

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 12
MAINTENANCE AND REPAIR OF DITCHES

42-1201. OPERATION AND MAINTENANCE OF IRRIGATION CONVEYANCE FACILITIES. (1) Every person or entity owning or controlling any ditch, canal, lateral, or conduit for the purpose of irrigation shall:

(a) During the time the ditch, canal, lateral, or conduit is operated to deliver water for irrigation, keep a flow of water therein sufficient to meet the needs of the persons or entities entitled to the use of water therefrom. Such duty may be adjusted when there is insufficient water in the public streams or other natural water sources or when the board of directors or governing body of an entity furnishing water deems it in the best interests of that entity to reduce the water supply or dates of availability;

(b) Construct the necessary outlets in the ditch, canal, lateral, or conduit for proper delivery of water to persons and entities having rights to the use of the water;

(c) Not permit a greater quantity of water to be turned into the ditch, canal, lateral, or conduit than it will contain or than can be used for beneficial or useful purposes to prevent the wasting and useless discharge and running away of water; and

(d) Carefully keep and maintain the ditch, canal, lateral, or conduit in good repair and condition so as not to damage or in any way injure the property or premises of others and to prevent the water conveyed therein from wasting during the irrigation season.

(2) The duties to operate and maintain an irrigation ditch, canal, lateral, or conduit, whether statutory or common law, require reasonable care only and shall not be construed to impose strict liability or to otherwise enlarge the liability of the owners or operators thereof. The owners, constructors, or operators of irrigation ditches, canals, laterals, or conduits, while responsible for their own acts or omissions, shall not be liable for damage or injury caused by:

(a) The diversion or discharge of water into a ditch, canal, lateral, or conduit by a third party without the permission of the owner or operator thereof;

(b) Any other act or omission of a third party, other than an employee or agent of the owner or operator of the ditch, canal, lateral, or conduit; or

(c) An act of God, including but not limited to fire, earthquake, storm, or similar natural phenomenon.

(3) The provisions of this section shall not be construed to impair any defense that an owner, constructor, or operator of a ditch, canal, lateral, or conduit may assert in a civil action.

[(42-1201) 1899, p. 380, sec. 15; reen. R.C. & C.L., sec. 3306; C.S., sec. 5654; I.C.A., sec. 41-1101; am. 1989, ch. 236, sec. 1, p. 573; am. 2024, ch. 93, sec. 8, p. 435.]

42-1207. RELOCATION AND PIPING OF IRRIGATION CONVEYANCE FACILITIES AND DRAINAGE FACILITIES. (1) Where any ditch, canal, lateral, drain, or

buried irrigation conduit has heretofore been, or may hereafter be, constructed across or beneath the lands of another:

(a) The servient estate owner may, at his own expense, relocate or pipe the ditch, canal, lateral, drain, or buried irrigation conduit to any other part of his 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 entity using or interested in such ditch, canal, lateral, drain, or buried irrigation conduit.; or

(b) The servient estate owner may, at his own expense, place the ditch, canal, lateral, or drain in a pipe, culvert, or other conduit on his land, provided that the pipe, culvert, or other conduit 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.

(2) The right and responsibility for operation and maintenance of a ditch, canal, lateral, drain, or buried irrigation conduit that is relocated or placed in conduit by the servient estate owner shall remain with the owner of the ditch, canal, lateral, or drain, but the servient estate owner, his heirs, executors, administrators, successors, and assigns shall be responsible for any increased operation and maintenance costs, including rehabilitation and replacement, unless otherwise agreed in writing with the owner of the ditch, canal, lateral, drain, or buried irrigation conduit.

(3) (a) The written permission of the owner or operator of a ditch, canal, lateral, drain, or buried irrigation conduit must first be obtained before it is relocated or placed in a pipe, culvert, or other conduit by the owner of the servient estate, in order to ensure that:

(i) Such change will not impede the flow of water therein, unreasonably or materially interfere with access, use, operation, maintenance, cleaning, or repair, or otherwise injure any person or entity using such ditch, canal, lateral, drain, or buried irrigation conduit;

(ii) Adequate provision is made for the payment of any increased operation and maintenance costs, including rehabilitation and replacement, unless otherwise agreed in writing with the owner or operator of the ditch, canal, lateral, drain, or buried irrigation conduit; and

(iii) Adequate provision is made documenting, protecting, and perpetuating the ditch, canal, lateral, drain, or buried irrigation conduit right-of-way pursuant to section [42-1102](#), Idaho Code.

(b) Such written permission shall not be unreasonably withheld.

(4) A ditch, canal, lateral, drain, or buried irrigation conduit that is relocated or placed in a pipe, culvert, or other conduit without such express written permission shall be removed, modified, repaired, or restored to its prior location or condition, as directed by the owner thereof, at the expense of the person or entity that caused or permitted such relocation or placement in pipe, culvert, or other conduit, in the event it unreasonably or materially interferes with the use and enjoyment of the easement or right-of-way.

(a) The person or entity that caused or permitted the relocation or the placement in pipe, culvert, or other conduit shall perform such removal, modification, repair, or restoration within a reasonable time

after request from the owner or operator of the easement or right-of-way, or immediately upon such request in the event of reduced delivery or drainage of water, property damage, safety risk, or other emergency. What constitutes a reasonable time to respond to the request depends on circumstances affecting the use, operation, maintenance, and repair of the ditch, canal, lateral drain, or buried irrigation conduit and associated easement or right-of-way.

(b) If the person or entity that caused or permitted the relocation or the placement in pipe, culvert, or other conduit fails to timely perform the requested actions, or in the event of reduced delivery or drainage of water, property damage, safety risk, or other emergency, the owner or operator of the easement or right-of-way may proceed to perform such actions at the expense of the person or entity that caused or permitted the relocation or piping.

(5) The owner or operator of a ditch, canal, lateral, drain, or buried irrigation conduit that has been constructed across or beneath the lands of another may relocate or pipe the facility.

(a) Prior to relocating a ditch, canal, lateral, drain, or buried irrigation conduit, the written permission of the owner of the servient estate shall be obtained.

(b) The owner or operator of the ditch, canal, lateral, drain, or buried irrigation conduit shall have the right to place it in a buried conduit within the easement or right-of-way, without the permission of the servient estate owner, 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 as long as the construction is accomplished in a manner that the surface of the servient estate outside the easement or right-of-way and the owner's use thereof is not disrupted and is restored to its prior condition as expeditiously as possible, but no longer than thirty (30) days after the completion of construction.

(c) The owner of the servient estate may request that the conduit be installed along a different route than the existing route of the ditch, canal, lateral, or drain, provided that:

(i) The conditions of subsection (3) of this section are satisfied; and

(ii) The servient estate owner, his heirs, executors, administrators, successors, and assigns shall 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 conduit owner or operator.

(6) This section shall apply to ditches, canals, laterals, drains, and buried irrigation conduits existing on or established after July 1, 2024.

[(42-1207) 1907, p. 237, sec. 4; reen. R.C. & C.L., sec. 3311a; C.S., sec. 5660; I.C.A., sec. 41-1107; am. 1994, ch. 151, sec. 1, p. 345; am. 2002, ch. 115, sec. 4, p. 329; am. 2005, ch. 331, sec. 1, p. 1038; am. 2011, ch. 177, sec. 1, p. 504; am. 2019, ch. 158, sec. 4, p. 513; am. 2024, ch. 93, sec. 14, p. 436.]

42-1208. EASEMENTS, RIGHTS-OF-WAY, AND OTHER REAL PROPERTY NOT SUBJECT TO ADVERSE POSSESSION. The easements, rights-of-way, or real property owned by irrigation districts, Carey act operating companies, nonprofit irriga-

tion entities, lateral ditch associations, and drainage districts are not subject to adverse possession. No person shall prevent free access of authorized personnel on such easements, rights-of-way, or other real property, or construct any obstruction on such easements, rights-of-way, or other real property in an effort to adversely possess said easement, right-of-way, or other real property.

[42-1208, added 1981, ch. 344, sec. 1, p. 714; am. 2004, ch. 179, sec. 2, p. 563; am. 2021, ch. 112, sec. 1, p. 354.]

42-1209. ENCROACHMENTS ON EASEMENTS AND RIGHTS-OF-WAY. (1) Easements or rights-of-way operated, maintained, controlled or owned by irrigation districts, Carey act operating companies, nonprofit irrigation entities, lateral ditch associations, and drainage districts are essential for the operations of such irrigation and drainage entities. Accordingly, no person or entity shall cause or permit any encroachments onto the easements or rights-of-way, including any public or private roads, utilities, fences, gates, pipelines, structures, landscaping, trees, vegetation, or other construction or placement of objects, without the written permission of the irrigation district, Carey act operating company, nonprofit irrigation entity, lateral ditch association, or drainage district owning, operating, maintaining, or controlling the easement or right-of-way, in order to ensure that any such encroachments will not unreasonably or materially interfere with the use and enjoyment of the easement or right-of-way and the incidental rights and protections described in sections [42-1102](#) and [42-1207](#), Idaho Code. Such written permission shall not be unreasonably withheld.

(2) Encroachments of any kind placed in such easement or right-of-way, without such express written permission, shall be removed or modified, and the ditch, canal, lateral, drain, conduit, easement, or right-of-way shall be repaired or restored at the expense of the person or entity causing or permitting such encroachments, upon the request of the persons operating, maintaining, or controlling the easement or right-of-way or the owner of the easement or right-of-way, in the event that any such encroachments unreasonably or materially interfere with the use and enjoyment of the easement or right-of-way.

(a) The person or entity that caused or permitted the encroachment shall perform such removal, modification, repair, or restoration within a reasonable time after request from the owner or operator of the easement or right-of-way, or immediately upon such request in the event of reduced delivery or drainage of water, property damage, safety risk, or other emergency. What constitutes a reasonable time to respond to the request depends on circumstances affecting the use, operation, maintenance, and repair of the ditch, canal, lateral, drain, or buried irrigation conduit and associated easement or right-of-way.

(b) If the person or entity that caused or permitted the encroachment fails to timely perform the requested actions, or in the event of reduced delivery or drainage of water, property damage, safety risk, or other emergency, the owner or operator of the easement or right-of-way may proceed to perform such actions at the expense of the person or entity that caused or permitted the encroachment, as long as no work is performed on any municipal or public utility line.

(3) Any person or entity that causes or permits an encroachment shall be responsible for its use, operation, maintenance, repair, and replacement to prevent unreasonable or material interference with a ditch, canal, lateral,

drain, or conduit and the associated easement or right-of-way and shall be liable for all damages that may accrue therefrom.

(4) Nothing in this section shall in any way affect the exercise of the right of eminent domain for the public purposes set forth in section [7-701](#), Idaho Code.

[42-1209, added 2004, ch. 179, sec. 3, p. 563; am. 2019, ch. 158, sec. 5, p. 514; am. 2019, ch. 183, sec. 3, p. 592; am. 2024, ch. 93, sec. 15, p. 438.]