alternative remedy.  
Construction.  
Maintenance charges.  
Preferential rate.  
Unpaid assessments.

#### Alternative Remedy.

For user's default in payment of maintenance, water company may have proceeded either under this section or under § 42-101. Adams v. Twin Falls-Oakley Land & Water Co., 29 Idaho 357, 161 P. 322 (1916); Blaine County Canal Co. v. Hansen, 49 Idaho 649, 292 P. 240 (1930).

#### Construction.

This section clearly authorizes parties to contract with reference to the delivery of

water and to fix and determine amount to be charged as an annual maintenance fee therefor. Jackson v. Indian Creek Reservoir Ditch & Irrigation Co., 16 Idaho 430, 101 P. 814 (1909).

#### Maintenance Charges.

Maintenance charges may be recovered in action in quantum meruit. Blaine County Canal Co. v. Hansen, 49 Idaho 649, 292 P. 240 (1930).

#### Preferential Rate.

Canal company, not a common carrier, may allow a valid preferential maintenance rate. Nampa & Meridian Irrigation Dist. v. Briggs, 27 Idaho 84, 147 P. 75 (1915).

#### Unpaid Assessments.

This section provides remedy for unpaid assessments by foreclosure of lien on premises as this furnishes ample protection and works no injustice to user of water. Reynolds v. North Side Canal Co., 36 Idaho 622, 213 P. 344 (1923).

**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, 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. [1895, p. 174, part of § 17; reen. R.C. § 3288; reen. C.L., § 3288b; C.S., § 5632; I.C.A., § 41-807.]

**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).

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**Cross ref.** Appointment by district  
watermaster or directors of irrigation district,  
§ 42-909.

**Duties of manager,** § 42-910.

**Sec. to sec. ref.** This section is referred to  
in §§ 42-910, 42-1302.

#### ANALYSIS

**Construction.**

Construction of prior decree.

Costs of repair and maintenance.

Effect of failure to appoint.

Nature of office.

Rights of water users.

**Construction.**

Viewing provisions of this section in connec-  
tion with other sections of chapter, it would  
seem that purpose of legislature was simply  
to provide means of insuring equitable distri-  
bution of water received through community  
ditch and enforcing payment by each user of  
his part of expenses necessarily incurred.  
Preis v. Idaho Irrigation Co., 37 Idaho 109,  
215 P. 466 (1923).

There is nothing in S.L. 1899, p. 380, or S.L.  
1903, p. 223, repugnant or inconsistent with  
provisions of this section, and it is not thereby  
repealed. Preis v. Idaho Irrigation Co., 37  
Idaho 109, 215 P. 466 (1923).

Where water users fail to select  
watermaster, company was not liable for un-  
fair distribution of water from community  
ditch, although it had not delivered the full  
amount of water contracted for. Preis v. Idaho  
Irrigation Co., 37 Idaho 109, 215 P. 466  
(1923).

**Construction of Prior Decree.**

Since this statute was enacted subsequent  
to decree as to water rights, it could not be  
considered as controlling in construing that

decree, and the decree should have been con-  
strued in the light of the facts in the case and  
the law as it existed when the decree was  
entered. Anderson v. Dewey, 82 Idaho 173,  
350 P.2d 734 (1960).

**Costs of Repair and Maintenance.**

If the servient estate landowner's use of  
irrigation ditch had increased the cost of  
repairs and maintenance he would have been  
responsible for the additional costs, but since  
his use did not increase those costs, he had no  
obligation to pay for any portion of those  
costs. Sellers v. Powell, 120 Idaho 250, 815  
P.2d 448 (1991).

**Effect of Failure to Appoint.**

Failure of plaintiff to select watermaster for  
ditches used by himself and others jointly was  
not ground upon which motion for nonsuit  
could be sustained in action against water  
company for failure to deliver water. Preis v.  
Idaho Irrigation Co., 37 Idaho 109, 215 P. 466  
(1923); Meservy v. Idaho Irrigation Co., 37  
Idaho 227, 217 P. 595 (1923).

**Nature of Office.**

Manager of distributing lateral is not public  
officer in any sense of term. He gives no bond  
and takes no oath, nor is he paid from public  
treasury. Carter v. Niday, 46 Idaho 505, 269 P.  
91 (1928).

**Rights of Water Users.**

Water users were entitled to organize and  
provide for transfer of management of later-  
als owned by them to a ditch company pursu-  
ant to a unilateral agreement signed by the  
majority of the water users. Hale v.  
McCammon Ditch Co., 72 Idaho 478, 244 P.2d  
151 (1951).

**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, the person to be selected by such parties on or  
before April first of each year, as provided in section 42-907, 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. [1909, p. 108, § 1; reen. C.L., § 3288c; C.S.,  
§ 5633; I.C.A., § 41-808.]

Cited in: Hale v. McCammon Ditch Co., 72  
Idaho 478, 244 P.2d 151 (1951).

**Water Decree Prior to Statute.**

Since this statute was enacted subsequent

to decree as to water rights, it could not be  
considered as controlling in construing that  
decree as the decree is to be construed in light  
of the facts in the case and the law as it  
existed when the decree was entered. Ander-

son v. Dewey, 82 Idaho 173, 350 P.2d 734 (1960).

**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 or section 42-908, 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: 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 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. [C.S., § 5633-A, as added by 1925, ch. 99, § 1, p. 144; am. 1929, ch. 45, § 1, p. 57; am. 1931, ch. 62, § 1, p. 105; I.C.A., § 41-809.]

Cited in: Cronwall v. Talboy, 45 Idaho 459, 262 P. 871 (1928); Hale v. McCammon Ditch Co., 72 Idaho 478, 244 P.2d 151 (1951).

**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 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