

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 307

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO IRRIGATION; REPEALING SECTION 42-1101, IDAHO CODE, RELATING
2 TO THE RIGHTS OF LANDOWNERS TO WATER; AMENDING SECTION 42-1102, IDAHO
3 CODE, TO REVISE RIGHT-OF-WAY PROVISIONS; AND AMENDING SECTION 42-1204,
4 IDAHO CODE, TO REVISE RIGHT-OF-WAY PROVISIONS.
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6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section [42-1101](#), Idaho Code, be, and the same is hereby
8 repealed.

9 SECTION 2. That Section 42-1102, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 42-1102. OWNERS OF LAND -- RIGHT TO RIGHT-OF-WAY. (1) When any such
12 owners or claimants to land have not sufficient length of frontage on a
13 stream to afford the requisite fall for a ditch, canal or other conduit on
14 their own premises for the proper irrigation thereof, or where the land pro-
15 posed to be irrigated is back from the banks of such stream, and convenient
16 facilities otherwise for the watering of said lands cannot be had, such own-
17 ers or claimants are entitled to a right-of-way through the lands of others,
18 for a ditch, canal, or conduit to convey water to the place of use for the
19 purposes of irrigation.

20 (2) The right-of-way for a ditch, canal, or other conduit shall in-
21 clude, but is not limited to, the reasonable exercise of the following
22 rights:

23 (a) The right to enter the land across which the right-of-way extends
24 for the purposes of accessing, inspecting, operating, cleaning, main-
25 taining, and repairing the ditch, canal or, conduit, embankments, and
26 irrigation structures, and to occupy such width of the land along the
27 banks of the ditch, canal or, conduit, and embankments as is necessary
28 to properly do the perform such work of cleaning, maintaining and re-
29 pairing the ditch, canal or conduit with personnel and with such equip-
30 ment as is commonly used or is reasonably adapted to that work.

31 (b) The right-of-way also includes the right to remove from and to de-
32 posit on the banks of the ditch or, canal, conduit, embankments, and
33 irrigation structures the debris, soil, vegetation, and other matter
34 necessarily required to be taken from the ditch, canal, or right-of-way
35 material the ditch, canal, or conduit owner or operator reasonably
36 deems necessary to properly access, inspect, operate, clean, and main-
37 tain, and repair them, but. The owner or operator has the right and
38 discretion to transport the material from the right-of-way, to utilize
39 the material for reconstruction, repair, or maintenance of the ditch,
40 canal, conduit, embankments, irrigation structures, and related roads
41 and access areas, and to deposit and leave the material within the

1 right-of-way, provided that the deposits occupy no greater width of
2 land along the banks of the canal or ditch, canal, conduit, and embank-
3 ments than is absolutely reasonably necessary for such deposits shall
4 be occupied by the removed debris, vegetation, or other matter. The
5 right-of-way also includes the right to remove or control vegetation
6 within the ditch or canal or along the banks of the ditch or canal to
7 properly access, clean, and maintain them, but the

8 (c) The right to occupy the right-of-way during any season of the year
9 to perform the work of operating, cleaning, maintaining, and repair-
10 ing the ditch, canal, conduit, embankments, and irrigation structures,
11 without prior notice to the owner or occupant of the land across which
12 the right-of-way extends.

13 (d) The owner or operator of the ditch, canal, or conduit is not obli-
14 gated to maintain or control the right-of-way or vegetation for the ben-
15 efit of the owners or claimants of lands of others.

16 (3) Provided that in the making, constructing, keeping up and mainte-
17 nance of such ditch, canal or conduit, through the lands of others, the per-
18 son, company or corporation, proceeding under this section, and those suc-
19 ceeding to the interests of such person, company or corporation must keep
20 such ditch, canal or other conduit in good repair and are liable to the owners
21 or claimants of the lands crossed by such work or aqueduct for all damages oc-
22 casioned by the overflow thereof, or resulting from any neglect or accident
23 (unless the same be unavoidable) to such ditch or aqueduct.

24 (4) The existence of a visible ditch, canal or conduit shall constitute
25 notice to the owner, or any subsequent purchaser, of the underlying servient
26 estate, that the owner of the ditch, canal or conduit has the right-of-way
27 and incidental rights confirmed or granted by this section.

28 (5) Rights-of-way provided by this section are essential for the oper-
29 ations of the ditches, canals and conduits. No person or entity shall cause
30 or permit any encroachments onto the right-of-way, including public or pri-
31 vate roads, utilities, fences, gates, pipelines, structures, landscaping,
32 trees, vegetation, or other construction or placement of objects, without
33 the written permission of the owner or operator of the right-of-way, in order
34 to ensure that any such encroachments will not unreasonably or materially
35 interfere with the use and enjoyment of the right-of-way. Encroachments of
36 any kind placed in such right-of-way without express written permission of
37 the owner or operator of the right-of-way shall be removed at the expense of
38 the person or entity causing or permitting such encroachment, upon the re-
39 quest of the owner or operator of the right-of-way, in the event that any such
40 encroachments unreasonably or materially interfere with the use and enjoy-
41 ment of the right-of-way. Nothing in this section shall in any way affect the
42 exercise of the right of eminent domain for the public purposes set forth in
43 section 7-701, Idaho Code.

44 (6) This section shall apply to ditches, canals ~~or other~~, conduits,
45 and embankments existing on the effective date of this act, as well as to
46 ditches, canals ~~or other~~, conduits, and embankments constructed or existing
47 after such effective date.

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

1 42-1204. PREVENTION OF DAMAGE TO OTHERS. The owners, constructors, or
2 operators of ditches, canals, works or other aqueducts, and their successors
3 in interest, using and employing the same to convey the waters of any stream
4 or spring, whether the said ditches, canals, works or aqueducts be upon the
5 lands owned or claimed by them, or upon other lands, must carefully keep and
6 maintain the same, and the embankments, flumes or other conduits, by which
7 such waters are or may be conducted, in good repair and condition, so as
8 not to damage or in any way injure the property or premises of others. The
9 duties referenced in this section, whether statutory or common law, require
10 reasonable care only and shall not be construed to impose strict liability
11 or to otherwise enlarge the liability of the owner, owners, or operators of
12 any irrigating ditch, canal, works or other aqueduct. The owners, construc-
13 tors, or operators of such ditches, canals, works or other aqueducts, while
14 responsible for their own acts or omissions, shall not be liable for damage
15 or injury caused by: (1) The diversion or discharge of water into a ditch,
16 canal, works or other aqueduct by a third party without the permission of the
17 owner, owners, or operators of the ditch, canal, works or other aqueduct; (2)
18 Any other act or omission of a third party, other than an employee or agent of
19 the owner, owners, or operators of the ditch, canal, works or other aqueduct;
20 or (3) An act of God, including fire, earthquake, storm or similar natural
21 phenomenon. The provisions of this section shall not be construed to impair
22 any defense that an owner, constructor, or operator of a ditch, canal, works
23 or other aqueduct may assert in a civil action. The owners, constructors,
24 or operators have the right to enter the land across which the right-of-way
25 extends, for the purposes of necessary cleaning, maintaining and repairing
26 the ditch, canal ~~or~~, conduit, and embankments, and to occupy such width of
27 the land along the banks of the ditch, canal ~~or~~, conduit, and embankments, as
28 is necessary to properly do the work of cleaning, maintaining and repairing
29 the ditch, canal ~~or~~, conduit, and embankments, with personnel and with such
30 equipment as is commonly used or is reasonably adapted to that work. The
31 right-of-way also includes the right to remove from and to deposit on the
32 banks of the ditch or canal the debris, vegetation, and other matter neces-
33 sarily required to be taken from the ditch, canal, or from the right-of-way
34 to properly clean and maintain them, but no greater width of land along the
35 banks of the canal or ditch than is absolutely necessary for such deposits
36 shall be occupied by the removed debris, vegetation, or other matter. The
37 right-of-way also includes the right to remove or control vegetation within
38 the ditch or canal or along the ~~banks~~ embankments of the ditch or canal as
39 necessary to properly access, clean, and maintain them, but the owner or
40 operator of the ditch, canal, or conduit is not obligated to maintain or
41 control the right-of-way or vegetation for the benefit of the owners or
42 claimants of lands of others. This section shall apply to ditches, canals,
43 conduits, and embankments existing on the effective date of this act, as well
44 as to ditches, canals, conduits, and embankments constructed or existing
45 after such effective date.