

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 571

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO EASEMENTS AND RIGHTS-OF-WAY; AMENDING SECTION 42-1209, IDAHO  
2 CODE, TO PROVIDE THAT SPECIFIED LAW SHALL NOT AFFECT THE EXERCISE OF THE  
3 RIGHT OF EMINENT DOMAIN FOR ANY CONCURRENT PUBLIC USE OF THE PROPERTY OF  
4 AN IRRIGATION OR DRAINAGE ENTITY PURSUANT TO CERTAIN LAW, TO PROHIBIT  
5 THE EXERCISE OF EMINENT DOMAIN TO ACQUIRE PROPERTY THAT AN IRRIGATION OR  
6 DRAINAGE ENTITY OWNS, OPERATES AND MAINTAINS TO DELIVER WATER OR PRO-  
7 VIDE DRAINAGE PURSUANT TO EXISTING RIGHTS AND OBLIGATIONS AND TO MAKE A  
8 TECHNICAL CORRECTION; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE  
9 APPLICATION AND APPLICABILITY.  
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11 Be It Enacted by the Legislature of the State of Idaho:

12 SECTION 1. That Section 42-1209, Idaho Code, be, and the same is hereby  
13 amended to read as follows:

14 42-1209. ENCROACHMENTS ON EASEMENTS AND RIGHTS-OF-WAY. Easements  
15 or rights-of-way of irrigation districts, Carey act operating companies,  
16 nonprofit irrigation entities, lateral ditch associations, and drainage  
17 districts are essential for the operations of such irrigation and drainage  
18 entities. Accordingly, no person or entity shall cause or permit any en-  
19 croachments onto the easements or rights-of-way, including any public or  
20 private roads, utilities, fences, gates, pipelines, structures or other  
21 construction or placement of objects, without the written permission of  
22 the irrigation district, Carey act operating company, nonprofit irrigation  
23 entity, lateral ditch association, or drainage district owning the ease-  
24 ment or right-of-way, in order to ensure that any such encroachments will  
25 not unreasonably or materially interfere with the use and enjoyment of the  
26 easement or right-of-way. Encroachments of any kind placed in such easement  
27 or right-of-way, without such express written permission, shall be removed  
28 at the expense of the person or entity causing or permitting such encroach-  
29 ments, upon the request of the owner of the easement or right-of-way, in  
30 the event that any such encroachments unreasonably or materially interfere  
31 with the use and enjoyment of the easement or right-of-way. Nothing in this  
32 section shall in any way affect the exercise of the right of eminent domain  
33 for the any concurrent public purposes set forth in section 7-701 use of the  
34 property of an irrigation or drainage entity pursuant to chapter 7, title 7,  
35 Idaho Code, provided however, notwithstanding any other provision of law,  
36 the right of eminent domain shall not be exercised to acquire property that  
37 an irrigation or drainage entity owns, operates and maintains to deliver  
38 water or provide drainage pursuant to existing rights and obligations.

39 SECTION 2. An emergency existing therefor, which emergency is hereby  
40 declared to exist, this act shall be in full force and effect on and after its  
41 passage and approval, and retroactively to June 1, 2012, and the provisions

1 of this act shall apply to any court actions filed on or after or pending as of  
2 June 1, 2012.