Water District No. 65

Payette River Basin, State of Idaho
102 North Main Street
Payette, Idaho 83661

Watermaster
Ron Shurtleff

Phone (208) 642-4465
Fax (208) 642-1042
E-Mail waterdist65@srvinet.com

July 21, 2004

RECEIVED
JUL 23 2004
WATER RESOURCES
WESTERN REGION

John Westra
Western Region Manager
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Dear Mr. Westra, John

I have a situation in the district where a land owner has filled in a lateral ditch that crosses his property, preventing another party from receiving their water. It looks like a deliberate attempt to adversely possess the right-of-way that has been in existence for many decades.

I am providing you with a copy of correspondence that I have sent to the offending party.

I hope that we can come to an agreement without a great deal of trouble, however I thought that it may be wise if you were aware of the situation in the event that we need further assistance from the Department.

Thank you in advance for your time.

Sincerely,

Ron Shurtleff

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Water District 65

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WATER RESOURCES
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July 21, 2004

Ray Aiken
2330 Brogan Road
Emmett, Idaho 83617

Dear Mr. Aiken

I was recently contacted by Mr. Alan Brown about a situation that exists whereas you have refused to allow Mr. Brown to access his right-of-way through your property to maintain and operate his irrigation lateral ditch.

Idaho code 42-102 addresses this situation and is very specific to give landowners the entitlement of a right-of-way through others property to gain access to irrigation water. This type of right-of-way through your property has been in existence for the irrigated land owned and operated by Mr. Brown. The right-of-way existed long before you became the owner of your property and Idaho Code (Law) is very specific that any subsequent land owner must also respect the rights confirmed and granted by the section of Idaho Code.

It is important that you do not place yourself in a position where you have interfered with any water delivery system or diminished the ability to irrigate any crop.

Within Idaho's laws pertaining to water there is a clear recognition of the importance of gravity water delivery to agricultural lands. Specific portions of Idaho code have been designed to continually protect the water delivery systems of the state. And because of this fact there are stiff penalties written into the enforcement of Idaho code which may be awarded to deliberate violators.

I have enclosed some sections of Idaho Code for your review. I would advise you to read and understand these sections so that you may comply with the provisions within them. I have highlighted some sections of the code that apply to your situation.

I am willing to visit with you in regards to this misunderstanding over the rights and responsibilities of land owners and irrigators. I can be reached at 208-642-4465 or mobile, 208-642-0230, and would be available to meet with you on site to help solve this issue.

Once again I would like to say how important it is that you do not place yourself in a position of deliberately interfering with the ability to deliver water to any crop.

I have provided you with copies of Idaho Code Chapter 42, Sections 902, 1102, 1204, 1207 1208, 1209 and 1310.

Sincerely,

Ron Shurtleff
Watermaster, Water District 65, State of Idaho

cc.
Mr. Alan Brown
8200 Dewey Road
Emmett, Idaho 83617

Mr. Maynard Potter,
Chairman, Reed Ditch Co.
3740 County Line Road
Emmett, Idaho 83617

Mr. John Westra,
Western Region Manager
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082



Idaho Statutes

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 11
RIGHTS OF WAY

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, as well as to ditches, canals or other conduits constructed after such effective date.

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Idaho Statutes

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 9
DISTRIBUTION OF WATER TO CONSUMERS

42-902. INJURING DITCH OR HEADGATE -- 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.

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Idaho Statutes

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 12
MAINTENANCE AND REPAIR OF DITCHES

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.

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Idaho Statutes

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 12
MAINTENANCE AND REPAIR OF DITCHES

42-1207. CHANGE OF DITCH, CANAL, LATERAL, DRAIN 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 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, 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.

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

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Idaho Statutes

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 12
MAINTENANCE AND REPAIR OF DITCHES

42-1208. EASEMENTS OR RIGHTS-OF-WAY NOT SUBJECT TO ADVERSE POSSESSION. Easements or rights-of-way of irrigation districts, Carey act operating companies, nonprofit irrigation entities, lateral ditch associations, and drainage districts are not subject to adverse possession, and no person shall prevent free access of authorized personnel on easements or rights-of-way or construct any obstruction on easements or rights-of-way in an effort to adversely possess said easement or right-of-way.

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Idaho Statutes

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 12
MAINTENANCE AND REPAIR OF DITCHES

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 easement or right-of-way, without such express written permission shall be removed at the expense of the person or entity causing or permitting such encroachments, upon the request of the owner of the easement or right-of-way, in the event that any such encroachments unreasonably or materially interfere with the use and enjoyment of the easement or 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.

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Idaho Statutes

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 13
LATERAL DITCH WATER USERS' ASSOCIATIONS

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.

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