



# **Idaho Statutes**

## **Pertaining to Canals & Laterals**



**Idaho Department of Water Resources**

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# Idaho Department of Water Resources — Directory

## **IDWR State Office**

322 E. Front Street  
Boise, Idaho 83702

*Mailing Address:*

PO Box 83720  
Boise, Idaho 83720-0098  
(208) 287-4800  
Fax – 287-6700

## **Eastern Region**

900 N. Skyline Dr., Ste. A  
Idaho Falls, Idaho 83402-1718  
(208) 525-7161  
Fax - 525-7177

## **Northern Region**

7600 N Mineral Dr Ste 100  
Coeur d'Alene, Idaho 83815  
(208) 762-2800  
Fax – 762-2819

## **Western Region**

2735 Airport Way  
Boise, Idaho 83705-5082  
(208) 334-2190  
Fax - 334-2348

## **Southern Region**

1341 Fillmore St. Ste. #200  
Twin Falls, Idaho 83301-3380  
(208) 736-3033  
Fax - 736-3037

Internet Homepage - [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

## Preface

The Titles and Chapters indicated below are intended as a reference guide so that water users and non-water users alike may have firsthand knowledge of certain water laws that apply to various aspects of canals and laterals and are the most common and relevant laws pertaining to distribution of water on canals, ditches and laterals. Individuals are encouraged to consult these statutes when first addressing questions or issues related to ditches and laterals but recognize that these laws, and hence this list may not answer or address all pertinent questions. Certain questions or assistance may be most appropriately addressed by local canal companies, irrigation districts and lateral organizations, etc. The Idaho Department of Water Resources (IDWR) may provide some assistance in addressing general questions related to Idaho water laws with respect to common water distribution matters. A guide to IDWR office locations and phone numbers is provided below.

In addition to those water distribution matters that routinely arise, many misunderstandings between neighbors involve disputes over the existence and scope of water related rights-of-way and easements. In many instances, disputes over these types of property interests can present difficult legal questions involving legal research and analysis requiring the parties to consult their attorneys.

Please note that the Titles and Chapters listed are not comprehensive of all the laws in Idaho related to irrigation, water use and water delivery. There are numerous laws that address water rights and irrigation but are found in Titles 42 and 43 of the Idaho Code. These and several other laws found in different Titles of Idaho Code may have some relevance to water delivery but are omitted from the links below since they are not germane to distribution of water on ditches and laterals. Sections 31-3805 and 31-3806 for example, address certain county zoning regulations applicable to water delivery systems in subdivisions.

A complete copy of the Idaho Code related to water rights and irrigation statutes may be viewed on line via a link on the IDWR Internet homepage at [www.idwr.idaho.gov](http://www.idwr.idaho.gov), or through the State of Idaho homepage at [www.accessidaho.org](http://www.accessidaho.org). A complete copy of the Idaho Code can also be obtained at most Idaho libraries.

## **GENERAL INFORMATION REGARDING DITCHES AND EASEMENTS**

### **IRRIGATION DITCH QUESTIONS**

**In Idaho it is quite common that property owners may have some type of ditch crossing their lands that transport water to some other place. There are two basic types of ditches:**

- 1) The irrigation ditch which carry needed “live” irrigation water to the place of use, and**
- 2) The waste-ditch, which carry away excess water from the place of use.**

**Water users generally maintain some type of easement to [pass water through and maintain ditches over the lands of their neighbors. Easements are limited to right of use over the lands of another and pass with the land to subsequent owners. Easements are valuable interests in land and are protected from interference by others. Although many types of real estate easements are reduced to a written document and recorded at the county courthouse, most ditch easements are not. The right to use a ditch over the lands of another is often an implied right that was created about the same time as the water right was created about the same time as the water right was developed. The scope of the easement and the extent of the maintenance practices are often established by historical usage. Under I.C. § 42-1207, subject to certain limitations, an underlying landowner can relocate a ditch on his lands at his expense provided that there is no injury to the persons using the ditch.**

**The owners or operators of ditches used for irrigation purposes are responsible for maintenance and repair of ditches to prevent damage or injury to property owners, whether on lands of the owners or operators of ditches or upon other lands (see I.C. §§ 42-1202 through 42-1204.**

# **IDAHO STATUTES PERTAINING TO CANALS AND LATERALS**

## **TITLE 42**

### **IRRIGATION & DRAINAGE – WATER RIGHTS & RECLAMATION**

<a href="#">CHAPTER 1:</a>	APPROPRIATION OF WATER – GENERAL PROVISIONS
<a href="#">CHAPTER 9:</a>	DISTRIBUTION OF WATER TO CONSUMERS
<a href="#">CHAPTER 11:</a>	RIGHTS OF WAY
<a href="#">CHAPTER 12:</a>	MAINTENANCE AND REPAIR OF DITCHES
<a href="#">CHAPTER 13:</a>	LATERAL DITCH WATER USER ASSOCIATIONS

## **TITLE 43**

### **IRRIGATION DISTRICTS**

CHAPTER 11:	EXCLUSION OF LANDS FROM DISTRICT
<a href="#">43-1101</a>	Petitions
CHAPTER 15:	MISCELLANEOUS PROVISIONS OF DISTRICT LAW
<a href="#">43-1505</a>	Irrigation Lateral Districts

## **TITLE 18**

### **CRIMES AND PUNISHMENTS**

<a href="#">CHAPTER 43:</a>	IRRIGATION WORKS
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## Water Conversion Factors

1 cubic foot of water 7.4805 gallons 62.37 pounds

1 CFS 448.83 GPM 26,930 gallons per hour

1 CFS 646,315 gallons per day 1.9835 AF per day

1 CFS 59.502 AF per month (30 days) 723.94 AF per year

1 Acre-Foot enough water to cover 1 acre of land one foot deep

1 Acre-Foot 43,560 cubic feet 325,850 gallons

1 cubic meter per second 35.31 CFS 15,850 gallons per minute

1 million gallons 3.0689 AF

1 million gallons per day 1,120.147 AF per year

1 Miner's Inch 9 GPM 0.02 CFS

**CFS** = Cubic Feet per Second

**AF** = Acre Feet

**GPM** = Gallons per Minute

## Glossary

*Note: Idaho Code references have been provided wherever possible. All other definitions are those commonly used by IDWR at the present time.*

**ACRE-FOOT (AF)** is a unit commonly used for measuring the volume of water; equal to the quantity of water required to cover one acre to a depth of one foot and equal to 43-560 cubic feet of 325,851 gallons.

**APPROPRIATION DOCTRINE** is the system of water law adopted by most Western States. The basic principles of the appropriation doctrine are: (1) that a private right to use water can be acquired only by diverting the water and applying it to a beneficial use; (2) the first in time of beneficial use is the first in right and the right is maintained only by use.

**AQUIFER** is a stratum or zone below the surface of the earth capable of producing water as from a well.

**BENEFICIAL USE** is one or more of the recognized uses of water including but not limited to irrigation, domestic, municipal, commercial, recreation, hydropower, stock watering and fish propagation uses for which permits to appropriate water can be issued. Industrial use includes manufacturing, mining and processing uses of water.

**CONSUMPTIVE USE** is that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, converted to nonrecoverable water vapor, incorporated into products, or otherwise does not return to the waters of the state. Consumptive use does not include any water that falls as precipitation directly on the place of use unless the precipitation is captured, controlled and used under an appurtenant water right. Idaho Code Section 42-202B

**CUBIC FEET PER SECOND (CFS)** is a unit used to express a rate of flow of water. One cfs is equal to 50 miners' inches or 448.8 gallons per minute.

**DEPARTMENT** means the Idaho Department of Water Resources.

**DIRECTOR** means the Director of the Idaho Department of Water Resources.

**DIVERSION** is the structure through which water is removed from a water source. It also refers to the act of removing water for a specific purpose. A diversion structure, particularly on a natural channel, may also include a check structure in the channel.

**GROUND WATER** is water that occupies all the voids within a geologic stratum and occurs in its natural condition below land surface. As defined by Idaho law, ground water is all water under the surface of the ground, whatever may be the geological structure in which it is standing or moving. Idaho Code Sections 42-501 – 42-230(a)

**GROUND WATER DISTRICT:** A district organized in accordance with the provisions of chapter 52, title 42, Idaho Code. Such districts include holders of ground water irrigation rights and are formed or organized by such ground water users.

**GROUNDWATER RECHARGE:** the introduction of surface or ground water to groundwater storage. It can consist of natural recharge, artificial recharge or incidental recharge.

**HEADGATE** or **HEADWORKS** are structures which are constructed to control or regulate the flow of water in a ditch or canal.

**IIRRIGATION DISTRICT** is a district organized in accordance with the provisions of chapter 1, title 43, Idaho Code.

**IRRIGATION LATERAL DISTRICT** is a district organized in accordance with Section 43-1505, Idaho Code. A district created within an area already organized as an irrigation district for the purpose of constructing, operating and managing water in distributing systems by means of laterals, sub laterals, ditches, flumes and pipelines. District is organized in the same manner and by the same process required for irrigation districts under chapter 1, title 43, Idaho Code.

**LATERAL DITCH** is a ditch that supplies water to two or more users. Lateral ditches normally divert water from a main canal or ditch which has its heading from a river or natural stream channel.

**LICENSE** is the certificate issued by the director in accordance with Section 42-219, Idaho Code, confirming the extent of diversion and beneficial use of water that has been made in conformance with the permit conditions.

**MEASURING DEVICE** is a generally accepted structure or apparatus used to determine a rate of flow or volume of water. Examples are weirs, meters and flumes.

**MINER'S INCH** is a variable unit used to express a rate of flow of water in the Western United States. In Idaho, a miner's inch is equal to 1/50 of a cubic foot per second (cfs), or 0.02 cfs. One miner's inch is the duty of water, or the standard allocated flow, for each acre of irrigated land.

**PERIOD OF USE** is the time period each year during which water under a given right may be beneficially used in compliance with terms of the water right.

**PERMIT** or **WATER RIGHT PERMIT** is the water right document issued by the Director authorizing the construction of diversion facilities and commencement of use of public water of the state. Idaho Code Section 42-202

**PLACE OF USE** is the location where water is used. The place of use under Idaho water rights is given by legal descriptions, or 40 acre quarter-quarter section or Government lot land descriptions.

**POINT OF DIVERSION** is the location at which water is physically diverted by manmade works from the source of water. Points of diversions are identified by legal descriptions in Idaho water rights.

**PUBLIC WATER** as defined by Idaho law, is all the waters of the state when flowing in their natural channels, including the waters of all-natural springs and lakes and ground water.

**PRIORITY** or **PRIORITY OF APPROPRIATION** or **PRIORITY DATE** is the date of appropriation established in the development of a water right.

**REDIVERSION** as a general term is used to describe the location of any secondary point of diversion under a water right. Example, consider a storage reservoir on Creek A where storage water is released to Creek A and diverted downstream at Canal #1. The primary point of diversion for a water right with a storage reservoir on Creek A is the impounding dam across Creek A, while the point of re-diversion is Canal #1. Re-diversion as used in an exchange, is the location where a quantity of water is diverted from source B after an equal quantity of water was diverted from source A and injected into source B.

**RESERVOIR** is a lake or pond in which water is collected and controlled for some beneficial use.

**STORED WATER** is water that is diverted to and retained within a reservoir and then released for some beneficial use. Water may be diverted to and stored in a reservoir located either within the stream channel or off of the stream channel. IDWR considers a storage facility as one which will not fill within 24 hours using the maximum authorized flow rate.

**SOURCE** is the water body at the point of diversion. Examples are Salmon River, Squaw Creek, spring, ground water, etc.

**UNAPPROPRIATED WATER** is the public water of the state of Idaho in streams, rivers, lakes, springs or ground water in excess of that necessary to satisfy prior rights including minimum stream flows and rights established by law.

**WATERMASTER** is the person elected or appointed pursuant to Chapter 6, Title 42, Idaho Code, to distribute water in the order of priority to those water users entitled to its use. In more general terms, a watermaster may also refer to a person who serves as the distribution manager of a canal, ditch or lateral.

**WATER DISTRICT** is a district organized in accordance with the provisions of chapter 6, title 42, Idaho Code. The Director of the Idaho Department of Water Resources (IDWR) creates water districts in order to distribute water rights from natural water sources in accordance with water right priority dates. Water distribution in water districts is accomplished by watermasters who are elected annually by district water users. Watermasters are supervised by the Director of IDWR.

**WATER AND SEWER DISTRICTS** are districts organized in accordance with the provisions of chapter 32, title 42, Idaho Code. Water districts supply water for domestic, commercial and/or municipal purposes. Sewer districts provide for sewage disposal. A district may be created for a combination of water and sewer purposes. IDWR has no jurisdiction over this type of district.

**WATER MEASUREMENT DISTRICT** is a district organized in accordance with the provisions of chapter 7, title 42, Idaho Code. Water Measurement Districts are created by the Director of the Idaho Department of Water Resources (IDWR) in order to measure and report water that is diverted from natural water sources under state water rights. Water measurement and reporting in water measurement districts is accomplished by hydrographers who are elected annually by district water users. Hydrographers are supervised by the Director of IDWR.

**WATER USER** is a person, corporation, association, firm, governmental agency or other entity entitled to divert and beneficially use water.