

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) When any such owners or claimants to land have not sufficient length of frontage on a stream to afford the requisite fall for a ditch, canal or other conduit on their own premises for the proper irrigation 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, or conduit to convey water to the place of use for the purposes of irrigation.

(2) The right-of-way for a ditch, canal, 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, conduit, embankments, and irrigation structures, and to occupy such width of the land along the ditch, canal, 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, conduit, embankments, and irrigation structures the debris, soil, vegetation, and other material the ditch, canal, 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, 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, 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, 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, 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) Provided that in the making, constructing, keeping up and maintenance of such ditch, canal or conduit, through the lands of others, the person, company or corporation, proceeding under this section, and those succeeding to the interests of such person, company or corporation must keep such ditch, canal or other conduit in good repair and are liable to the owners or claimants of the lands crossed by such work or aqueduct for all damages occasioned by the overflow thereof, or resulting from any neglect or accident (unless the same be unavoidable) to such ditch or aqueduct.

(4) The existence of a visible ditch, canal or conduit shall constitute notice to the owner, or any subsequent purchaser, of the underlying servient

estate, that the owner of the ditch, canal or conduit has the right-of-way and incidental rights confirmed or granted by this section.

(5) Rights-of-way provided by this section are essential for the operations of the ditches, canals 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. 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. 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.

(6) This section shall apply to ditches, canals, conduits, and embankments existing on the effective date of this act, as well as to ditches, canals, 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.]

42-1103. OWNERS OF SPRINGS AND STREAMS -- RIGHT TO RIGHT OF WAY. Where the owners of any spring, or the appropriators thereof, or of any stream, desire to conduct the waters thereof to any lands for the purposes of irrigation, or to any city or town for the use of the inhabitants thereof, or to any factory, or to any distant place, with the intent to apply the same to a beneficial use, and to accomplish such object it is necessary to cross with ditches, flumes or other conduit, the lands owned or occupied by others than the owners or appropriators of such spring or stream, the right of way over and across the lands of others for conducting said water may be acquired in the manner above provided.

[(42-1103) 1881, p. 271; R.S., sec. 3185; reen. R.C. & C.L., sec. 3301; C.S., sec. 5648; I.C.A., sec. 41-1003.]

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, conduit or other works for the diversion or carrying of water for any beneficial use: 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.]

42-1105. RIGHT OF WAY FOR RIPARIAN PROPRIETORS. All persons, companies and corporations owning or having the possessory title or right to lands adjacent to any stream, have the right to place in the channel or upon the banks or margin of the same, rams or other machines for the purpose of raising the waters thereof to a level above the banks, requisite for the flow thereof to and upon such adjacent lands; and the right of way over and across the lands of others, for conducting said waters, may be acquired in the manner prescribed in the following section.

[(42-1105) 1881, p. 271; R.S., sec. 3184; am. R.C. & C.L., sec. 3303; C.S., sec. 5650; I.C.A., sec. 41-1005.]

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

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.]

42-1108. RIGHT TO CROSS DITCHES. Any person, company or corporation, owners of any ditch, flume or other conduit, can not lawfully deny to any other person, company or corporation the right to cross their right of way with another ditch, flume or conduit either upon a higher or lower level, where the same can be done in a convenient and safe manner: provided, that such second person, company or corporation shall be liable for all damages that may accrue from the construction of such ditch, flume or other conduit across the conduit of another.

[(42-1108) 1899, p. 380, last half of sec. 10; am. R.C. & C.L., sec. 3305; C.S., sec. 5653; I.C.A., sec. 41-1008.]