

IN THE SENATE

SENATE BILL NO. 1339

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

1 RELATING TO RIGHTS-OF-WAY; AMENDING SECTION 42-1102, IDAHO CODE, TO REVISE
2 PROVISIONS REGARDING RIGHTS TO RIGHT-OF-WAY AND TO MAKE TECHNICAL COR-
3 RECTIONS; REPEALING SECTION 42-1103, IDAHO CODE, RELATING TO OWNERS OF
4 SPRINGS AND STREAMS; AMENDING SECTION 42-1104, IDAHO CODE, TO REVISE
5 PROVISIONS REGARDING RIGHT-OF-WAY OVER STATE LANDS; REPEALING SECTION
6 42-1105, IDAHO CODE, RELATING TO RIGHT-OF-WAY FOR RIPARIAN PROPRI-
7 ETORS; AMENDING CHAPTER 11, TITLE 42, IDAHO CODE, BY THE ADDITION OF A
8 NEW SECTION 42-1105, IDAHO CODE, TO PROVIDE FOR RIGHT-OF-WAY FOR DIVER-
9 SION WORKS; AMENDING SECTION 42-1106, IDAHO CODE, TO REVISE PROVISIONS
10 REGARDING RIGHT OF EMINENT DOMAIN; REPEALING SECTION 42-1108, IDAHO
11 CODE, RELATING TO THE RIGHT TO CROSS DITCHES; AMENDING SECTION 42-1201,
12 IDAHO CODE, TO REVISE PROVISIONS REGARDING THE OPERATION AND MAINTEN-
13 NANCE OF IRRIGATION CONVEYANCE FACILITIES; REPEALING SECTION 42-1202,
14 IDAHO CODE, RELATING TO THE MAINTENANCE OF DITCHES; REPEALING SEC-
15 TION 42-1203, IDAHO CODE, RELATING TO THE MAINTENANCE OF EMBANKMENTS;
16 REPEALING SECTION 42-1204, IDAHO CODE, RELATING TO THE PREVENTION OF
17 DAMAGE TO OTHERS; REPEALING SECTION 42-1205, IDAHO CODE, RELATING TO
18 BRIDGES OVER DITCHES; REPEALING SECTION 42-1206, IDAHO CODE, RELATING
19 TO THE REPAIR OF COMMUNITY DITCHES; AMENDING SECTION 42-1207, IDAHO
20 CODE, TO REVISE PROVISIONS REGARDING RELOCATION AND PIPING OF IRRIGA-
21 TION CONVEYANCE FACILITIES AND DRAINAGE FACILITIES; AMENDING SECTION
22 42-1209, IDAHO CODE, TO REVISE PROVISIONS REGARDING ENCROACHMENTS ON
23 EASEMENTS AND RIGHTS-OF-WAY; REPEALING SECTION 18-4308, IDAHO CODE,
24 RELATING TO THE CHANGE OF A DITCH, CANAL, LATERAL, DRAIN OR BURIED IR-
25 RIGATION CONDUIT; AMENDING CHAPTER 43, TITLE 18, IDAHO CODE, BY THE
26 ADDITION OF A NEW SECTION 18-4308, IDAHO CODE, TO PROVIDE A PENALTY; AND
27 DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
28

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

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

32 42-1102. OWNERS OF LAND -- RIGHT TO RIGHT-OF-WAY. (1) ~~When any such~~
33 ~~owners~~ Owners or claimants to land that do not have not sufficient length
34 of frontage on a stream to afford the requisite fall for a ditch, canal,
35 lateral, drain, or other conduit on their own premises for the proper irriga-
36 tion or drainage thereof, or where the land proposed to be irrigated is back
37 from the banks of such stream, and convenient facilities otherwise for the
38 watering of said lands cannot be had, such owners or claimants are entitled
39 to a right-of-way through the lands of others, for a ditch, canal, lateral,
40 drain, or conduit to convey water to the place of use for the purposes of
41 irrigation or to provide drainage of irrigated land.

1 (2) The right-of-way for a ditch, canal, lateral, drain, or other con-
 2 duit shall include but is not limited to the reasonable exercise of the fol-
 3 lowing rights:

4 (a) The right to enter the land across which the right-of-way extends
 5 for the purposes of accessing, inspecting, operating, cleaning, main-
 6 taining, and repairing the ditch, canal, lateral, drain, conduit,
 7 embankments, and irrigation structures, and to occupy such width of the
 8 land along the ditch, canal, lateral, drain, conduit, and embankments
 9 as is necessary to properly perform such work with personnel and with
 10 such equipment as is commonly used or is reasonably adapted to that
 11 work.

12 (b) The right to remove from the ditch, canal, lateral, drain, conduit,
 13 embankments, and irrigation structures the debris, soil, vegetation,
 14 and other material the ditch, canal, lateral, drain, or conduit owner
 15 or operator reasonably deems necessary to properly access, inspect, op-
 16 erate, clean, maintain, and repair them. The owner or operator has the
 17 right and discretion to transport the material from the right-of-way,
 18 to utilize the material for reconstruction, repair, or maintenance of
 19 the ditch, canal, lateral, drain, conduit, embankments, irrigation
 20 structures, and related roads and access areas, and to deposit and leave
 21 the material within the right-of-way, provided that the deposits occupy
 22 no greater width of land along the ditch, canal, lateral, drain, con-
 23 duit, and embankments than is reasonably necessary.

24 (c) The right to occupy the right-of-way during any season of the year
 25 to perform the work of operating, cleaning, maintaining, and repairing
 26 the ditch, canal, lateral, drain, conduit, embankments, and irrigation
 27 structures, without prior notice to the owner or occupant of the land
 28 across which the right-of-way extends.

29 (d) The owner or operator of the ditch, canal, lateral, drain, or con-
 30 duit is not obligated to maintain or control the right-of-way or vegeta-
 31 tion for the benefit of the owners or claimants of lands of others.

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

40 ~~(4) (3) The existence of a visible ditch, canal or conduit shall con-~~
 41 ~~stitute notice to the owner, or any subsequent purchaser, of the underly-~~
 42 ~~ing servient estate, Any servient estate owner shall be deemed to have no-~~
 43 ~~tice that the owner of the ditch, canal, lateral, drain, or conduit has the~~
 44 ~~right-of-way and all incidental rights confirmed or granted by this section~~
 45 ~~if:~~

46 ~~(a) The servient estate owner has actual or constructive knowledge of~~
 47 ~~the ditch, canal, lateral, drain, or conduit; or~~

48 ~~(b) The ditch, canal, lateral, drain, or conduit or any feature thereof~~
 49 ~~is visible or reasonably discoverable.~~

1 ~~(5)~~ (4) Rights-of-way provided by this section are essential for the
 2 operations of the ditches, canals, laterals, drains, and conduits. No per-
 3 son or entity shall cause or permit any encroachments onto the right-of-way,
 4 including public or private roads, utilities, fences, gates, pipelines,
 5 structures, landscaping, trees, vegetation, or other construction or place-
 6 ment of objects, without the written permission of the owner or operator
 7 of the right-of-way, in order to ensure that any such encroachments will
 8 not unreasonably or materially interfere with the use and enjoyment of the
 9 right-of-way. Such written permission shall not be unreasonably withheld.

10 (5) Encroachments of any kind placed in such right-of-way without ex-
 11 press written permission of the owner or operator of the right-of-way shall
 12 be removed at the expense of the person or entity causing or permitting such
 13 encroachment, upon the request of the owner or operator of the right-of-way,
 14 in the event that any such encroachments unreasonably or materially inter-
 15 fere with the use and enjoyment of the right-of-way.

16 (a) The person or entity that caused or permitted the encroachment
 17 shall perform such removal, modification, repair, or restoration
 18 within a reasonable time after request from the owner or operator of the
 19 easement or right-of-way or immediately upon such request in the event
 20 of reduced delivery or drainage of water, property damage, safety risk,
 21 or other emergency. What constitutes a reasonable time to respond to
 22 the request depends on the circumstances affecting the use, operation,
 23 maintenance, and repair of the ditch, canal, lateral, drain, or conduit
 24 and associated easement or right-of-way.

25 (b) If the person or entity that caused or permitted the encroachment
 26 fails to timely perform the requested actions, or in the event of re-
 27 duced delivery or drainage of water, property damage, safety risk, or
 28 other emergency, the owner or operator of the easement or right-of-way
 29 may proceed to perform such actions at the expense of the person or en-
 30 tity causing or permitting the encroachment, as long as no work is per-
 31 formed on any municipal or public utility line.

32 (6) Any person or entity that causes or permits an encroachment shall
 33 be responsible for its use, operation, maintenance, repair, and replace-
 34 ment to prevent unreasonable or material interference with the ditch, canal,
 35 lateral, drain, or conduit and the associated easement or right-of-way and
 36 shall be liable for all damages that may accrue therefrom.

37 (7) Nothing in this section shall in any way affect the exercise of the
 38 right of eminent domain for the public purposes set forth in section 7-701,
 39 Idaho Code.

40 ~~(6)~~ (8) This section shall apply to ditches, canals, laterals, drains,
 41 conduits, and embankments existing on the effective date of this act, as
 42 well as to ditches, canals, laterals, drains, conduits, and embankments
 43 constructed or existing after such effective date.

44 SECTION 2. That Section [42-1103](#), Idaho Code, be, and the same is hereby
 45 repealed.

46 SECTION 3. That Section 42-1104, Idaho Code, be, and the same is hereby
 47 amended to read as follows:

1 42-1104. RIGHT-OF-WAY OVER STATE LANDS. The right-of-way over and
 2 upon any and all lands owned or controlled by the state of Idaho is hereby
 3 granted to any and all persons for the purpose of constructing and maintain-
 4 ing any ditch, canal, lateral, drain, conduit or other works for the diver-
 5 sion or carrying of water for any beneficial use; or to provide drainage;
 6 provided, that no property shall be taken under the provisions of this sec-
 7 tion until a just compensation shall be paid therefor, to be ascertained in
 8 the manner prescribed by law for the taking of private property for a public
 9 use.

10 SECTION 4. That Section 42-1105, Idaho Code, be, and the same is hereby
 11 repealed.

12 SECTION 5. That Chapter 11, Title 42, Idaho Code, be, and the same is
 13 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 14 ignated as Section 42-1105, Idaho Code, and to read as follows:

15 42-1105. RIGHT-OF-WAY FOR DIVERSION WORKS. A water right owner has the
 16 right to install, operate, and maintain diversion works at the authorized
 17 point of diversion in any of the waters of the state described in section
 18 42-101, Idaho Code, for the purpose of diverting and conveying water to the
 19 place of use in accordance with the water right. A right-of-way over and
 20 across the lands of others, for conducting said waters, may be acquired in
 21 the manner prescribed in section 42-1106, Idaho Code.

22 SECTION 6. That Section 42-1106, Idaho Code, be, and the same is hereby
 23 amended to read as follows:

24 42-1106. RIGHT OF EMINENT DOMAIN. In case of the refusal of the owners
 25 or claimants of any lands, through which any ditch, canal, lateral, drain,
 26 or conduit is proposed to be made or constructed, to allow passage thereof,
 27 the person or persons desiring the right-of-way may proceed as in the law of
 28 eminent domain.

29 SECTION 7. That Section 42-1108, Idaho Code, be, and the same is hereby
 30 repealed.

31 SECTION 8. That Section 42-1201, Idaho Code, be, and the same is hereby
 32 amended to read as follows:

33 42-1201. DITCHES TO BE KEPT FULL OPERATION AND MAINTENANCE OF IRRIGA-
 34 TION CONVEYANCE FACILITIES. (1) Every person, ~~company or corporation or en-~~
 35 tity owning or controlling any ditch, canal, lateral, or conduit for the pur-
 36 pose of irrigation shall, ~~during:~~

37 (a) During the time from April first to the first day of November of
 38 each year the ditch, canal, lateral, or conduit is operated to deliver
 39 water for irrigation, keep a flow of water therein sufficient to meet
 40 the requirements needs of such the persons as are properly or entities
 41 entitled to the use of water therefrom; provided, however, that when.
 42 Such duty may be adjusted when there is insufficient water in the pub-
 43 lic streams or other natural water sources from which the water is ob-

1 ~~tained is too low and inadequate for that purpose, or when the board of~~
 2 ~~directors or governing body of an organization or entity furnishing wa-~~
 3 ~~ter deem deems it in the best interests of that organization or entity~~
 4 ~~to adjust reduce the water supply or dates of availability and provide~~
 5 ~~for termination of irrigation water, then such ditch, canal or conduit~~
 6 ~~shall be kept with as full a flow of water therein as may be practicable,~~
 7 ~~subject, however, to the rights of priority from the streams or other~~
 8 ~~natural sources as provided by law.;~~

9 (b) Construct the necessary outlets in the ditch, canal, lateral, or
 10 conduit for proper delivery of water to persons and entities having
 11 rights to the use of the water;

12 (c) Not permit a greater quantity of water to be turned into the ditch,
 13 canal, lateral, or conduit than it will contain or than can be used for
 14 beneficial or useful purposes to prevent the wasting and useless dis-
 15 charge and running away of water; and

16 (d) Carefully keep and maintain the ditch, canal, lateral, or conduit
 17 in good repair and condition so as not to damage or in any way injure the
 18 property or premises of others and to prevent the water conveyed therein
 19 from wasting during the irrigation season.

20 (2) The duties to operate and maintain an irrigation ditch, canal, lat-
 21 eral, or conduit, whether statutory or common law, require reasonable care
 22 only and shall not be construed to impose strict liability or to otherwise
 23 enlarge the liability of the owners or operators thereof. The owners, con-
 24 structors, or operators of irrigation ditches, canals, laterals, or con-
 25 duits, while responsible for their own acts or omissions, shall not be liable
 26 for damage or injury caused by:

27 (a) The diversion or discharge of water into a ditch, canal, lateral, or
 28 conduit by a third party without the permission of the owner or operator
 29 thereof;

30 (b) Any other act or omission of a third party, other than an employee or
 31 agent of the owner or operator of the ditch, canal, lateral, or conduit;
 32 or

33 (c) An act of God, including but not limited to fire, earthquake, storm,
 34 or similar natural phenomenon.

35 (3) The provisions of this section shall not be construed to impair any
 36 defense that an owner, constructor, or operator of a ditch, canal, lateral,
 37 or conduit may assert in a civil action.

38 SECTION 9. That Section [42-1202](#), Idaho Code, be, and the same is hereby
 39 repealed.

40 SECTION 10. That Section [42-1203](#), Idaho Code, be, and the same is hereby
 41 repealed.

42 SECTION 11. That Section [42-1204](#), Idaho Code, be, and the same is hereby
 43 repealed.

44 SECTION 12. That Section [42-1205](#), Idaho Code, be, and the same is hereby
 45 repealed.

1 SECTION 13. That Section 42-1206, Idaho Code, be, and the same is hereby
2 repealed.

3 SECTION 14. That Section 42-1207, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 42-1207. ~~CHANGE OF DITCH, CANAL, LATERAL, DRAIN OR BURIED IRRIGA-~~
6 ~~TION CONDUIT~~ RELOCATION AND PIPING OF IRRIGATION CONVEYANCE FACILITIES
7 AND DRAINAGE FACILITIES. (1) Where any ditch, canal, lateral ~~or~~, drain, or
8 buried irrigation conduit has heretofore been, or may hereafter be, con-
9 structed across or beneath the lands of another, ~~the person or persons owning~~
10 ~~or controlling said land shall have the right at their own expense to change~~
11 ~~said ditch, canal, lateral or drain or buried irrigation conduit:~~

12 (a) The servient estate owner may, at his own expense, relocate or pipe
13 the ditch, canal, lateral, drain, or buried irrigation conduit to any
14 other part of said his land, but such change must be made in such a manner
15 as not to impede the flow of the water therein, or to otherwise injure
16 any person or persons entity using or interested in such ditch, canal,
17 lateral or, drain, or buried irrigation conduit. Any increased oper-
18 ation and maintenance shall be the responsibility of the landowner who
19 makes the change, his heirs, executors, administrators, successors and
20 assigns; or

21 (b) ~~A landowner shall also have the right to bury the ditch, canal,~~
22 ~~lateral or drain of another in pipe on the landowner's property~~ The
23 servient estate owner may, at his own expense, place the ditch, canal,
24 lateral, or drain in a pipe, culvert, or other conduit on his land,
25 provided that the pipe, culvert, or other conduit installation and
26 backfill reasonably meet standard specifications for such materials
27 and construction, as set forth in the Idaho standards for public works
28 construction or other standards recognized by the city or county in
29 which the burying is to be done.

30 (2) The right and responsibility for operation and maintenance of a
31 ditch, canal, lateral, drain, or buried irrigation conduit that is relocated
32 or placed in conduit by the servient estate owner shall remain with the owner
33 of the ditch, canal, lateral, or drain, but the landowner, his servient es-
34 tate owner, his heirs, executors, administrators, successors, and assigns
35 shall be responsible for any increased operation and maintenance costs, in-
36 cluding rehabilitation and replacement, unless otherwise agreed in writing
37 with the owner of the ditch, canal, lateral, drain, or buried irrigation
38 conduit.

39 (3) (a) The written permission of the owner or operator of a ditch,
40 canal, lateral, drain, or buried irrigation conduit must first be
41 obtained before it is changed relocated or placed in buried a pipe, cul-
42 vert, or other conduit by the landowner. owner of the servient estate,
43 in order to ensure that:

44 (i) Such change will not impede the flow of water therein, un-
45 reasonably or materially interfere with access, use, operation,
46 maintenance, cleaning, or repair, or otherwise injure any person
47 or entity using such ditch, canal, lateral, drain, or buried irri-
48 gation conduit;

1 (ii) Adequate provision is made for the payment of any increased
2 operation and maintenance costs, including rehabilitation and re-
3 placement, unless otherwise agreed in writing with the owner or
4 operator of the ditch, canal, lateral, drain, or buried irrigation
5 conduit; and

6 (iii) Adequate provision is made documenting, protecting, and
7 perpetuating the ditch, canal, lateral, drain, or buried irri-
8 gation conduit right-of-way pursuant to section 42-1102, Idaho
9 Code.

10 (b) Such written permission shall not be unreasonably withheld.

11 (4) A ditch, canal, lateral, drain, or buried irrigation conduit that
12 is relocated or placed in a pipe, culvert, or other conduit without such ex-
13 press written permission shall be removed, modified, repaired, or restored
14 to its prior location or condition, as directed by the owner thereof, at the
15 expense of the person or entity that caused or permitted such relocation or
16 placement in pipe, culvert, or other conduit, in the event it unreasonably
17 or materially interferes with the use and enjoyment of the easement or right-
18 of-way.

19 (a) The person or entity that caused or permitted the relocation or
20 the placement in pipe, culvert, or other conduit shall perform such re-
21 moval, modification, repair, or restoration within a reasonable time
22 after request from the owner or operator of the easement or right-of-
23 way, or immediately upon such request in the event of reduced delivery
24 or drainage of water, property damage, safety risk, or other emergency.
25 What constitutes a reasonable time to respond to the request depends on
26 circumstances affecting the use, operation, maintenance, and repair of
27 the ditch, canal, lateral drain, or buried irrigation conduit and asso-
28 ciated easement or right-of-way.

29 (b) If the person or entity that caused or permitted the relocation or
30 the placement in pipe, culvert, or other conduit fails to timely perform
31 the requested actions, or in the event of reduced delivery or drainage
32 of water, property damage, safety risk, or other emergency, the owner
33 or operator of the easement or right-of-way may proceed to perform such
34 actions at the expense of the person or entity that caused or permitted
35 the relocation or piping.

36 (5) ~~While the~~ The owner or operator of a ditch, canal, lateral, drain,
37 or buried irrigation conduit shall have no right to relocate it on the prop-
38 erty of another without permission, a ditch, canal, lateral or drain owner or
39 operator that has been constructed across or beneath the lands of another may
40 relocate or pipe the facility.

41 (a) Prior to relocating a ditch, canal, lateral, drain, or buried irri-
42 gation conduit, the written permission of the owner of the servient es-
43 tate shall be obtained.

44 (b) The owner or operator of the ditch, canal, lateral, drain, or buried
45 irrigation conduit shall have the right to place it in a buried conduit
46 within the easement or right-of-way on the property of another, without
47 the permission of the servient estate owner, in accordance with stan-
48 dard specifications for pipe, materials, installation, and backfill,
49 as set forth in the Idaho standards for public works construction or
50 other standards recognized by the city or county in which the burying is

1 to be done, and as long as the ~~pipe and the~~ construction is accomplished
 2 in a manner that the surface of the ~~owner's property~~ servient estate
 3 outside the easement or right-of-way and the owner's use thereof is not
 4 disrupted and is restored to the its prior condition of adjacent prop-
 5 erty as expeditiously as possible, but no longer than thirty (30) days
 6 after the completion of construction.

7 ~~(c) A landowner shall have the right to direct that the~~ The owner of the
 8 servient estate may request that the conduit be relocated to installed
 9 along a different route than the existing route of the ditch, canal,
 10 lateral, or drain, provided that the landowner,;

11 (i) The conditions of subsection (3) of this section are satis-
 12 fied; and

13 (ii) The servient estate owner, his heirs, executors, adminis-
 14 trators, successors, and assigns shall be responsible for any in-
 15 creased construction or future maintenance costs necessitated by
 16 said relocation. Maintenance of the buried conduit shall be the
 17 responsibility of the conduit owner or operator.

18 (6) This section shall apply to ditches, canals, laterals, drains, and
 19 buried irrigation conduits existing on or established after July 1, 2024.

20 SECTION 15. That Section 42-1209, Idaho Code, be, and the same is hereby
 21 amended to read as follows:

22 42-1209. ENCROACHMENTS ON EASEMENTS AND RIGHTS-OF-WAY. (1) Easements
 23 or rights-of-way operated, maintained, controlled or owned by irrigation
 24 districts, Carey act operating companies, nonprofit irrigation entities,
 25 lateral ditch associations, and drainage districts are essential for the
 26 operations of such irrigation and drainage entities. Accordingly, no per-
 27 son or entity shall cause or permit any encroachments onto the easements or
 28 rights-of-way, including any public or private roads, utilities, fences,
 29 gates, pipelines, structures, landscaping, trees, vegetation, or other
 30 construction or placement of objects, without the written permission of
 31 the irrigation district, Carey act operating company, nonprofit irrigation
 32 entity, lateral ditch association, or drainage district owning, operating,
 33 maintaining, or controlling the easement or right-of-way, in order to ensure
 34 that any such encroachments will not unreasonably or materially interfere
 35 with the use and enjoyment of the easement or right-of-way and the inciden-
 36 tal rights and protections described in sections 42-1102 and 42-1207, Idaho
 37 Code. Such written permission shall not be unreasonably withheld.

38 (2) Encroachments of any kind placed in such easement or right-of-way,
 39 without such express written permission, shall be removed or modified, and
 40 the ditch, canal, lateral, drain, conduit, easement, or right-of-way shall
 41 be repaired or restored at the expense of the person or entity causing or
 42 permitting such encroachments, upon the request of the persons operating,
 43 maintaining, or controlling the easement or right-of-way or the owner of the
 44 easement or right-of-way, in the event that any such encroachments unreason-
 45 ably or materially interfere with the use and enjoyment of the easement or
 46 right-of-way.

47 (a) The person or entity that caused or permitted the encroachment
 48 shall perform such removal, modification, repair, or restoration
 49 within a reasonable time after request from the owner or operator of

1 the easement or right-of-way, or immediately upon such request in the
2 event of reduced delivery or drainage of water, property damage, safety
3 risk, or other emergency. What constitutes a reasonable time to respond
4 to the request depends on circumstances affecting the use, operation,
5 maintenance, and repair of the ditch, canal, lateral, drain, or buried
6 irrigation conduit and associated easement or right-of-way.

7 (b) If the person or entity that caused or permitted the encroachment
8 fails to timely perform the requested actions, or in the event of re-
9 duced delivery or drainage of water, property damage, safety risk, or
10 other emergency, the owner or operator of the easement or right-of-way
11 may proceed to perform such actions at the expense of the person or en-
12 tity that caused or permitted the encroachment, as long as no work is
13 performed on any municipal or public utility line.

14 (3) Any person or entity that causes or permits an encroachment shall be
15 responsible for its use, operation, maintenance, repair, and replacement to
16 prevent unreasonable or material interference with a ditch, canal, lateral,
17 drain, or conduit and the associated easement or right-of-way and shall be
18 liable for all damages that may accrue therefrom.

19 (4) Nothing in this section shall in any way affect the exercise of the
20 right of eminent domain for the public purposes set forth in section 7-701,
21 Idaho Code.

22 SECTION 16. That Section [18-4308](#), Idaho Code, be, and the same is hereby
23 repealed.

24 SECTION 17. That Chapter 43, Title 18, Idaho Code, be, and the same is
25 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
26 ignated as Section 18-4308, Idaho Code, and to read as follows:

27 18-4308. CHANGE OF DITCH, CANAL, LATERAL, DRAIN, OR BURIED IRRIGATION
28 CONDUIT. Any person who relocates or places in pipe, culvert, or other con-
29 duit or buries a ditch, canal, lateral, or drain contrary to the provisions
30 of section 42-1207, Idaho Code, shall be guilty of a misdemeanor.

31 SECTION 18. An emergency existing therefor, which emergency is hereby
32 declared to exist, this act shall be in full force and effect on and after
33 July 1, 2024.