

IN THE SENATE

SENATE BILL NO. 1083

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

RELATING TO IRRIGATION AND DRAINAGE; AMENDING SECTION 42-1102, IDAHO CODE, TO REVISE PROVISIONS REGARDING ENCROACHMENTS ON CERTAIN RIGHTS-OF-WAY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 42-1203, IDAHO CODE, TO REVISE PROVISIONS REGARDING MAINTENANCE OF EMBANKMENTS; AMENDING SECTION 42-1204, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE PREVENTION OF DAMAGE TO OTHERS ASSOCIATED WITH DITCHES, CANALS, WORKS, OR OTHER AQUEDUCTS; AMENDING SECTION 42-1207, IDAHO CODE, TO REVISE PROVISIONS REGARDING BURIED IRRIGATION CONDUIT AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 42-1209, IDAHO CODE, TO REVISE PROVISIONS REGARDING ENCROACHMENTS ON CERTAIN EASEMENTS AND RIGHTS-OF-WAY.

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

SECTION 1. That Section 42-1102, Idaho Code, be, and the same is hereby amended to read as follows:

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.

1 The existence of a visible ditch, canal or conduit shall constitute no-
 2 tice to the owner, or any subsequent purchaser, of the underlying servient
 3 estate, that the owner of the ditch, canal or conduit has the right-of-way
 4 and incidental rights confirmed or granted by this section.

5 Rights-of-way provided by this section are essential for the opera-
 6 tions of the ditches, canals and conduits. No person or entity shall cause
 7 or permit any encroachments onto the right-of-way, including public or
 8 private roads, utilities, fences, gates, pipelines, structures, or other
 9 construction or placement of objects, without the written permission of
 10 the owner or operator of the right-of-way, in order to ensure that any such
 11 encroachments will not unreasonably or materially interfere with the use
 12 and enjoyment of the right-of-way. Encroachments of any kind placed in
 13 such right-of-way without express written permission of the owner or op-
 14 erator of the right-of-way shall be removed at the expense of the person
 15 or entity causing or permitting such encroachment, upon the request of the
 16 owner or operator of the right-of-way, in the event that any such encroach-
 17 ments unreasonably or materially interfere with the use and enjoyment of the
 18 right-of-way. Nothing in this section shall in any way affect the exercise
 19 of the right of eminent domain for the public purposes set forth in section
 20 7-701, Idaho Code.

21 This section shall apply to ditches, canals or other conduits existing
 22 on the effective date of this act, as well as to ditches, canals or other con-
 23 duits constructed after such effective date.

24 SECTION 2. That Section 42-1203, Idaho Code, be, and the same is hereby
 25 amended to read as follows:

26 42-1203. MAINTENANCE OF EMBANKMENTS. The owner, ~~or owners~~, and opera-
 27 tors of any irrigating ditch, canal or conduit shall carefully keep and main-
 28 tain the embankments thereof in good repair, in order to prevent the water
 29 from wasting during the irrigation season, and shall not at any time permit a
 30 greater quantity of water to be turned into said ditch, canal or conduit than
 31 the banks thereof will easily contain or than can be used for beneficial or
 32 useful purposes; it being the meaning of this section to prevent the wasting
 33 and useless discharge and running away of water. The duties referenced in
 34 this section, whether statutory or common law, require reasonable care only,
 35 and shall not be construed to impose strict liability or to otherwise enlarge
 36 the liability of the owner, ~~or owners~~, or operators of any irrigating ditch,
 37 canal or conduit. The owners, ~~or constructors~~, or operators of such ditches,
 38 canals, works or other aqueducts, while responsible for their own acts or
 39 omissions, shall not be liable for damage or injury caused by: (1) The di-
 40 version or discharge of water into a ditch, canal or conduit by a third party
 41 without the permission of the owner, ~~or owners~~, or operators of the ditch,
 42 canal or conduit; (2) Any other act or omission of a third party, other than
 43 an employee or agent of the owner, ~~or owners~~, or operators of the ditch, canal
 44 or conduit; or (3) An act of God, including fire, earthquake, storm or sim-
 45 ilar natural phenomenon. The provisions of this section shall not be con-
 46 strued to impair any defense that an owner, ~~or constructor~~, or operator of a
 47 ditch, canal, works or other aqueduct may assert in a civil action.

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

3 42-1204. PREVENTION OF DAMAGE TO OTHERS. The owners, ~~or~~ constructors,
4 or operators of ditches, canals, works or other aqueducts, and their suc-
5 cessors in interest, using and employing the same to convey the waters of
6 any stream or spring, whether the said ditches, canals, works or aqueducts
7 be upon the lands owned or claimed by them, or upon other lands, must care-
8 fully keep and maintain the same, and the embankments, flumes or other con-
9 duits, by which such waters are or may be conducted, in good repair and con-
10 dition, so as not to damage or in any way injure the property or premises of
11 others. The duties referenced in this section, whether statutory or com-
12 mon law, require reasonable care only, and shall not be construed to impose
13 strict liability or to otherwise enlarge the liability of the owner, ~~or~~ own-
14 ers, or operators of any irrigating ditch, canal, works or other aqueduct.
15 The owners, ~~or~~ constructors, or operators of such ditches, canals, works or
16 other aqueducts, while responsible for their own acts or omissions, shall
17 not be liable for damage or injury caused by: (1) The diversion or discharge
18 of water into a ditch, canal, works or other aqueduct by a third party with-
19 out the permission of the owner, ~~or~~ owners, or operators of the ditch, canal,
20 works or other aqueduct; (2) Any other act or omission of a third party, other
21 than an employee or agent of the owner, ~~or~~ owners, or operators of the ditch,
22 canal, works or other aqueduct; or (3) An act of God, including fire, earth-
23 quake, storm or similar natural phenomenon. The provisions of this section
24 shall not be construed to impair any defense that an owner, ~~or~~ constructor,
25 or operator of a ditch, canal, works or other aqueduct may assert in a civil
26 action. The owners, ~~or~~ constructors, or operators have the right to enter
27 the land across which the right-of-way extends, for the purposes of clean-
28 ing, maintaining and repairing the ditch, canal or conduit, and to occupy
29 such width of the land along the banks of the ditch, canal or conduit as is
30 necessary to properly do the work of cleaning, maintaining and repairing the
31 ditch, canal or conduit with personnel and with such equipment as is commonly
32 used, or is reasonably adapted, to that work. The right-of-way also includes
33 the right to deposit on the banks of the ditch or canal the debris and other
34 matter necessarily required to be taken from the ditch or canal to properly
35 clean and maintain it, but no greater width of land along the banks of the
36 canal or ditch than is absolutely necessary for such deposits shall be occu-
37 pied by the removed debris or other matter.

38 SECTION 4. That Section 42-1207, Idaho Code, be, and the same is hereby
39 amended to read as follows:

40 42-1207. CHANGE OF DITCH, CANAL, LATERAL, DRAIN OR BURIED IRRIGATION
41 CONDUIT. Where any ditch, canal, lateral or drain or buried irrigation con-
42 duit has heretofore been, or may hereafter be, constructed across or beneath
43 the lands of another, the person or persons owning or controlling said land
44 shall have the right at their own expense to change said ditch, canal, lat-
45 eral or drain or buried irrigation conduit to any other part of said land,
46 but such change must be made in such a manner as not to impede the flow of the
47 water therein, or to otherwise injure any person or persons using or inter-
48 ested in such ditch, canal, lateral or drain or buried irrigation conduit.

1 Any increased operation and maintenance shall be the responsibility of the
 2 landowner who makes the change, his heirs, executors, administrators, suc-
 3 cessors and assigns.

4 A landowner shall also have the right to bury the ditch, canal, lateral
 5 or drain of another in pipe on the landowner's property, provided that the
 6 pipe, installation and backfill reasonably meet standard specifications for
 7 such materials and construction, as set forth in the Idaho standards for pub-
 8 lic works construction or other standards recognized by the city or county
 9 in which the burying is to be done. The right and responsibility for opera-
 10 tion and maintenance shall remain with the owner of the ditch, canal, lateral
 11 or drain, but the landowner, his heirs, executors, administrators, succes-
 12 sors and assigns, shall be responsible for any increased operation and main-
 13 tenance costs, including rehabilitation and replacement, unless otherwise
 14 agreed in writing with the owner.

15 The written permission of the owner or operator of a ditch, canal, lat-
 16 eral, drain or buried irrigation conduit must first be obtained before it is
 17 changed or placed in buried pipe by the landowner.

18 While the owner or operator of a ditch, canal, lateral, drain or buried
 19 irrigation conduit shall have no right to relocate it on the property of an-
 20 other without permission, a ditch, canal, lateral or drain owner or opera-
 21 tor shall have the right to place it in a buried conduit within the easement
 22 or right-of-way on the property of another in accordance with standard spec-
 23 ifications for pipe, materials, installation and backfill, as set forth in
 24 the Idaho standards for public works construction or other standards recog-
 25 nized by the city or county in which the burying is to be done, and ~~so~~ as long
 26 as the pipe and the construction is accomplished in a manner that the sur-
 27 face of the owner's property and the owner's use thereof is not disrupted and
 28 is restored to the condition of adjacent property as expeditiously as pos-
 29 sible, but no longer than thirty (30) days after the completion of construc-
 30 tion. A landowner shall have the right to direct that the conduit be relo-
 31 cated to a different route than the route of the ditch, canal, lateral or
 32 drain, provided that the landowner, his heirs, executors, administrators,
 33 successors and assigns, shall be responsible for any increased construction
 34 or future maintenance costs necessitated by said relocation. Maintenance of
 35 the buried conduit shall be the responsibility of the conduit owner or opera-
 36 tor.

37 SECTION 5. That Section 42-1209, Idaho Code, be, and the same is hereby
 38 amended to read as follows:

39 42-1209. ENCROACHMENTS ON EASEMENTS AND RIGHTS-OF-WAY. Easements or
 40 rights-of-way ~~of~~ operated, maintained, controlled or owned by irrigation
 41 districts, Carey act operating companies, nonprofit irrigation entities,
 42 lateral ditch associations, and drainage districts are essential for the
 43 operations of such irrigation and drainage entities. Accordingly, no per-
 44 son or entity shall cause or permit any encroachments onto the easements or
 45 rights-of-way, including any public or private roads, utilities, fences,
 46 gates, pipelines, structures or other construction or placement of objects,
 47 without the written permission of the irrigation district, Carey act op-
 48 erating company, nonprofit irrigation entity, lateral ditch association,
 49 or drainage district owning, operating, maintaining, or controlling the

1 easement or right-of-way, in order to ensure that any such encroachments
2 will not unreasonably or materially interfere with the use and enjoyment
3 of the easement or right-of-way. Encroachments of any kind placed in such
4 easement or right-of-way, without such express written permission, shall
5 be removed at the expense of the person or entity causing or permitting such
6 encroachments, upon the request of the persons operating, maintaining, or
7 controlling the easement or right-of-way or the owner of the easement or
8 right-of-way, in the event that any such encroachments unreasonably or mate-
9 rially interfere with the use and enjoyment of the easement or right-of-way.
10 Nothing in this section shall in any way affect the exercise of the right
11 of eminent domain for the public purposes set forth in section 7-701, Idaho
12 Code.