



# **Idaho Statutes**

## **Pertaining to Canals & Laterals**



**Idaho Department of Water Resources**

May 2013

# Idaho Department of Water Resources

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May 2013

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## Preface

This pamphlet provides an index and copy of the various Idaho laws that pertain to water distribution on canals and laterals. It is intended as a reference guide so that water users and non-water users alike may have first-hand knowledge of certain water laws that apply to various aspects of canals and laterals. The pamphlet contains the most relevant and common 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 pamphlet, 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 on the inside cover of this pamphlet.

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 this pamphlet is not a comprehensive reference of all the laws in Idaho related to irrigation, water use and water delivery. There are numerous laws that address water rights and irrigation. These laws are found in Titles 42 and 43 of the Idaho Code. These and several other laws found in different Titles of the Idaho Code may have some relevance to water delivery but are omitted from this publication 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 online 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.**



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TITLE 42  
IRRIGATION AND DRAINAGE – WATER RIGHTS AND  
RECLAMATION

**CHAPTER 1**  
**APPROPRIATION OF WATER — GENERAL PROVISIONS**

42-109. Change in Course of Ditch — When Prohibited.

Whenever any ditch or canal has been constructed for the purpose of conveying water and selling the same for irrigating purposes, it is unlawful for the owner or owners of said ditch or canal to change the line of said ditch or canal so as to prevent or interfere with the use of water from said ditch or canal, by any one who, prior to the proposed change, had used water for irrigating purposes from said ditch or canal.

**CHAPTER 9**  
**DISTRIBUTION OF WATER TO CONSUMERS**

42-901. Appointment of Watermaster — Appointment by Court.

It shall be the duty of those owning or controlling any ditch, canal or lateral to appoint a superintendent or watermaster, whose duty it shall be to measure the water from such ditch, canal or lateral through the outlet of those entitled thereto, according to his or her pro rata share: provided, that any vicinity or neighborhood, the inhabitants of which use the waters of any ditch, canal or lateral for the purpose of irrigation, or have or claim a common right to the waters of any ditch or lateral for such purposes, provided the waters so claimed or used have not been allotted to the individual users thereof, shall constitute a water district. Any one or more of said joint owners so using the water of any ditch, canal or lateral as aforesaid, when the appointment of a watermaster can not be agreed upon, may petition the judge of the district court in whose district the ditch, canal or lateral may be located for the appointment of a watermaster for said ditch, canal or lateral, and shall set forth in said petition the facts of his or her ownership in said ditch, canal or lateral; the ownership and interest of all other joint owners; the location and length of said ditch, canal or lateral, and requesting said district court to appoint a watermaster to take charge of the same. Upon due notice being given to all of the water users under said ditch, canal or lateral, and after hearing before said court, it shall be the duty of the judge of said district court if he deem it necessary or equitable in order that the rights of all water users under said ditch, canal or lateral may be protected, to appoint a watermaster for the ditch, canal or lateral described in the petition. Said watermaster to receive such compensation as the court in his judgment may

deem adequate, and shall be paid in the same manner as is provided for the payment of watermasters under chapter 5 of this title, and shall perform the same duties and have the same power and authority as other watermasters appointed or elected in accordance with the provisions of this code.

#### 42-902. Injuring Ditch or Head gate — Triple Damages.

Any person who, without the consent of the watermaster of the district, diverts any water from the ditch or channel where it was placed, or caused, or left to run by the watermaster or his deputies, or who shuts or opens any ditch, gate or dam with intent so to divert any water, and thereby deprive any person of the use of the same during any part of the time he is entitled to such use, or who, without the consent of the watermaster, cuts any ditch or the banks thereof, or breaks or destroys any gate or flume, is liable in a civil action to any person injured thereby in three times the actual damage sustained in consequence of any such wrongful act or acts.

#### 42-903. Head gates and Measuring Devices — Water Companies to Furnish.

Any person, association or corporation delivering or distributing water under any fixed annual charge or rental shall provide the necessary gates and measuring devices to render possible and practicable a measurement of the quantity of water being delivered to any consumer (or number of consumers using a common lateral or distributing ditch); and the price charged for the annual use of the water so distributed shall be in proportion to the quantity of water delivered from the works of such person, association or corporation. Such measuring devices shall be of such a character, and provided with such gauges or scales, that the quantity of water being delivered at any time can be ascertained by inspection; and shall be of such general plan as shall meet with the approval of the department of water resources, which shall inspect any such devices whenever possible to ascertain their character, and the department shall furnish such general information and instructions to any consumer, or the watermaster of any number of consumers of water, as may be necessary to enable him to ascertain the quantity of water flowing through any such measuring device.

#### 42-904. Division of Land into Classes by Priority.

When any ditch, canal or reservoir delivering or distributing water to several users has one or more rights or priorities by reason of enlargements made from time to time, the right of the land being irrigated by such works shall be divided into classes; rights of the first class belonging to those lands reclaimed between the dates of the first and second priorities or rights of such works; rights of the second class belonging to those lands reclaimed between the dates of the second and third priorities of such works; rights of any other class being determined in like manner; but all the rights belonging to the same class shall be equal and subject alike to the regulations of their respective class.

#### 42-905. Point of Delivery.

Any person, association or corporation which may contract to deliver a certain quantity of water to any party or parties, shall deliver the same to such party or parties, together with a reasonable and necessary allowance for loss by evaporation and seepage, at some convenient point on the main ditch, canal or reservoir of said person, association or corporation, or on any branch or lateral thereof belonging to the owner or owners of such ditch, canal or reservoir.

#### 42-906. Amount and Lien of Rental or Maintenance.

The amount to be paid by said party or parties for the delivery of said water, which amount may be fixed by contract, or may be as provided by law, is a first lien upon the land for the irrigation of which said water is furnished and delivered. But if the title to said tract of land is in the United States or the state of Idaho, then the said amount shall be a first lien upon any crop or crops which may be raised upon said tract of land, which said lien shall be recorded and collected as provided by law for other liens in this state. And any mortgage or other lien upon such tracts of land that may hereafter be given shall in all cases be subject to the lien for price of water as provided in this section.

#### 42-907. Duties of Consumers — Appointment of Manager of Distributing Lateral.

Where two (2) or more parties take water from said ditch, canal or reservoir at the same point, to be conveyed to their respective premises for any distance through the same lateral or distributing ditch, such parties shall, on or before April first of each year, select some person to have charge during the succeeding season of the distribution of water from such lateral, whose duty it shall be to ascertain and see that the amount of water to which each of the parties interested is entitled is properly apportioned and distributed. It shall be his further duty to see that the said person, association or corporation, contracting to furnish such water shall deliver the amount as provided in section 42-905, [Idaho Code,] and in case of dispute between such person and the said person, association or corporation as to the quantity of water to be delivered, or the amount actually delivered, the matter shall be referred to the department of water resources. The parties entitled to said water shall keep their ditches and laterals in good condition for carrying and distributing the same. In case the parties entitled to the use of water as in this section stated shall neglect or refuse to perform the duties imposed upon them by this section, they shall have no cause for damage against the person, association or corporation furnishing said water for failure to properly furnish and distribute the same.

#### 42-908. Manager of Distributing Lateral — Alternative Method of Selection.

Wherever two [(2)] or more persons take water from any main ditch, canal or reservoir, at the same point, to be conveyed to their respective premises for any distance through the same lateral or distributing ditch, as provided in section 42-905, [Idaho Code,] the person to be selected by such parties on or before April first of each year, as provided in section 42-907 [Idaho Code,] may be selected and appointed by a written instrument designating such person, signed by the majority of such persons so using the said ditch for their said water, and filed with the watermaster or other managing agent or director of such main canal, ditch or reservoir.

#### 42-909. Manager of Distributing Lateral — Appointment by District Watermaster — by Directors of Irrigation District — Payment of Compensation.

If two (2) or more parties taking water from any main ditch, canal or reservoir at the same point to be conveyed to their respective premises for any distance, through the same lateral or distributing ditch, do not select a manager for said lateral, as provided in section 42-907, [Idaho Code,] or section 42-908, [Idaho Code,] the watermaster of the water district, shall on the written demand of any one or more of said parties, appoint a manager for said lateral, who shall have and exercise all the powers and perform all of the duties of a manager of the distributing lateral as provided in section 42-910[Idaho Code];provided, that if an irrigation district is owner of the main ditch, canal or reservoir, the board of directors of such district shall, upon such demand, make such appointment.

The compensation of said manager shall be fixed by said watermaster, and shall be paid in the manner provided by section 42-910[, Idaho Code,] for the payment of expenses incurred by him. If not paid, it may be collected, with other damages in the action provided by said section: provided, that if an irrigation district is the owner of the main ditch, canal or reservoir, the board of directors of such district shall fix the compensation of said manager; and at the end of the irrigation season upon the request of such manager the secretary of such district shall prorate the amount of such compensation among the several parties taking water through such lateral, or distributing ditch upon the basis of the number of acres irrigated by each, and mail each a statement of the amount prorated to such party, requesting that remittance be made to such secretary for and on behalf of such manager. In the event such parties or either of them, not later than the date when irrigation district assessments are delinquent, remits to such secretary, he shall, upon receiving same, and without making any entry in his books of account, deliver it to such manager. Should such parties or either of them fail or refuse at such time to remit to said secretary, then such manager may collect as hereinbefore provided.

## 42-910. Duties of Manager of Distributing Lateral — Assessment of Repair and Maintenance costs — Appeals.

Such person shall be known as the manager of such distributing lateral for the season for which he is selected, and in addition to the powers granted to him by section 42-907[, Idaho Code,] he shall have power to require of each user of such lateral such user's proportion of the amount of labor, material or money reasonably necessary for the proper repair and maintenance of such lateral, and to require measuring weirs, head-gates and checks to be installed for distributing the water among the users, and each user of such lateral shall furnish his proportion of such labor, material or money upon three (3) days' notice so to do, and, in default of so doing, such manager may employ other labor in his place, or furnish the material or money necessary, and such user shall pay to the manager the reasonable value of such material or labor so furnished by the manager, upon demand, in case of default in payment by such user the said manager may sue and collect the same in any court of competent jurisdiction, and in addition to all costs, the court shall allow said manager his reasonable attorney's fees incurred in that behalf. In the event such water user or water users shall not furnish his or their respective share of such labor, material or money within three (3) days after notice so to do, as hereinabove provided, then said manager may, if he elects, notify the association or corporation delivering water into said distributing lateral of the failure, neglect or refusal of said water users or any of them to furnish his or their respective share of such labor, material or money for the proper repair and maintenance of such lateral or for the furnishing and installation of measuring weirs, head-gates and checks, and upon receipt of such notice said association or corporation may, if it chooses to do so, proceed to furnish all labor, material and money necessary for the proper repair and maintenance of such lateral and for the furnishing and installation of measuring weirs, head-gates and checks, or it may, if it chooses so to do, proceed to repair and maintain said laterals and furnish and install such measuring weirs, head-gates and checks as it shall deem necessary or proper for the distribution of water among the several water users. The cost of such repair and maintenance and the cost of furnishing and installing such measuring devices, head-gates, and checks shall be apportioned among the several water users on the basis of benefits derived therefrom by said water users, and the said association or corporation furnishing said funds or doing the aforesaid things or any of them shall within thirty [(30)] days after completion thereof give each of such water users written notice of the amount or amounts to be paid by him and demand payment thereof. Should the water users or any of them desire to contest the assessment and apportionment made by such association or corporation, appeal may be taken from such assessment and apportionment to the district court in the county where the principal office of said association or corporation is located within ten (10) days after receipt of said notice and demand for payment, in the same manner as in the case of appeals from the boards of county commissioners. In case of appeal any sum or sums determined by said district court to be due, or in the event no appeal is taken then any sum or sums determined by such association or corporation to be due from any water users,

shall be paid by such water user within ninety (90) days and the said association or corporation may refuse to deliver any water to any such water user until the amount due shall have been paid in full.

#### 42-911. Users of Water Defined.

The term "users of water" from a community ditch shall be understood to include the owner of the land on which the water is used, or any tenant or other person in possession and control of said premises.

#### 42-912. Company to Furnish Water on Demand.

Any person, company or corporation owning or controlling any canal or irrigation works for the distribution of water under a sale or rental thereof, shall furnish water to any person or persons owning or controlling any land under such canal or irrigation works for the purpose of irrigating such land or for domestic purposes, upon a proper demand being made and reasonable security being given for the payment thereof: provided, that no person, company or corporation shall contract to deliver more water than such person, company or corporation has a title to, by reason of having complied with the laws in regard to the appropriation of the public waters of this state.

#### 42-913. Application for Water.

Any person or persons owning or controlling land which has or has not been irrigated from any such canal, shall on or before January first of any year, inform the owner or person in control of such canal whether or not he desires the water from said canal for the irrigation of land during the succeeding season, stating also the quantity of water needed. In distributing water from any such canal, ditch or conduit during any season, preference shall be given to those applications for water for land irrigated from said canal the preceding season, and a surplus of water, if any there be, shall be distributed to the lands in the numerical order of the applications for it. But no demand for the purchase of a so called perpetual water right, or any contract fixing the annual charges or the quantity of water to be used per acre, shall be imposed as a condition precedent to the delivery of water annually as provided in this chapter; but the consumer of water shall be the judge of the amount and the duty of the water required for the irrigation of his land; and the annual charges to be made and to be fixed under the further provisions of this title, shall hereafter be based upon the quantity of water delivered to consumers, and shall not in any case depend upon the number of acres irrigated by means of such amount of water delivered.

#### 42-914. Sale or Rental Constitutes a Dedication — Domestic Purposes Construed — Liability for Violation.

Whenever any waters have been or shall be appropriated or used for agricultural or domestic purposes under a sale, rental or distribution thereof, such sale, rental or distribution shall be deemed an exclusive dedication to such use upon the

tract of land for which such appropriation or use has been secured, and, whenever such waters so dedicated shall have once been sold, rented or distributed to any person who has settled upon or improved land for agricultural purposes with the view of receiving the benefit of such water under such dedication, such person, his heirs, executors, administrators, successors or assigns, shall not thereafter be deprived of the annual use of the same when needed for agricultural or domestic purposes upon the tract of land for which such appropriation or use has been secured, or to irrigate the land so settled upon or improved, upon payment therefore, and compliance with such equitable terms and conditions as to the quantity used and times of use as may be prescribed by law. "Domestic purposes" shall not be construed to include any manner of land irrigation. Any person, association or corporation violating any of the provisions of this section, shall be liable for all damage to any party or parties injured thereby, which damage shall be determined by the proper court.

#### 42-915. Consumer's Title not Affected by Transfer of Ditch.

When any payment is made under the terms of a contract, by means of which payment a perpetual right to the use of water necessary to irrigate a certain tract of land is secured, said water right shall forever remain a part of said tract of land, and the title to the use of said water can never be affected in any way by any subsequent transfer of the canal or ditch property or by any foreclosure or any bond, mortgage or other lien thereon; but the owner of said tract of land, his heirs or assigns, shall forever be entitled to the use of the water necessary to properly irrigate the same, by complying with such reasonable regulations as may be agreed upon, or as may from time to time be imposed by law. And said payment for said water right shall be a release of any bond or mortgage upon the canal property of the person or company from whom such right is purchased or their successors or assigns, to the amount of such water right thus purchased and paid for, and said person or company from whom such water right is purchased shall furnish to the party or parties purchasing such right a release, or a good and sufficient bond for a release, from said mortgage or bonded indebtedness to the amount of the water right thus purchased.

#### 42-916. Liability for Waste of Water.

No person entitled to the use of water from any such ditch or canal, must, under any circumstances, use more water than good husbandry requires for the crop or crops that he cultivates; and any person using an excess of water, is liable to the owner of such ditch or canal for the value of such excess; and in addition thereto, is liable for all damages sustained by any other person, who would have been entitled to the use of such excess water, as fixed by this section.

## **CHAPTER 11 RIGHTS OF WAY**

### **42-1101. Rights of Landowners to Water.**

All persons, companies and corporations owning or claiming any lands situated on the banks or in the vicinity of any stream, are entitled to the use of the waters of such stream for the purpose of irrigating the land so held or claimed.

### **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.

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

Rights-of-way provided by this section are essential for the operations of the ditches, canals and conduits. No person or entity shall cause or permit any encroachments onto the right-of-way, including public or private roads, utilities, fences, gates, pipelines, structures, or other construction or placement of objects, without the written permission of the owner of the right-of-way, in order to

ensure that any such encroachments will not unreasonably or materially interfere with the use and enjoyment of the right-of-way. Encroachments of any kind placed in such right-of-way without express written permission of the owner of the right-of-way shall be removed at the expense of the person or entity causing or permitting such encroachment, upon the request of the owner of the right-of-way, in the event that any such encroachments unreasonably or materially interfere with the use and enjoyment of the right-of-way. Nothing in this section shall in any way affect the exercise of the right of eminent domain for the public purposes set forth in section 7-701, Idaho Code.

This section shall apply to ditches, canals or other conduits existing on the effective date of this act, [March 12, 1996], as well as to ditches, canals or other conduits constructed after such effective date.

#### 42-1103. Owners of Springs and Streams - Right to Right-of-Way.

Where the owners of any spring, or the appropriators thereof, or of any stream, desire to conduct the waters thereof to any lands for the purposes of irrigation, or to any city or town for the use of the inhabitants thereof, or to any factory, or to any distant place, with the intent to apply the same to a beneficial use, and to accomplish such object it is necessary to cross with ditches, flumes or other conduit, the lands owned or occupied by others than the owners or appropriators of such spring or stream, the right of way over and across the lands of others for conducting said water may be acquired in the manner above provided.

#### 42-1104. Right of Way Over State Lands.

The right of way over and upon any and all lands owned or controlled by the state of Idaho is hereby granted to any and all persons for the purpose of constructing and maintaining any ditch, canal, conduit or other works for the diversion or carrying of water for any beneficial use: provided, that no property shall be taken under the provisions of this section until a just compensation shall be paid therefore, to be ascertained in the manner prescribed by law for the taking of private property for a public use.

#### 42-1105. Right of Way for Riparian Proprietors.

All persons, companies and corporations owning or having the possessory title or right to lands adjacent to any stream, have the right to place in the channel or upon the banks or margin of the same, dams or other machines for the purpose of raising the waters thereof to a level above the banks, requisite for the flow thereof to and upon such adjacent lands; and the right of way over and across the lands of others, for conducting said waters, may be acquired in the manner prescribed in the following section.

#### 42-1106. Right of Eminent Domain.

In case of the refusal of the owners or claimants of any lands, through which any ditch, canal or conduit is proposed to be made or constructed, to allow passage thereof, the person or persons desiring the right of way may proceed as in the law of eminent domain.

#### 42-1107. Right of Way for Drains.

Whenever the owner or owners of any parcel or parcels of land desire to construct a drain for the purpose of carrying off surplus water, and they cannot agree among themselves or with the parties who own land below through which it is expedient to carry the drain in order to reach a natural waterway, then proceedings may be had in the same manner as in cases of eminent domain affecting irrigating works of diversion, and the right of way for such drains shall be regarded as equal to that of irrigation canals.

#### 42-1108. Right to Cross Ditches.

Any person, company or corporation, owners of any ditch, flume or other conduit, can not lawfully deny to any other person, company or corporation the right to cross their right of way with another ditch, flume or conduit either upon a higher or lower level, where the same can be done in a convenient and safe manner: provided, that such second person, company or corporation shall be liable for all damages that may accrue from the construction of such ditch, flume or other conduit across the conduit of another.

## **CHAPTER 12 MAINTENANCE AND REPAIR OF DITCHES**

#### 42-1201. Ditches to be Kept Full.

Every person, company or corporation owning or controlling any ditch, canal or conduit for the purpose of irrigation shall, during the time from April first to the first day of November of each year, keep a flow of water therein sufficient to the requirements of such persons as are properly entitled to the use of water there from: provided, however, that when the public streams or other natural water sources from which the water is obtained is [are] too low and inadequate for that purpose, or when the board of directors or governing body of an organization or entity furnishing water deem it in the best interests of that organization or entity to adjust the dates of availability and provide for termination of irrigation water, then such ditch, canal or conduit shall be kept with as full a flow of water therein as may be practicable, subject, however, to the rights of priority from the streams or other natural sources as provided by law.

#### 42-1302. Lateral Manager — Election — Duties

#### 42-1202. Maintenance of Ditch.

The owners or persons in control of any ditch, canal or conduit used for irrigating purposes shall maintain the same in good order and repair, ready to deliver water by the first of April in each year, and shall construct the necessary outlets in the banks of the ditches, canals or conduits for a proper delivery of water to persons having rights to the use of the water.

#### 42-1203. Maintenance of Embankments.

The owner or owners of any irrigating ditch, canal or conduit shall carefully keep and maintain the embankments thereof in good repair, in order to prevent the water from wasting during the irrigation season, and shall not at any time permit a greater quantity of water to be turned into said ditch, canal or conduit than the banks thereof will easily contain or than can be used for beneficial or useful purposes; it being the meaning of this section to prevent the wasting and useless discharge and running away of water

#### 42-1204. Prevention of Damage to Others.

The owners or constructors of ditches, canals, works or other aqueducts, and their successors in interest, using and employing the same to convey the waters of any stream or spring, whether the said ditches, canals, works or aqueducts be upon the lands owned or claimed by them, or upon other lands, must carefully keep and maintain the same, and the embankments, flumes or other conduits, by which such waters are or may be conducted, in good repair and condition, so as not to damage or in any way injure the property or premises of others. The owners or constructors have 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.

#### 42-1205. Bridges over Ditches.

All owners of any ditch, canal or conduit, or any other means for conveying water, shall build substantial bridges not less than sixteen (16) feet wide, and with boards not less than two (2) inches in thickness (unless the same shall be on a county or state road, when such boards shall not be less than three (3) inches thick), at all places where any county or state road crosses the same, or any road

kept open and used by any neighborhood of people for their benefit and convenience. In case of neglect or refusal of such owners to build such bridges as above required, after a notice of ten (10) days being given by the said board of county commissioners of the proper county, said board shall proceed to the construction of the same, and shall collect the cost thereof together with the costs of suit: provided, that after any bridge shall have been constructed across any ditch, canal or conduit on any county or state road in accordance with the provisions of this section, it shall thereafter be maintained at the public expense.

#### 42-1206. Repair of Community Ditches.

Where a ditch is common property, or there is a common right to the use of the water of a ditch without payment therefore, and any labor or materials are necessary for the repair or cleaning of the ditch, or any gate or flume thereon or thereunto belonging, the watermaster of the district may make a fair pro rata assessment of labor or materials against the inhabitants of the district claiming the use of such water, according to the benefits received by each; and if any person so assessed neglects or refuses, for the period of three (3) days after notice so to do from the watermaster or his deputy, to furnish his just proportion his pro rata in cash, to be recovered, with costs, in an action by the watermaster of the necessary labor or materials, according to such assessment, he must pay in his own name.

#### 42-1207. Change of Lateral Ditch or Buried Irrigation Conduit.

Where any ditch, canal, lateral or drain or buried irrigation conduit has heretofore been, or may hereafter be, constructed across or beneath the lands of another, the person or persons owning or controlling said land shall have the right at their own expense to change said ditch, canal, lateral or drain or buried irrigation conduit to any other part of said land, but such change must be made in such a manner as not to impede the flow of the water therein, or to otherwise injure any person or persons using or interested in such ditch, canal, lateral or drain or buried irrigation conduit. Any increased operation and maintenance shall be the responsibility of the landowner who makes the change.

A landowner shall also have the right to bury the ditch, canal, lateral or drain of another in pipe on the landowner's property, provided that the pipe, installation and backfill reasonably meet standard specifications for such materials and construction, as set forth in the Idaho standards for public works construction or other standards recognized by the city or county in which the burying is to be done. The right and responsibility for operation and maintenance shall remain with the owner of the ditch, canal, lateral or drain, but the landowner shall be responsible for any increased operation and maintenance costs, including rehabilitation and replacement, unless otherwise agreed in writing with the owner.

The written permission of the owner of a ditch, canal, lateral, drain or buried irrigation conduit must first be obtained before it is changed or placed in buried pipe by the landowner.

While the owner of a ditch, canal, lateral, drain or buried irrigation conduit shall have no right to relocate it on the property of another without permission, a ditch, canal, lateral or drain owner shall have the right to place it in a buried conduit within the easement or right-of-way on the property of another in accordance with standard specifications for pipe, materials, installation and backfill, as set forth in the Idaho standards for public works construction or other standards recognized by the city or county in which the burying is to be done, and so long as the pipe and the construction is accomplished in a manner that the surface of the owner's property and the owner's use thereof is not disrupted and is restored to the condition of adjacent property as expeditiously as possible, but no longer than thirty (30) days after the completion of construction. A landowner shall have the right to direct that the conduit be relocated to a different route than the route of the ditch, canal, lateral or drain, provided that the landowner shall agree in writing to be responsible for any increased construction or future maintenance costs necessitated by said relocation. Maintenance of the buried conduit shall be the responsibility of the conduit owner.

#### 42-1208. Rights-of-Way not Subject to Adverse Possession.

Rights-of-way of irrigation districts, Carey act operating companies, nonprofit irrigation entities, and lateral ditch associations, are not subject to adverse-possession, and no person shall prevent free access of authorized personnel on rights-of-way or construct any obstruction on rights-of-way in an effort to adversely possess said right-of-way.

#### 42-1209. Encroachments on easements and rights-of-way.

Easements or rights-of-way of irrigation districts, Carey act operating companies, nonprofit irrigation entities, lateral ditch associations, and drainage districts are essential for the operations of such irrigation and drainage entities. Accordingly, no person or entity shall cause or permit any encroachments onto the easements or rights-of-way, including any public or private roads, utilities, fences, gates, pipelines, structures or other construction or placement of objects, without the written permission of the irrigation district, Carey act operating company, nonprofit irrigation entity, lateral ditch association, or drainage district owning the easement or right-of-way, in order to ensure that any such encroachments will not unreasonably or materially interfere with the use and enjoyment of the easement or right-of-way. Encroachments of any kind placed in such right-of-way without express written permission of the owner of the right-of-way shall be removed at the expense of the person or entity causing or permitting such encroachment, upon the request of the owner of the right-of-way, in the event that any such encroachments unreasonably or materially interfere with the use and enjoyment of the right-of-way. Nothing in this section shall in any way affect the exercise of the right of eminent domain for the public purposes set forth in section 7-701, Idaho Code.

#### 42-1306. Collection and Disbursement of Funds.

The lateral manager shall collect all assessments so made and pay the same to the secretary [secretary]-treasurer taking his receipt therefore. The secretary-treasurer of this association shall keep the funds of the association in the name of the association and shall draw warrants or checks thereon to pay the costs and expenses of the management of said lateral as herein provided for upon the order of the board of directors, and shall perform such other duties as the association may prescribe.

### **CHAPTER 13 LATERAL DITCH WATER USERS' ASSOCIATIONS**

#### 42-1301. Organization — Officers — Rules.

Where three (3) or more parties take water from same canal or reservoir at the same point to be conveyed to their respective premises for any distance through a lateral or distributing ditch or laterals or distributing ditches such parties shall constitute a water users' association known as "Water Users' Association of Lateral or Laterals." Such water users' association may meet and organize at any time after thirty (30) days after this chapter shall take effect, and shall meet annually thereafter between January first and the last Monday in March of each year, at the call of the secretary of such association, said secretary to give ten (10) days' notice by mail of such annual meeting; provided that if for any reason the secretary should fail to call a meeting, then the annual meeting of such association shall be held on the last Monday in March of each year. At such annual meetings each water user shall be entitled to one (1) vote in person, for each inch and a fractional vote for each fraction of an inch of water which such water user is entitled to receive from such laterals, and a corporation shall vote by one (1) of its officers designated by it. Such association shall organize by the election of a chairman, vice-chairman and a secretary-treasurer, which officers shall also constitute the board of directors of such association, and shall hold office for one (1) year and until their successors are elected. Such association at the annual meeting shall also elect a manager of said lateral or laterals to be known as "lateral manager" for the succeeding season and shall fix the compensation of said manager, and of all officers. Such association may adopt such rules and regulations for the management of said lateral or laterals or distributing ditch or ditches and the delivery of water therefrom as they deem best, and may, by majority vote, if it be deemed for the best interests of the association, combine one or more laterals and abandon laterals not in use, and do any and all things not in conflict with the provisions of this chapter or the laws of this state wherein the best interests of the association will be furthered.

Should any water user's association at its annual meeting fail to elect a lateral manager or fix his compensation such lateral manager may be elected by the board of directors of such association, who may also fix his compensation. The manager of any lateral shall, in addition to the duties prescribed by the association perform all duties fixed for such lateral manager under the provisions of sections 42-907 and 42-910, [Idaho Code,] except as modified by this chapter.

#### 42-1303. Lateral Ditches — Repairs, Improvements, and Maintenance — Assessment of Costs.

Immediately after the annual meeting of any such association the directors thereof and the lateral manager shall make an examination of the lateral or distributing ditch or ditches, and make an estimate as to the cost of the necessary repairs and improvements thereon, and the maintenance thereof for the succeeding season, including the compensation of officers and lateral manager and such total cost and charges shall be assessed pro rata to each water user from said lateral, in the following manner, if agricultural land in proportion to the water which the owner is entitled to receive from such lateral or ditch, and if lots within any city or village, then the assessment may be made upon the basis of each lot, the same to be uniform upon lots of the same size. The improvement, repair and maintenance of any such lateral or distributing ditch shall be under the direction of the directors of the association.

#### 42-1304. Assessments — Notice — Penalties for Delinquency.

On or before the fifteenth day of April in each year the secretary of the association shall notify each water user of the amount assessed against him for that year as herein authorized, and the same shall be due and payable on the first day of May of each year and if not so paid on or before the fifteenth day of June of such year, a penalty of ten per cent (10%) shall be added thereto, and the total amount due shall then draw interest at the rate of ten per cent (10%) per annum from said fifteenth day of June of such year until paid.

#### 42-1305. Delinquent Users not Entitled to Water.

No water user shall be entitled to demand or receive water from said lateral whenever any such assessment is due and unpaid, and the lateral manager shall not distribute any water to such water user while delinquent in such payment except upon order of the board of directors of the association who shall have authority to cause such water to be delivered: provided, the water user shall give such security for the payment of such assessment against him as shall be required by the board of directors.

#### 42-1307. Action for Assessment — Attorneys' Fees.

In case any assessment, as herein provided for is due and unpaid the association may sue to collect the same, in the name of its secretary-treasurer as such, in any court of competent jurisdiction, and in addition to the amount due including all penalties and interest, and all costs incurred in said action, may collect a reasonable attorney's fee in such action to be fixed by the court.

#### 42-1308. Appointment of Lateral Manager by Director of Department of Water Resources.

(1) In the event that the water users or the board of directors of any lateral or ditch association do not meet and elect a lateral manager as provided chapter or a lateral manager is not selected as otherwise provided by law, then, the director of the department of water resources may appoint and fix the compensation of a lateral manager, upon the written petition of a water user alleging that water is not being apportioned and distributed properly among the users from the ditch or lateral and that the rights of the water user are being injured thereby.

(2) If the water users also have failed to elect association officers, the lateral manager appointed by the director may exercise the duties of the association officers, including the making and collection of assessments, but not the borrowing of money, as is necessary to achieve the proper allocation and distribution of water from the ditch or lateral and without regard to the statutory dates for the performance of these duties.

(3) The lateral manager appointed by the director shall hold office only for the period of time fixed by the order of appointment and in no event beyond the remainder of the year in which appointed.

(4) If the lateral is located within a water district established pursuant to chapter 6, title 42, Idaho Code, the director shall advise the district watermaster of the receipt of the petition and invite the watermaster to make recommendations concerning the need for appointment of a lateral manager and the person to be appointed.

(5) Upon receipt of a petition filed pursuant to subsection (1) of this section, the director shall make a reasonable effort to provide written notice of the petition to any irrigation district, Canal Company, or other water distribution entity that supplies water to the lateral, and to all persons having rights to the use of water from the lateral. Except in the case of serious threat of imminent injury to person or property, the director shall allow fourteen (14) days for written response to the petition.

(6) Based upon a review of the petition, the responses thereto, the recommendations of the watermaster, if any, and any investigation by the department of water resources, the director shall issue an order with findings either appointing a lateral manager or declining to appoint a lateral manager

Any person aggrieved by the order of the director shall be entitled to request a hearing before the director pursuant to section 42-1701A, Idaho Code.

#### 42-1309. Association Authorized to Borrow Money, Mortgage or Pledge Assets.

Lateral ditch water users' associations are expressly authorized to borrow money from any private or governmental source, to be repaid over a period of years, and to levy assessments over such period of years for the purpose of repaying said loan, and they are also authorized and empowered to mortgage and/or pledge any of the assets of said associations as security for said loan; providing, however, that before any money can be borrowed or any mortgage or pledge can be made and entered into, all members of said association shall be notified of an election by two (2) weekly publications in a legally authorized newspaper, as defined in section 60-106, Idaho Code, within the county in which the association is located, said notice to provide that an election is being called to determine whether or not the association shall be authorized to borrow money and mortgage and/or pledge its assets, and shall also state the date, time and place of said election, which shall be held within ten [(10)] days after the date of the last publication of said notice. If a majority of the total outstanding shares shall vote at said election in favor of borrowing said money and mortgaging and/or pledging said assets, then said association, through its president and secretary, shall be authorized to borrow said money and mortgage and/or pledge its assets.

#### 42-1310. Lateral Ditches -- Repairs, Improvements and Maintenance by Irrigation Delivery Entities.

In the event that a water users' association of lateral or laterals has not been constituted on a particular lateral or distributing ditch pursuant to this chapter, any individual water user taking water from a canal or reservoir to be conveyed to their respective premises for any distance through such lateral or distributing ditch may authorize the irrigation delivery entity providing water to the lateral or ditch to perform any necessary repairs, improvements, or maintenance to the lateral or ditch. The irrigation delivery entity may agree to perform such work only if it has duly adopted a bylaw authorizing such work to be done for its individual water users, or adopts a resolution authorizing the work. In performing such work, the irrigation delivery entity shall have the same rights and privileges to enter the land across which the right-of-way extends, for the purposes of cleaning, maintaining and repairing the lateral or ditch, and to perform such work, as does the individual water user authorizing the work. By performing such work, the irrigation delivery entity does not assume ownership of the lateral or ditch, or responsibility for or incur liability for any injury to person or property caused by an act or omission of the individual water user

authorizing the work, or of any other person. When such work has been authorized, the irrigation entity shall assess the individual water user for the annual cost of any necessary repairs, improvements, or maintenance performed on the lateral or ditch, in addition to the assessments that are levied for the delivery of water to the individual water user, and the same provisions shall apply with regard to delinquent assessments as in the case of assessments levied for the delivery of water. Nothing in this section shall affect the authority of a water users' association of lateral or laterals from assessing its members for work authorized under this chapter.

## TITLE 43 IRRIGATION DISTRICTS

### **CHAPTER 11 EXCLUSION OF LANDS FROM DISTRICT**

#### 43-1101. Petition.

Any person or persons owning land within any irrigation district and forming a part thereof may file with the board of directors of such irrigation district a petition in writing requesting the exclusion of the land or lands owned by them and described in the petition from the irrigation district. As many parties owning separate tracts or parcels of lands in any irrigation district or who are united in interest to which the same state of facts apply, may unite in the same petition. The petition shall be signed by all of the petitioners, but need not be acknowledged. A filing fee in the amount of five dollars (\$5.00) for each parcel of land described in the petition shall accompany the filing of each petition, plus an exclusion fee in the amount of twenty-five dollars (\$25.00) for each lot containing less than one (1) acre which is in a subdivision as defined in section 50-1301, Idaho Code, or an exclusion fee of fifty dollars (\$50.00) for each acre or portion thereof in all other parcels of property, for which the district shall provide a suitable receipt evidencing payment. Any petition not accompanied by the required filing fee and exclusion fee shall be returned to the petitioner. All other costs of the exclusion proceeding shall be assessed as provided in section 43-1105, Idaho Code. A person or persons purchasing land under a written contract shall be deemed to be the owners of that land for purposes of this section.

## **CHAPTER 15 MISCELLANEOUS PROVISIONS OF DISTRICT LAW**

### **43-1505. Irrigation Lateral Districts.**

For the purpose of constructing, operating, and managing water in distributing systems by means of laterals, sub laterals, ditches, flumes, and pipe lines, an irrigation lateral district may be organized and created within the territory already organized as an irrigation district, in the same manner and by the same process required by the provisions of this title, for the creation of an irrigation district from unorganized territory, and such interior irrigation lateral district, when organized shall through its board of directors, other officers and employees have all necessary powers for the purpose of its creation conferred by this title upon the original irrigation district, including the power to issue, negotiate and sell bonds payable and secured as is in this title provided; to build and construct new works and to levy assessments and taxes necessary for the purpose of conducting its affairs in the same manner and by the same process as are by this title provided in the case of irrigation districts; provided, however, it is distinctly understood that the negotiation and sale of coupons bonds and levying of assessments and taxes and incurring of debts and obligations by any such irrigation lateral district shall not in any way or manner affect any of the bonds, assessments, taxes, or obligations of the irrigation district of which it is a part and shall not in any way or manner limit the power of such original irrigation district to incur the indebtedness, levying of assessments and issue its bonds for any of the purposes for which such district is by this title entitled to levy or issue the same .

## **TITLE 18 CRIMES AND PUNISHMENTS**

### **CHAPTER 43 IRRIGATION WORKS**

### **18-4301. Interference with Ditches, Canals or Reservoirs.**

Every person who shall, without authority of the owner or managing agent, and with intent to defraud, take water from any canal, ditch, flume or reservoir, used for the purpose of holding or conveying water for manufacturing, agricultural, mining, or domestic uses, or who shall, without like authority, raise, lower, or otherwise disturb, any gate or other appurtenance thereof used for the control or measurement of water, or who shall empty or place, or cause to be emptied or placed, into any such canal, ditch, flume, or reservoir, any rubbish, filth, or obstruction to the free flow of water, is guilty of a misdemeanor.

#### 18-4302. Wasting Water Used for Irrigation.

Any person or persons, who shall willfully or wantonly waste any of the waters of any stream, the waters of which are used for irrigation, to the detriment of any claimant of such water for irrigation purposes, by diverting the same for an unnecessary use or purpose, or by allowing such water to waste by running into depressions or dry channels so that the same cannot be used for irrigation, nor reach the original channel of the stream from which it has been diverted, are guilty of a misdemeanor.

#### 18-4303. Obstruction of Overflow, Gauge or Waterway in Dam.

Any person or persons who shall obstruct any overflow gauge or waterway, placed in any dam by order of any watermaster, so as to impede the flow of water over such dam as regulated by the water master, shall be guilty of a misdemeanor.

#### 18-4304. Wrongful Diversion of Water.

Any person who without the consent of the water master of the district, diverts any water from a ditch or channel where it has been placed, or caused or left to run by the water master or his deputies, or who shuts or opens any ditch, gate or dam, or in any way impedes or increases the flow of water in any stream or ditch diverting water from a stream, while the same is under the charge of a water master, or who cuts away any embankment of a stream, whereby the water of such stream is diverted, or breaks, injures, or removes any gate, flume or other device used for the equitable distribution of the water of any such stream by the water master, shall be guilty of a misdemeanor.

#### 18-4305. Interference with Head gate – Cutting Banks of Stream.

If any obstruction shall be willfully and maliciously placed on any overflow gauge in any stream of water which is used for irrigation and is under control of a water master, and such obstruction retards or impedes the free overflow of the water of such stream, thereby increasing the pressure against a head gate through which water is diverted by means of such dam, or if any head gate regulated by a water master shall be removed, broken, injured or interfered with so as to disturb the distribution of the water as regulated by the water master, or if any bank of the natural stream, the water of which is being used for irrigation and is being distributed by a water master, shall be cut away so as to increase the flow of water from such stream, thereby interfering with the distribution of the water as regulated by a water master, the person or persons so interrupting the flow of said water as aforesaid, shall be guilty of a misdemeanor.

#### 18-4306. Injuries to Ditches, Canals, Laterals, Drains and Appurtenances.

Any person or persons, who shall willfully cut, break, damage, or in any way interfere with any ditch, canal, lateral, drain, head gate, or any other works in or appurtenant thereto, the property of another person, irrigation district, drainage

district, canal company, corporation, or association of persons, and whereby water is conducted to any place for beneficial use or purposes, and when said canal, head gate, ditch, lateral, drain, dam, or appurtenance is being used or is to be used for said conduct or drainage of water, shall be guilty of a misdemeanor. measuring device is being used or is to be used for the measurement of water, shall be guilty of a misdemeanor.

#### 18-4307. Injury to Measuring Devices .

Any person or persons who shall cut, break, injure, destroy, enlarge, change, or alter any head gate, sluiceway, weir, water box, or other measuring device, the property of any irrigation district, corporation or association of persons, or in the possession of, or in the use of, said irrigation district, corporation, or association, or the property of another, shall be guilty of a misdemeanor. Any person or persons who shall change, alter, destroy, disturb, enlarge, or interfere with any head gate, dam, weir, water box, or other measuring device, made, placed, used or regulated by any duly appointed, elected, or authorized water master, deputy water master, ditch walker, ditch rider, engineer, or other authorized agent of any irrigation company, corporation or association or person, when said

#### 18-4308. Change of Lateral Ditch or Buried Irrigation Conduit.

Where any lateral ditch has heretofore been, or may hereafter be, constructed across or beneath the lands of another, the person or persons owning or controlling the said land, shall have the right at his own expense to change said lateral ditch or buried irrigation conduit to any other part of said land, but such change must be made in such a manner as not to impede the flow of the water therein, or to otherwise injure any person or persons using or interested in such lateral ditch or buried irrigation conduit. Any increased operation and maintenance shall be the responsibility of the landowner who makes the change. A landowner shall also have the right to bury the ditch of another in pipe on the landowner's property, provided that the pipe, installation and backfill reasonably meet standard specifications for such materials and construction, as set forth in the Idaho standards for public works construction or other standards recognized by the city or county in which the burying is to be done. The right and responsibility for operation and maintenance shall remain with the ditch owner, but the landowner shall be responsible for any increased operation and maintenance costs, including rehabilitation and replacement, unless otherwise agreed in writing with the ditch owner.

In the event that the ditch, lateral, buried irrigation conduit, or canal is owned by an organized irrigation district, canal company, ditch association, or other irrigation entity, the written permission of the entity must first be obtained before a ditch, lateral, buried irrigation conduit, or canal is changed or placed in buried pipe by the landowner.

While a ditch owner shall have no right to relocate his ditch on the property of another without permission, a ditch owner shall have the right to place his ditch in a buried conduit within the easement or right-of-way on the property of another in accordance with standard specifications for pipe, materials, installation and backfill, as set forth in the Idaho standards for public works construction or other standards recognized by the city or county in which the burying is to be done, and so long as the pipe and the construction is accomplished in a manner that the surface of the owner's property and the owner's use thereof is not disrupted and is restored to the condition of adjacent property as expeditiously as possible, but not to exceed five (5) days after the start of construction. A landowner shall have the right to direct that the conduit be relocated to a different route than the route of the ditch, provided that the landowner shall agree in writing to be responsible for any increased construction or future maintenance costs necessitated by said relocation. Maintenance of the buried conduit shall be the responsibility of the ditch owner.

No more than five (5) days after the start of construction, a landowner or ditch owner who buries a ditch in pipe shall record the location and specifications of the buried irrigation conduit, including primary and secondary easements, in the county in which the burying is done, and shall provide the irrigation entity that supplies water to the ditch, with a copy of such location and specifications and the construction plans utilized. The irrigation entity shall keep and maintain such records and have them available for the public.

#### **18-4309. Unauthorized Tampering With Measuring Devices .**

Every person who shall willfully waste water for irrigation, or who shall willfully open, close, change or disturb, or interfere with, any head gate or water box or valve or measuring or regulating device, without authority, shall be guilty of a misdemeanor. The water masters or their assistants, within their district, shall have the power to arrest any person or persons offending, and turn them over to the sheriff or the nearest peace officer of the county in which such offense is committed, and immediately upon delivering such person so arrested into the custody of either of such officers, it shall be the duty of the water master making such arrest to make complaint, in writing and under oath, before the proper justice of the peace, or the probate judge of such county, against the person so arrested.

#### **18-4310. Neglect to Deliver Water – Interference With Delivery.**

Any superintendent or any person having control or charge of the said ditch, canal or conduit, who shall willfully neglect or refuse to deliver water as provided in chapter 9, of title 42, or person or persons who shall prevent or interfere with the proper delivery of water to the person or persons having a right thereto, shall be guilty of a misdemeanor; and the owner or owners of such ditch, canal or conduit shall be liable in damages to the person or persons deprived of the use of water to which they were entitled as provided in said chapter 9.

## 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.

**IRRIGATION 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.