

41-4-517. Appeal from action of state engineer or order of board of control.

Any applicant who is aggrieved by the endorsement made by the state engineer upon his application, may, in writing, in an informal manner and without pleadings of any character, appeal to the board of control within sixty (60) days of the date of receipt of notice of the endorsement, for an examination and reversal of any such action of the state engineer. Upon receipt of such an appeal, the secretary of the board of control shall notify the members of the board of control and upon receipt of replies from them shall fix a date, as early as may be possible, when such appeal shall be heard before the board. All parties and those who claim an adverse interest thereto, shall be notified and shall be given an opportunity to be heard. Any person aggrieved by any order or determination of the board of control in cases embracing such appeals from the state engineer, may appeal to the district court of the county in which the greatest use of water is proposed to be made under the application. The procedure in the appeal from a decision of the board of control shall be in conformity with the Wyoming Administrative Procedure Act and the Wyoming Rules of Appellate Procedure. The attorney general shall, in such cases, represent the state board of control.

CHAPTER 5 - IRRIGATION GENERALLY

ARTICLE 1 - CARE, MAINTENANCE AND PROTECTION OF IRRIGATION WORKS

41-5-101. Ditches; generally.

The owner or owners of any ditch for irrigation, or other purposes, shall carefully maintain the embankments thereof so that the water of such ditch may not flood or damage the premises of others.

41-5-102. Ditches; jointly owned; action to recover proportionate share of work.

In all cases where irrigating ditches are owned by two (2) or more persons and one (1) or more of such persons shall fail or neglect to do his, her or their proportionate share of the work necessary for the proper maintenance and operation of such ditch or ditches or to construct suitable head gates or measuring devices at the points where water is diverted from the main ditch, such owner or owners desiring the performance of such

work as is reasonably necessary to maintain the ditch, may, after having given ten (10) days written notice to such owner or owners who have failed to perform his, her or their proportionate share of such work, necessary for the operation and maintenance of said ditch or ditches, perform his, her or their share of such work, and recover therefor from such person or persons so failing to perform his, her or their share of such work in any competent court having jurisdiction of the matter, the expense or value of such work or labor so performed.

41-5-103. Ditches; jointly owned; lien for work.

Upon the failure of any co-owner to pay his proportionate share of such expense as mentioned in W.S. 41-5-102, within thirty (30) days after receiving a statement of the same as performed by his co-owner or owners, such person or persons so performing such labor may secure payment of said claim by filing an itemized and sworn statement thereof, setting forth the date of the performance and the nature of the labor so performed, with the county clerk of the county wherein said ditch is situated, and when so filed it shall constitute a valid lien against the interest of such person or persons who shall fail to perform their proportionate share of the work requisite to the proper maintenance of said ditch, which said lien when so taken may be enforced in the same manner as provided by law for the enforcement of construction liens.

41-5-104. Ditches; bridge to be built when ditch crosses public roads; costs of construction; failure to comply.

When any such ditch or watercourse shall be constructed across any public traveled road, and not bridged within three (3) days thereafter, it shall be the duty of the county commissioners of the county in which said ditch and road are located, to put a bridge over said ditch or watercourse, and call upon the owner or owners of said ditch or watercourse to pay the expenses of constructing said bridge, and if payment thereof be refused, a civil action may be maintained for the recovery of the same, together with all accruing costs.

41-5-105. When capital stock of irrigation companies assessable for maintenance.

Any ditch or irrigation company or association, all the property or capital stock of which is owned by farmers or others, owning lands under the line of such company's or association's ditch, and receiving water therefrom, by reason of their being owners

or stockholders in said company or association, shall have the right to levy and collect such annual assessments on the capital stock of said company, or members or owners of such association, whether said capital stock be fully paid up or otherwise, as may be deemed necessary by the trustees of said company, or a majority of the stock of such association, for the purpose of maintaining its ditches, flumes, tunnels, and the payment of all necessary expenses of such company; provided, that this section shall only apply to such water companies or associations whose capital stock or ditch property is wholly owned by persons or corporations owning land under the line of their ditches, and using water therefrom by reason of being such stockholders in said companies; and provided further, that said company or association shall have the right to close the headgate and refuse water to all such stockholders, owners or members who fail or refuse to pay said assessments after ten (10) days notice thereof, in writing, made by the president, agent or attorney of said company or association.

41-5-106. Keeping fish out of irrigation systems.

The game and fish department of the state of Wyoming may construct and maintain, at or near the point of diversion where the water of any stream or reservoir is diverted by any means of conveyance from its natural channel, some fit and proper device whereby all fish will be prevented from entering said means of conveyance; provided, such device does not obstruct or diminish the flow of water through said means of conveyance; and provided further that the determination as to obstruction shall be within the discretion of the water commissioner of the district within which such structure is placed subject to appeal to the division superintendent, and from the decision of the division superintendent to the state engineer.

41-5-107. Removal or destruction of bridges or flumes.

Whenever any person, persons or corporation shall remove or destroy any bridge or flume which crosses any ditch, canal or other irrigation works, when said flume or bridge is in good condition a legal right for such crossing having been acquired, said person, persons or corporations must replace said bridge or flume, in as good condition as before removal. If said bridge or flume is removed by the owner or owners of the said ditch, canal or irrigation works; it shall be the duty of the water commissioner to keep the controlling works of the said ditch, canal or irrigation works closed until the said bridge or flume is properly replaced. It shall be unlawful for any other person

to remove or destroy any such bridge or flumes. Any violation of this section shall be punishable pursuant to W.S. 41-3-616.

41-5-108. Driving or floating logs, timber or lumber on streams.

(a) Any person, association or corporation desiring or intending to drive or float logs, timber or lumber down or upon any stream in this state shall, before commencing operations apply to the state engineer for a permit to drive or float the same. Such application shall be in writing and shall state that the driving of such logs, timber or lumber will be conducted with all possible expedition and in such manner as not to interfere with, or injure any irrigating ditch or other property along the stream on which said drive is to take place, and the applicant shall be required by the state engineer to give bond to the state of Wyoming in such sum as the state engineer may deem sufficient, conditioned for the conducting of said drive without delay and for the protection of the owners of irrigating ditches and property along the stream whereon said drive is to be made. When said permit is issued the said applicant may proceed to conduct said drive upon the stream or streams therein mentioned. Provided, however, that no permit shall be granted allowing any logs, timber or lumber to be left in or upon any stream so as to be frozen in during winter, and it shall be the duty of the state engineer to issue to all applicants a license to float timber or lumber on all streams of sufficient capacity, upon compliance with the provisions aforesaid.

(b) Anyone violating any of the provisions of this section, shall be subject to penalty pursuant to W.S. 41-3-616.

41-5-109. Construction of acts.

(a) Nothing in this chapter contained, shall be so construed as to impair the prior vested rights of any mill or ditch owner, or other person, to the use of any such watercourse.

(b) This chapter shall in no wise be construed as impairing or abridging any rights already vested in any person or persons, company or corporation by virtue of the law heretofore in force.

41-5-110. Prohibited acts; penalty for violation.

It shall be unlawful for any person without authority, to willfully interfere with or damage any dam, diversion structure or means of conveyance whether jointly owned by the person, on the property or in the lawful possession of another, with intent to injure any person, or for his own gain, to the injury of any other person lawfully entitled to the use of such water, diversion structure or means of conveyance. Any violation of this section shall be punishable pursuant to W.S. 41-3-616.

41-5-111. Irrigation facility modification and maintenance.

(a) Any person who, acting directly or indirectly through an agent or representative, in trespass or in other violation of the rights of a user, wrongfully modifies an existing irrigation ditch or other irrigation facility in any manner that diminishes the capacity or adversely affects the utility of the ditch or irrigation facility is liable to the users for all restoration costs. If restoration is not feasible and the effort or cost of maintaining the modified ditch or facility is increased, then the person is thereafter liable to the users for the amount of increased maintenance that results from the modifications.

(b) For cases in which restoration is feasible, any adversely affected user may serve a written demand for restoration. If restoration is not feasible and requires increased maintenance, efforts or costs, any adversely affected user may serve a written demand for immediate and continued maintenance. A copy of this section shall be annexed to the written demand. The demand shall be delivered to the actor in person, or if the actor cannot be found then the demand shall be delivered conspicuously to the actor's usual place of business or residence. If the actor fails to accomplish complete restoration or all the currently necessary maintenance within forty-eight (48) hours after the written demand is delivered in accordance with this subsection, the user may perform the restoration and may do the maintenance that is then necessary, as well as that which becomes necessary thereafter, and may recover the reasonable costs thereof from the actor. If the modification is so gross that restoration cannot reasonably be completed within the forty-eight (48) hour period, then the duty to restore is satisfied when:

(i) Within twenty-four (24) hours after delivery of the demand, the actor undertakes a good faith effort to mitigate harm to other users and to restore the facility and the effort is:

(A) Commensurate with the magnitude of harm or potential harm to the users; and

(B) Continuously and diligently pursued to completion in a timely manner.

(c) Every user who provides the restoration or maintenance shall have a lien on the actor's interest or property that is involved in the modification. If the property involved is land, the lien extends to one (1) acre, unless the modification extends or covers more than one (1) acre, in which case the lien shall extend to all the additional land covered by the modification. If the land subject to the modification is located in any city, town or subdivision, the lien shall extend to each entire lot upon which the modification is located. If the actor's interest or property is only a ditch right or reservoir right, or such, then the one (1) acre shall be at the site where the water under the actor's ditch or reservoir right, or other interest is first applied to beneficial use.

(d) In order to have a perfected lien, a lien claimant shall file with the county clerk a lien statement that conforms to the requirements of W.S. 29-1-312, and shall notify the last known record owner as provided in W.S. 29-1-312. The county clerk shall record and index the statement as provided in W.S. 29-1-312. When so perfected, the lien may be enforced in the same manner as provided in W.S. 29-4-101 and 29-4-102 and is subject to the limitation in W.S. 29-2-109.

(e) If litigation is necessary to enforce the lien, the prevailing party shall be awarded reasonable attorney's fees and costs of litigation, to be fixed and awarded by the court, unless the court finds that the nonprevailing party had reasonable grounds to expect to prevail.

(f) The remedies provided by this section are not exclusive but are supplemental to other remedies in law or equity. This section does not in any way alter or affect law regarding water rights, covenants, easements or other servitudes, or other rights.

(g) As used in this section:

(i) "Actor" means a person who wrongfully modifies an existing irrigation ditch or other irrigation facility as specified in subsection (a) of this section;

(ii) "User" means an individual, ditch company whether organized or unorganized, irrigation district, or other person or entity lawfully permitted to use water under an adjudicated or other valid water right who uses a ditch or facility for conveyance of direct flow, or waste water, or storage of water in the beneficial use of water under the water right.

ARTICLE 2 - BONDS AND LIENS FOR LABOR AND MATERIALS

41-5-201. Contractor's bond.

Whenever any ditch or canal company, or other owner or owners, shall contract with any person, persons or corporation, for the construction of its, his or their ditch, canal or reservoir, or any part thereof, such company, owner or owners, shall take from the person, persons or corporation with whom such contract is made, a good and sufficient bond, conditioned that such contractor or contractors shall pay or cause to be paid all laborers, mechanics, material men, ranchmen, farmers, merchants and other persons who supply such contractor or contractors, or any of his or their subcontractors with labor, work, material, or goods of any kind which shall enter into or become a part of such irrigation works, which bonds shall be filed by such company or other owner in the office of the county clerk in the county where the principal work of such contractor shall be carried on; and if any such ditch or canal company, or other owner or owners, shall fail to take such bond, such ditch or canal company or other owner or owners shall be liable to the persons herein mentioned to the full extent of all such debts so contracted by such contractor, or contractors, or any of his or their subcontractors. Any such contractor or contractors may take a similar bond from each subcontractor to secure the payment of all debts of the kind above mentioned incurred by him, and file the same as above provided. All such persons mentioned in this section to whom any debt of the kind above mentioned shall be due from any contractor or subcontractor shall severally have a right of action upon any such bond covering such debt taken as herein provided for the recovery of the full amount of such debt. Provided, however, that in order that the right of action upon such bonds may exist, such persons or parties herein granted such right shall comply with either of the following conditions, to-wit, first, an action in a court of competent jurisdiction, in the county where such bond is filed, shall be commenced within ninety (90) days after the last item of indebtedness shall have accrued; or, second, an itemized

statement of the indebtedness duly verified, shall, within ninety (90) days after the last item of such indebtedness shall have accrued, be filed in the office of the county clerk of the proper county; and an action shall be brought in any court of competent jurisdiction of such county within three (3) months after the filing of such statement. In case an action is commenced upon the bond of a contractor liable for the claim, and in such case the result of such action shall be binding upon the subcontractor, and his sureties, and in any case when a contractor has paid a claim for which a subcontractor is liable, such contractor shall bring action against the subcontractor and his sureties within sixty (60) days after the payment of such claim.

41-5-202. Statement of mechanic's lien; delivery to owner of ditch; retention of unpaid amount from subsequent payments to contractor.

Every laborer, mechanic, ranchman, farmer, merchant or other person performing any work or labor or furnishing any material, or goods of any kind which enter into and become a part of such irrigation works, to any contractor or subcontractor in the construction of any ditch, canal or reservoir, or any part thereof used by such contractor or subcontractor in carrying on said work of construction, whose demand has not been paid, may deliver to the owner or owners of such ditch, canal or reservoir, or to its, his or their agent, a verified statement of the account, and thereupon such owner or owners or its, his or their agent, shall retain out of the subsequent payments to the contractor or contractors the amount of such unpaid account for the benefit of the person to whom the same is due.

41-5-203. Statement of mechanic's lien; delivery of copy to contractor; time limits for disputing claims; recovery by civil action; application of W.S. 41-5-201 through 41-5-203.

Whenever any verified account mentioned in W.S. 41-5-202 shall be placed in the hands of any such owner or owners or its, his or their agent, as above stated, it shall be the duty of such owner or owners to furnish the contractor with a copy of such verified account, so that if there be any disagreement between the debtor and creditor as to the amount due the same may be amicably adjusted, and if the contractor, or subcontractor if he be the debtor, shall not, within ten (10) days after the receipt of such account, give the said owner or owners or its, his or their agent, written notice that the claim is disputed, he shall be considered as assenting to its payment, and the owner or

owners or its, his or their agent, shall be justified in paying the same when due and charging the same to the contractor. The person or persons to whom any such debt is due and who shall deliver a verified account thereof as above provided, may recover the amount thereof in an action at law, to the extent of any balance due by such owner or owners to the contractor at or after the time of delivering the verified account. Provided, that nothing contained in this section or in W.S. 41-5-202 shall interfere with the right of action upon the bond or bonds provided for in W.S. 41-5-201, or against the company or other owner, for the full amount of any such debt in case of a failure to take a bond.

CHAPTER 6 - IRRIGATION AND DRAINAGE DISTRICTS GENERALLY

ARTICLE 1 - JOINT OPERATION AND COOPERATION BETWEEN DISTRICTS

41-6-101. Authority to cooperate.

Whenever two (2) or more incorporated irrigation or drainage districts desire to cooperate in the operation and maintenance of their respective systems of irrigation or drainage works, they may do so by availing themselves of the provisions of this act, as hereinafter more particularly provided.

41-6-102. Election upon request of landowners; procedure generally.

The commissioners of any such district may, and, upon written request of not less than ten (10) landowners thereof, shall, at any time, submit to the qualified electors thereof the question as to whether or not they desire their district to cooperate with any other district or districts named, in the operation and maintenance of their respective systems under the provisions of this act. Such question may be submitted at any general district election, or at a special election duly called for the purpose, notice of which shall have been given as required by law in case of general elections in irrigation districts. In every case, the notice of election shall state briefly but clearly the question to be submitted, naming the district or districts with which it is proposed to cooperate. The vote shall be by ballot, and a majority of the votes cast shall determine the question. If more than two (2) districts are involved in the proposal, the electors shall in like manner determine the district or districts, if any, with which they desire their district to cooperate, in the event that they do not desire to cooperate with all the districts named in the proposal, or in the event