

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 11
RIGHTS OF WAY

42-1101. RIGHTS OF LANDOWNERS TO WATER. All persons, companies and corporations owning or claiming any lands situated on the banks or in the vicinity of any stream, are entitled to the use of the waters of such stream for the purpose of irrigating the land so held or claimed.

[(42-1101) R.S., sec. 3180; reen. R.C. & C.L., sec. 3299; C.S., sec. 5646; I.C.A., sec. 41-1001.]

42-1102. OWNERS OF LAND -- RIGHT TO RIGHT-OF-WAY. 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 the purposes of irrigation. The right-of-way shall include, but is not limited to, the right to enter the land across which the right-of-way extends, for the purposes of cleaning, maintaining and repairing the ditch, canal or conduit, and to occupy such width of the land along the banks of the ditch, canal or conduit as is necessary to properly do the work of cleaning, maintaining and repairing the ditch, canal or conduit with personnel and with such equipment as is commonly used, or is reasonably adapted, to that work. The right-of-way also includes the right to deposit on the banks of the ditch or canal the debris and other matter necessarily required to be taken from the ditch or canal to properly clean and maintain it, but no greater width of land along the banks of the canal or ditch than is absolutely necessary for such deposits shall be occupied by the removed debris or other matter. 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.

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.

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, or other construction or placement of objects, without the written permission of the owner 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 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 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.

This section shall apply to ditches, canals or other conduits existing on the effective date of this act, as well as to ditches, canals or other conduits constructed 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.]

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.]