

IN THE SENATE

SENATE BILL NO. 1086

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

1 RELATING TO IRRIGATION AND DRAINAGE; AMENDING SECTION 42-1102, IDAHO CODE,  
2 TO REVISE PROVISIONS REGARDING RIGHTS ASSOCIATED WITH RIGHTS-OF-WAY;  
3 AMENDING SECTION 42-1204, IDAHO CODE, TO REVISE PROVISIONS REGARDING  
4 RIGHTS ASSOCIATED WITH RIGHTS-OF-WAY AND TO MAKE TECHNICAL CORREC-  
5 TIONS; AND AMENDING SECTION 42-1209, IDAHO CODE, TO REVISE PROVISIONS  
6 REGARDING ENCROACHMENTS ONTO EASEMENTS AND RIGHTS-OF-WAY.  
7

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

9 SECTION 1. 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. When any such own-  
12 ers or claimants to land have not sufficient length of frontage on a stream  
13 to afford the requisite fall for a ditch, canal or other conduit on their own  
14 premises for the proper irrigation thereof, or where the land proposed to  
15 be irrigated is back from the banks of such stream, and convenient facili-  
16 ties otherwise for the watering of said lands cannot be had, such owners or  
17 claimants are entitled to a right-of-way through the lands of others, for  
18 the purposes of irrigation. The right-of-way shall include, but is not lim-  
19 ited to, the right to enter the land across which the right-of-way extends,  
20 for the purposes of cleaning, maintaining and repairing the ditch, canal or  
21 conduit, and to occupy such width of the land along the banks of the ditch,  
22 canal or conduit as is necessary to properly do the work of cleaning, main-  
23 taining and repairing the ditch, canal or conduit with personnel and with  
24 such equipment as is commonly used, or is reasonably adapted, to that work.  
25 The right-of-way also includes the right to remove from and to deposit on the  
26 banks of the ditch or canal the debris, vegetation, and other matter nec-  
27 essarily required to be taken from the ditch, ~~or~~ canal, or right-of-way to  
28 properly access, clean, and maintain ~~it~~ them, but no greater width of land  
29 along the banks of the canal or ditch than is absolutely necessary for such  
30 deposits shall be occupied by the removed debris, vegetation, or other mat-  
31 ter. The right-of-way also includes the right to remove or control vegeta-  
32 tion within the ditch or canal or along the banks of the ditch or canal to  
33 properly access, clean, and maintain them, but the owner or operator of the  
34 ditch, canal, or conduit is not obligated to maintain or control the right-  
35 of-way or vegetation for the benefit of the owners or claimants of lands of  
36 others. Provided, that in the making, constructing, keeping up and mainte-  
37 nance of such ditch, canal or conduit, through the lands of others, the per-  
38 son, company or corporation, proceeding under this section, and those suc-  
39 ceeding to the interests of such person, company or corporation, must keep  
40 such ditch, canal or other conduit in good repair, and are liable to the own-  
41 ers or claimants of the lands crossed by such work or aqueduct for all damages

1 occasioned by the overflow thereof, or resulting from any neglect or acci-  
2 dent (unless the same be unavoidable) to such ditch or aqueduct.

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

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

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

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

27 42-1204. PREVENTION OF DAMAGE TO OTHERS. The owners or constructors of  
28 ditches, canals, works or other aqueducts, and their successors in interest,  
29 using and employing the same to convey the waters of any stream or spring,  
30 whether the said ditches, canals, works or aqueducts be upon the lands owned  
31 or claimed by them, or upon other lands, must carefully keep and maintain the  
32 same, and the embankments, flumes or other conduits, by which such waters are  
33 or may be conducted, in good repair and condition, so as not to damage or in  
34 any way injure the property or premises of others. The duties referenced in  
35 this section, whether statutory or common law, require reasonable care only,  
36 and shall not be construed to impose strict liability or to otherwise enlarge  
37 the liability of the owner or owners of any irrigating ditch, canal, works or  
38 other aqueduct. The owners or constructors of such ditches, canals, works  
39 or other aqueducts, while responsible for their own acts or omissions, shall  
40 not be liable for damage or injury caused by: (1) The diversion or discharge  
41 of water into a ditch, canal, works or other aqueduct by a third party with-  
42 out the permission of the owner or owners of the ditch, canal, works or other  
43 aqueduct; (2) Any other act or omission of a third party, other than an em-  
44 ployee or agent of the owner or owners of the ditch, canal, works or other  
45 aqueduct; or (3) An act of God, including fire, earthquake, storm or sim-  
46 ilar natural phenomenon. The provisions of this section shall not be con-  
47 strued to impair any defense that an owner or constructor of a ditch, canal,  
48 works or other aqueduct may assert in a civil action. The owners or con-  
49 structors have the right to enter the land across which the right-of-way ex-

1 tends, for the purposes of cleaning, maintaining and repairing the ditch,  
 2 canal or conduit, and to occupy such width of the land along the banks of the  
 3 ditch, canal or conduit as is necessary to properly do the work of clean-  
 4 ing, maintaining and repairing the ditch, canal or conduit with personnel  
 5 and with such equipment as is commonly used, or is reasonably adapted, to  
 6 that work. The right-of-way also includes the right to remove from and to  
 7 deposit on the banks of the ditch or canal the debris, vegetation, and other  
 8 matter necessarily required to be taken from the ditch, ~~or~~ canal, or from the  
 9 right-of-way to properly clean and maintain ~~it~~ them, but no greater width  
 10 of land along the banks of the canal or ditch than is absolutely necessary  
 11 for such deposits shall be occupied by the removed debris, vegetation, or  
 12 other matter. The right-of-way also includes the right to remove or control  
 13 vegetation within the ditch or canal or along the banks of the ditch or  
 14 canal to properly access, clean, and maintain them, but the owner or opera-  
 15 tor of the ditch, canal, or conduit is not obligated to maintain or control  
 16 the right-of-way or vegetation for the benefit of the owners or claimants of  
 17 lands of others.

18 SECTION 3. That Section 42-1209, Idaho Code, be, and the same is hereby  
 19 amended to read as follows:

20 42-1209. ENCROACHMENTS ON EASEMENTS AND RIGHTS-OF-WAY. Easements  
 21 or rights-of-way of irrigation districts, Carey act operating companies,  
 22 nonprofit irrigation entities, lateral ditch associations, and drainage  
 23 districts are essential for the operations of such irrigation and drainage  
 24 entities. Accordingly, no person or entity shall cause or permit any en-  
 25 croachments onto the easements or rights-of-way, including any public or  
 26 private roads, utilities, fences, gates, pipelines, structures, landscap-  
 27 ing, trees, vegetation, or other construction or placement of objects,  
 28 without the written permission of the irrigation district, Carey act oper-  
 29 ating company, nonprofit irrigation entity, lateral ditch association, or  
 30 drainage district owning the easement or right-of-way, in order to ensure  
 31 that any such encroachments will not unreasonably or materially interfere  
 32 with the use and enjoyment of the easement or right-of-way. Encroachments  
 33 of any kind placed in such easement or right-of-way, without such express  
 34 written permission, shall be removed at the expense of the person or entity  
 35 causing or permitting such encroachments, upon the request of the owner  
 36 of the easement or right-of-way, in the event that any such encroachments  
 37 unreasonably or materially interfere with the use and enjoyment of the ease-  
 38 ment or right-of-way. Nothing in this section shall in any way affect the  
 39 exercise of the right of eminent domain for the public purposes set forth in  
 40 section 7-701, Idaho Code.