

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 12
MAINTENANCE AND REPAIR OF DITCHES

42-1201. DITCHES TO BE KEPT FULL. Every person, company or corporation owning or controlling any ditch, canal or conduit for the purpose of irrigation shall, during the time from April first to the first day of November of each year, keep a flow of water therein sufficient to the requirements of such persons as are properly entitled to the use of water therefrom: provided, however, that when the public streams or other natural water sources from which the water is obtained is [are] too low and inadequate for that purpose, or when the board of directors or governing body of an organization or entity furnishing water deem it in the best interests of that organization or entity to adjust the dates of availability and provide for termination of irrigation water, then such ditch, canal or conduit shall be kept with as full a flow of water therein as may be practicable, subject, however, to the rights of priority from the streams or other natural sources as provided by law.

[(42-1201) 1899, p. 380, sec. 15; reen. R.C. & C.L., sec. 3306; C.S., sec. 5654; I.C.A., sec. 41-1101; am. 1989, ch. 236, sec. 1, p. 573.]

42-1202. MAINTENANCE OF DITCH. The owners or persons in control of any ditch, canal or conduit used for irrigating purposes shall maintain the same in good order and repair, ready to deliver water by the first of April in each year, and shall construct the necessary outlets in the banks of the ditches, canals or conduits for a proper delivery of water to persons having rights to the use of the water.

[(42-1202) 1899, p. 380, sec. 16; reen. R.C. & C.L., sec. 3307; C.S., sec. 5655; I.C.A., sec. 41-1102.]

42-1203. MAINTENANCE OF EMBANKMENTS. The owner or owners of any irrigating ditch, canal or conduit shall carefully keep and maintain the embankments thereof in good repair, in order to prevent the water from wasting during the irrigation season, and shall not at any time permit a greater quantity of water to be turned into said ditch, canal or conduit than the banks thereof will easily contain or than can be used for beneficial or useful purposes; it being the meaning of this section to prevent the wasting and useless discharge and running away of water. The duties referenced in this section, whether statutory or common law, require reasonable care only, and shall not be construed to impose strict liability or to otherwise enlarge the liability of the owner or owners of any irrigating ditch, canal or conduit. The owners or constructors of such ditches, canals, works or other aqueducts, while responsible for their own acts or omissions, shall not be liable for damage or injury caused by: (1) The diversion or discharge of water into a ditch, canal or conduit by a third party without the permission of the owner or owners of the ditch, canal or conduit; (2) Any other act or omission of a third party, other than an employee or agent of the owner or owners of the ditch, canal or conduit; or (3) An act of God, including fire, earthquake, storm or similar natural phenomenon. The provisions of this section shall not be construed to impair any defense that an owner or constructor of a ditch, canal, works or other aqueduct may assert in a civil action.

[(42-1203) 1899, p. 380, sec. 22; reen. R.C. & C.L., sec. 3308; C.S., sec. 5656; I.C.A., sec. 41-1103; am. 2012, ch. 274, sec. 1, p. 772.]

42-1204. PREVENTION OF DAMAGE TO OTHERS. The owners or constructors of ditches, canals, works or other aqueducts, and their successors in interest, using and employing the same to convey the waters of any stream or spring, whether the said ditches, canals, works or aqueducts be upon the lands owned or claimed by them, or upon other lands, must carefully keep and maintain the same, and the embankments, flumes or other conduits, by which such waters are or may be conducted, in good repair and condition, so as not to damage or in any way injure the property or premises of others. The duties referenced in this section, whether statutory or common law, require reasonable care only, and shall not be construed to impose strict liability or to otherwise enlarge the liability of the owner or owners of any irrigating ditch, canal, works or other aqueduct. The owners or constructors of such ditches, canals, works or other aqueducts, while responsible for their own acts or omissions, shall not be liable for damage or injury caused by: (1) The diversion or discharge of water into a ditch, canal, works or other aqueduct by a third party without the permission of the owner or owners of the ditch, canal, works or other aqueduct; (2) Any other act or omission of a third party, other than an employee or agent of the owner or owners of the ditch, canal, works or other aqueduct; or (3) An act of God, including fire, earthquake, storm or similar natural phenomenon. The provisions of this section shall not be construed to impair any defense that an owner or constructor of a ditch, canal, works or other aqueduct may assert in a civil action. The owners or constructors have 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.

[(42-1204) 1881, p. 271; R.S., sec. 3186; reen. R.C. & C.L., sec. 3309; C.S., sec. 5657; I.C.A., sec. 41-1104; am. 1996, ch. 187, sec. 2, p. 595; am. 2012, ch. 274, sec. 2, p. 773.]

42-1205. BRIDGES OVER DITCHES. All owners of any ditch, canal or conduit, or any other means for conveying water, shall build substantial bridges not less than sixteen (16) feet wide, and with boards not less than two (2) inches in thickness (unless the same shall be on a county or state road, when such boards shall not be less than three (3) inches thick), at all places where any county or state road crosses the same, or any road kept open and used by any neighborhood of people for their benefit and convenience. In case of neglect or refusal of such owners to build such bridges as above required, after a notice of ten (10) days being given by the said board of county commissioners of the proper county, said board shall proceed to the construction of the same, and shall collect the cost thereof together with the costs of suit: provided, that after any bridge shall have been constructed across any ditch, canal or conduit on any county or state road

in accordance with the provisions of this section, it shall thereafter be maintained at the public expense.

[(42-1205) 1899, p. 380, sec. 25; reen. R.C., sec. 3310; compiled and reen. C.L., sec. 3310; C.S., sec. 5658; I.C.A., sec. 41-1105.]

42-1206. REPAIR OF COMMUNITY DITCHES. Where a ditch is common property, or there is a common right to the use of the water of a ditch without payment therefor, and any labor or materials are necessary for the repair or cleaning of the ditch, or any gate or flume thereon or thereunto belonging, the watermaster of the district may make a fair pro rata assessment of labor or materials against the inhabitants of the district claiming the use of such water, according to the benefits received by each; and if any person so assessed neglects or refuses, for the period of three (3) days after notice so to do from the watermaster or his deputy, to furnish his just proportion of the necessary labor or materials, according to such assessment, he must pay his pro rata in cash, to be recovered, with costs, in an action by the watermaster in his own name.

[(42-1206) 1881, p. 275; R.S., sec. 3203; reen. R.C. & C.L., sec. 3311; C.S., sec. 5659; I.C.A., sec. 41-1106.]

42-1207. CHANGE OF DITCH, CANAL, LATERAL, DRAIN OR BURIED IRRIGATION CONDUIT. Where any ditch, canal, lateral or drain or buried irrigation conduit has heretofore been, or may hereafter be, constructed across or beneath the lands of another, the person or persons owning or controlling said land shall have the right at their own expense to change said ditch, canal, lateral or drain or buried irrigation conduit to any other part of said land, but such change must be made in such a manner as not to impede the flow of the water therein, or to otherwise injure any person or persons using or interested in such ditch, canal, lateral or drain or buried irrigation conduit. Any increased operation and maintenance shall be the responsibility of the landowner who makes the change, his heirs, executors, administrators, successors and assigns.

A landowner shall also have the right to bury the ditch, canal, lateral or drain of another in pipe on the landowner's property, provided that the pipe, installation and backfill reasonably meet standard specifications for such materials and construction, as set forth in the Idaho standards for public works construction or other standards recognized by the city or county in which the burying is to be done. The right and responsibility for operation and maintenance shall remain with the owner of the ditch, canal, lateral or drain, but the landowner, his heirs, executors, administrators, successors and assigns, shall be responsible for any increased operation and maintenance costs, including rehabilitation and replacement, unless otherwise agreed in writing with the owner.

The written permission of the owner of a ditch, canal, lateral, drain or buried irrigation conduit must first be obtained before it is changed or placed in buried pipe by the landowner.

While the owner of a ditch, canal, lateral, drain or buried irrigation conduit shall have no right to relocate it on the property of another without permission, a ditch, canal, lateral or drain owner shall have the right to place it in a buried conduit within the easement or right-of-way on the property of another in accordance with standard specifications for pipe, materials, installation and backfill, as set forth in the Idaho standards for public works construction or other standards recognized by the city or county in

which the burying is to be done, and so long as the pipe and the construction is accomplished in a manner that the surface of the owner's property and the owner's use thereof is not disrupted and is restored to the condition of adjacent property as expeditiously as possible, but no longer than thirty (30) days after the completion of construction. A landowner shall have the right to direct that the conduit be relocated to a different route than the route of the ditch, canal, lateral or drain, provided that the landowner, his heirs, executors, administrators, successors and assigns, shall be responsible for any increased construction or future maintenance costs necessitated by said relocation. Maintenance of the buried conduit shall be the responsibility of the conduit owner.

[(42-1207) 1907, p. 237, sec. 4; reen. R.C. & C.L., sec. 3311a; C.S., sec. 5660; I.C.A., sec. 41-1107; am. 1994, ch. 151, sec. 1, p. 345; am. 2002, ch. 115, sec. 4, p. 329; am. 2005, ch. 331, sec. 1, p. 1038; am. 2011, ch. 177, sec. 1, p. 504.]

42-1208. EASEMENTS OR RIGHTS-OF-WAY NOT SUBJECT TO ADVERSE POSSESSION. Easements or rights-of-way of irrigation districts, Carey act operating companies, nonprofit irrigation entities, lateral ditch associations, and drainage districts are not subject to adverse possession, and no person shall prevent free access of authorized personnel on easements or rights-of-way or construct any obstruction on easements or rights-of-way in an effort to adversely possess said easement or right-of-way.

[42-1208, added 1981, ch. 344, sec. 1, p. 714; am. 2004, ch. 179, sec. 2, p. 563.]

42-1209. ENCROACHMENTS ON EASEMENTS AND RIGHTS-OF-WAY. Easements or rights-of-way of irrigation districts, Carey act operating companies, nonprofit irrigation entities, lateral ditch associations, and drainage districts are essential for the operations of such irrigation and drainage entities. Accordingly, no person or entity shall cause or permit any encroachments onto the easements or rights-of-way, including any public or private roads, utilities, fences, gates, pipelines, structures or other construction or placement of objects, without the written permission of the irrigation district, Carey act operating company, nonprofit irrigation entity, lateral ditch association, or drainage district owning the easement or right-of-way, in order to ensure that any such encroachments will not unreasonably or materially interfere with the use and enjoyment of the easement or right-of-way. Encroachments of any kind placed in such easement or right-of-way, without such express written permission shall be removed at the expense of the person or entity causing or permitting such encroachments, upon the request of the owner of the easement or right-of-way, in the event that any such encroachments unreasonably or materially interfere with the use and enjoyment of the easement or 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.

[42-1209, added 2004, ch. 179, sec. 3, p. 563.]