

IN THE SENATE

SENATE BILL NO. 1074

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

1 RELATING TO IRRIGATION; REPEALING SECTION 42-1101, IDAHO CODE, RELATING
2 TO THE RIGHTS OF LANDOWNERS TO WATER; AMENDING SECTION 42-1102, IDAHO
3 CODE, TO REVISE RIGHT-OF-WAY PROVISIONS; AND AMENDING SECTION 42-1204,
4 IDAHO CODE, TO REVISE RIGHT-OF-WAY PROVISIONS.
5

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section [42-1101](#), Idaho Code, be, and the same is hereby
8 repealed.

9 SECTION 2. That Section 42-1102, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 42-1102. OWNERS OF LAND -- RIGHT TO RIGHT-OF-WAY. (1) When any such
12 owners or claimants to land have not sufficient length of frontage on a
13 stream to afford the requisite fall for a ditch, canal or other conduit on
14 their own premises for the proper irrigation thereof, or where the land pro-
15 posed to be irrigated is back from the banks of such stream, and convenient
16 facilities otherwise for the watering of said lands cannot be had, such own-
17 ers or claimants are entitled to a right-of-way through the lands of others,
18 for a ditch, canal, or conduit to convey water to the place of use for the
19 purposes of irrigation.

20 (2) The right-of-way for a ditch, canal, or other conduit shall in-
21 clude, but is not limited to, the:

22 (a) The right to enter the land across which the right-of-way extends
23 for the purposes of accessing, inspecting, operating, cleaning, main-
24 taining, and repairing the ditch, canal or, conduit, embankments, and
25 irrigation structures, and to occupy such width of the land along the
26 banks of the ditch, canal or, conduit, and embankments as is necessary
27 to properly do the perform such work of cleaning, maintaining and re-
28 pairing the ditch, canal or conduit with personnel and with such equip-
29 ment as is commonly used or is reasonably adapted to that work.

30 (b) The right-of-way also includes the right to remove from and to de-
31 posit on the banks of the ditch or, canal, conduit, embankments, and
32 irrigation structures the debris, soil, vegetation, and other matter
33 necessarily required to be taken from the ditch, canal, or right-of-way
34 material the ditch, canal, or conduit owner or operator reasonably
35 deems necessary to properly access, inspect, operate, clean, and main-
36 tain, and repair them, but. The owner or operator has the right and
37 discretion to transport the material from the right-of-way, to utilize
38 the material for reconstruction, repair, or maintenance of the ditch,
39 canal, conduit, embankments, irrigation structures, and related roads
40 and access areas, and to deposit and leave the material within the
41 right-of-way, provided that the deposits occupy no greater width of

1 land along the ~~banks of the canal or ditch~~, canal, conduit, and embank-
2 ments than is absolutely reasonably necessary for such deposits shall
3 be occupied by the removed debris, vegetation, or other matter. The
4 ~~right-of-way also includes the right to remove or control vegetation~~
5 ~~within the ditch or canal or along the banks of the ditch or canal to~~
6 ~~properly access, clean, and maintain them, but the~~

7 (c) The right to occupy the right-of-way during any season of the year
8 to perform the work of operating, cleaning, maintaining, and repair-
9 ing the ditch, canal, conduit, embankments, and irrigation structures,
10 without prior notice to the owner or occupant of the land across which
11 the right-of-way extends.

12 (d) The owner or operator of the ditch, canal, or conduit is not obli-
13 gated to maintain or control the right-of-way or vegetation for the ben-
14 efit of the owners or claimants of lands of others.

15 (3) Provided that in the making, constructing, keeping up and mainte-
16 nance of such ditch, canal or conduit, through the lands of others, the per-
17 son, company or corporation, proceeding under this section, and those suc-
18 ceeding to the interests of such person, company or corporation must keep
19 such ditch, canal or other conduit in good repair and are liable to the owners
20 or claimants of the lands crossed by such work or aqueduct for all damages oc-
21 casioned by the overflow thereof, or resulting from any neglect or accident
22 (unless the same be unavoidable) to such ditch or aqueduct.

23 (4) The existence of a visible ditch, canal or conduit shall constitute
24 notice to the owner, or any subsequent purchaser, of the underlying servient
25 estate, that the owner of the ditch, canal or conduit has the right-of-way
26 and incidental rights confirmed or granted by this section.

27 (5) Rights-of-way provided by this section are essential for the oper-
28 ations of the ditches, canals and conduits. No person or entity shall cause
29 or permit any encroachments onto the right-of-way, including public or pri-
30 vate roads, utilities, fences, gates, pipelines, structures, landscaping,
31 trees, vegetation, or other construction or placement of objects, without
32 the written permission of the owner or operator of the right-of-way, in order
33 to ensure that any such encroachments will not unreasonably or materially
34 interfere with the use and enjoyment of the right-of-way. Encroachments of
35 any kind placed in such right-of-way without express written permission of
36 the owner or operator of the right-of-way shall be removed at the expense of
37 the person or entity causing or permitting such encroachment, upon the re-
38 quest of the owner or operator of the right-of-way, in the event that any such
39 encroachments unreasonably or materially interfere with the use and enjoy-
40 ment of the right-of-way. Nothing in this section shall in any way affect the
41 exercise of the right of eminent domain for the public purposes set forth in
42 section 7-701, Idaho Code.

43 (6) This section shall apply to ditches, canals ~~or other~~, conduits,
44 and embankments existing on the effective date of this act, as well as to
45 ditches, canals ~~or other~~, conduits, and embankments constructed or existing
46 after such effective date.

47 SECTION 3. That Section 42-1204, Idaho Code, be, and the same is hereby
48 amended to read as follows:

1 42-1204. PREVENTION OF DAMAGE TO OTHERS. The owners, constructors, or
2 operators of ditches, canals, works or other aqueducts, and their successors
3 in interest, using and employing the same to convey the waters of any stream
4 or spring, whether the said ditches, canals, works or aqueducts be upon the
5 lands owned or claimed by them, or upon other lands, must carefully keep and
6 maintain the same, and the embankments, flumes or other conduits, by which
7 such waters are or may be conducted, in good repair and condition, so as not
8 to damage or in any way injure the property or premises of others. The du-
9 ties referenced in this section, whether statutory or common law, require
10 reasonable care only and shall not be construed to impose strict liability
11 or to otherwise enlarge the liability of the owner, owners, or operators of
12 any irrigating ditch, canal, works or other aqueduct. The owners, construc-
13 tors, or operators of such ditches, canals, works or other aqueducts, while
14 responsible for their own acts or omissions, shall not be liable for damage
15 or injury caused by: (1) The diversion or discharge of water into a ditch,
16 canal, works or other aqueduct by a third party without the permission of
17 the owner, owners, or operators of the ditch, canal, works or other aque-
18 duct; (2) Any other act or omission of a third party, other than an employee
19 or agent of the owner, owners, or operators of the ditch, canal, works or
20 other aqueduct; or (3) An act of God, including fire, earthquake, storm or
21 similar natural phenomenon. The provisions of this section shall not be con-
22 strued to impair any defense that an owner, constructor, or operator of a
23 ditch, canal, works or other aqueduct may assert in a civil action. The own-
24 ers, constructors, or operators have the right to enter the land across which
25 the right-of-way extends, for the purposes of cleaning, maintaining and re-
26 pairing the ditch, canal ~~or~~, conduit, and embankments, and to occupy such
27 width of the land along the banks of the ditch, canal ~~or~~, conduit, and em-
28 bankments, as is necessary to properly do the work of cleaning, maintaining
29 and repairing the ditch, canal ~~or~~, conduit, and embankments, with person-
30 nel and with such equipment as is commonly used or is reasonably adapted to
31 that work. The right-of-way also includes the right to remove from and to de-
32 posit on the banks of the ditch or canal the debris, vegetation, and other
33 matter necessarily required to be taken from the ditch, canal, or from the
34 right-of-way to properly clean and maintain them, but no greater width of
35 land along the banks of the canal or ditch than is absolutely necessary for
36 such deposits shall be occupied by the removed debris, vegetation, or other
37 matter. The right-of-way also includes the right to remove or control vege-
38 tation within the ditch or canal or along the ~~banks~~ embankments of the ditch
39 or canal to properly access, clean, and maintain them, but the owner or oper-
40 ator of the ditch, canal, or conduit is not obligated to maintain or control
41 the right-of-way or vegetation for the benefit of the owners or claimants
42 of lands of others. This section shall apply to ditches, canals, conduits,
43 and embankments existing on the effective date of this act, as well as to
44 ditches, canals, conduits, and embankments constructed or existing after
45 such effective date.