

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 11
RIGHTS OF WAY

42-1102. OWNERS OF LAND -- RIGHT TO RIGHT-OF-WAY. (1) Owners or claimants to land that do not have sufficient length of frontage on a stream to afford the requisite fall for a ditch, canal, lateral, drain, or other conduit on their own premises for the proper irrigation or drainage 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 a ditch, canal, lateral, drain, or conduit to convey water to the place of use for the purposes of irrigation or to provide drainage of irrigated land.

(2) The right-of-way for a ditch, canal, lateral, drain, or other conduit shall include but is not limited to the reasonable exercise of the following rights:

(a) The right to enter the land across which the right-of-way extends for the purposes of accessing, inspecting, operating, cleaning, maintaining, and repairing the ditch, canal, lateral, drain, conduit, embankments, and irrigation structures and to occupy such width of the land along the ditch, canal, lateral, drain, conduit, and embankments as is necessary to properly perform such work with personnel and with such equipment as is commonly used or is reasonably adapted to that work.

(b) The right to remove from the ditch, canal, lateral, drain, conduit, embankments, and irrigation structures the debris, soil, vegetation, and other material the ditch, canal, lateral, drain, or conduit owner or operator reasonably deems necessary to properly access, inspect, operate, clean, maintain, and repair them. The owner or operator has the right and discretion to transport the material from the right-of-way, to utilize the material for reconstruction, repair, or maintenance of the ditch, canal, lateral, drain, conduit, embankments, irrigation structures, and related roads and access areas, and to deposit and leave the material within the right-of-way, provided that the deposits occupy no greater width of land along the ditch, canal, lateral, drain, conduit, and embankments than is reasonably necessary.

(c) The right to occupy the right-of-way during any season of the year to perform the work of operating, cleaning, maintaining, and repairing the ditch, canal, lateral, drain, conduit, embankments, and irrigation structures without prior notice to the owner or occupant of the land across which the right-of-way extends.

(d) The owner or operator of the ditch, canal, lateral, drain, or conduit is not obligated to maintain or control the right-of-way or vegetation for the benefit of the owners or claimants of lands of others.

(3) Any servient estate owner shall be deemed to have notice that the owner of the ditch, canal, lateral, drain, or conduit has the right-of-way and all incidental rights confirmed or granted by this section if:

(a) The servient estate owner has actual or constructive knowledge of the ditch, canal, lateral, drain, or conduit; or

(b) The ditch, canal, lateral, drain, or conduit or any feature thereof is visible or reasonably discoverable.

(4) Rights-of-way provided by this section are essential for the operations of the ditches, canals, laterals, drains, and conduits. No person or entity shall cause or permit any encroachments onto the right-of-way, including 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 owner or operator of the right-of-way in order to ensure that any such encroachments will not unreasonably or materially interfere with the use and enjoyment of the right-of-way. Such written permission shall not be unreasonably withheld.

(5) Encroachments of any kind placed in such right-of-way without express written permission of the owner or operator of the right-of-way shall be removed at the expense of the person or entity causing or permitting such encroachment, upon the request of the owner or operator of the right-of-way, in the event that any such encroachments unreasonably or materially interfere with the use and enjoyment of the 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 the circumstances affecting the use, operation, maintenance, and repair of the ditch, canal, lateral, drain, or 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 causing or permitting the encroachment, as long as no work is performed on any municipal or public utility line.

(6) 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 the 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.

(7) 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.

(8) This section shall apply to ditches, canals, laterals, drains, conduits, and embankments existing on the effective date of this act, as well as to ditches, canals, laterals, drains, conduits, and embankments constructed or existing after such effective date.

[(42-1102) 1881, p. 269; R.S., sec. 3181; reen. R.C. & C.L., sec. 3300; C.S., sec. 5647; I.C.A., sec. 42-1002; am. 1996, ch. 187, sec. 1, p. 594; am. 2004, ch. 179, sec. 1, p. 562; am. 2019, ch. 158, sec. 1, p. 511; am. 2019, ch. 183, sec. 1, p. 590; am. 2021, ch. 250, sec. 2, p. 778; am. 2024, ch. 93, sec. 1, p. 432.]

42-1104. RIGHT-OF-WAY OVER STATE LANDS. The right-of-way over and upon any and all lands owned or controlled by the state of Idaho is hereby granted

to any and all persons for the purpose of constructing and maintaining any ditch, canal, lateral, drain, conduit or other works for the diversion or carrying of water for any beneficial use or to provide drainage; provided, that no property shall be taken under the provisions of this section until a just compensation shall be paid therefor, to be ascertained in the manner prescribed by law for the taking of private property for a public use.

[(42-1104) 1899, p. 380, sec. 13; reen. R.C. & C.L., sec. 3302; C.S., sec. 5649; I.C.A., sec. 41-1004; am. 2024, ch. 93, sec. 3, p. 434.]

42-1105. RIGHT-OF-WAY FOR DIVERSION WORKS. A water right owner has the right to install, operate, and maintain diversion works at the authorized point of diversion in any of the waters of the state described in section [42-101](#), Idaho Code, for the purpose of diverting and conveying water to the place of use in accordance with the water right. A right-of-way over and across the lands of others, for conducting said waters, may be acquired in the manner prescribed in section [42-1106](#), Idaho Code.

[42-1105, added 2024, ch. 93, sec. 5, p. 434.]

42-1106. RIGHT OF EMINENT DOMAIN. In case of the refusal of the owners or claimants of any lands, through which any ditch, canal, lateral, drain, 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.

[(42-1106) 1899, p. 380, sec. 14; reen. R.C. & C.L., sec. 3304; C.S., sec. 5651; I.C.A., sec. 41-1006; am. 2024, ch. 93, sec. 6, p. 435.]

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.

[(42-1107) 1911, ch. 125, sec. 1, p. 413; reen. C.L., sec. 3304a; C.S., sec. 5652; I.C.A., sec. 41-1007.]