

LATERAL DITCHES

A GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES



Dear Neighbor,

You may have a lateral irrigation ditch running through your property. This guide addresses commonly asked questions about maintenance and access with answers drawn directly from Idaho law.

Boise City Canal Company is a non-profit that prides itself on being a good neighbor. We hope this guide helps reduce conflict and uncertainty. If you have questions, please contact us.

Sincerely,

Boise City Canal Company Board of Directors

The brochure is designed to address common situations. In summary:

- Do not block or impede the flow of water.
- Water users are responsible for maintenance and have the right to enter private property.
- If a lateral ditch is piped, the property owner is responsible for maintaining it.

Remember, water law isn't always clear. These questions should be viewed as guidance rather than legal advice. The numbers in parentheses are references to Idaho code.

Q: Can I use the water?

A: If you are a shareholder, yes! We have water shares available, and the cost to irrigate most properties is \$98 per year.

Q: Who maintains the lateral ditches?

A: The main canal is maintained by Boise City Canal Company and the lateral ditches are maintained by their water users, who are sometimes formally organized as 'lateral associations' (42-1202). A lateral manager often coordinates operations.

Q: Can water users cross my private property?

A: Yes. There is an easement, or right of way, for accessing the ditch (42-1102). Water users have the right to use that easement, unannounced, to clean, maintain and inspect the ditch. If requested by BCCC or the lateral association, you must remove fences or install gates at your own expense to provide access to the ditch (42-1209).

Q: How wide is the easement?

A: The width of the easement isn't defined, but is wide enough to operate commonly used equipment such as mini-excavators. A good rule of thumb is to leave 7.5' either side of the centerline of the lateral ditch for access. The main canal has a wider easement.

Q: I wasn't informed about the easement when I purchased my property. Why not?

A: Irrigation easements are based upon prior use and are often not recorded. They are statutorily recognized, and the existence of the ditch provides notice of the easement (42-1102). We are working with the Ada County Association of Realtors to improve communication about this issue.

Q: So anyone can just walk across my property?

A: No. This is not a public easement. The only people who can use the easement are water users, and only for cleaning, inspecting, and maintaining the ditch. This is a fairly small number of people, and they're your neighbors. Many lateral associations have a 'big cleanup' in March or April, and subsequent maintenance needs are few.

Q: I don't like this. Can I be excluded?

A: No. The lateral easement is a longstanding part of Idaho law. You can minimize problems by keeping your section well-maintained.

Q: If a water user cleans up the lateral on my property, do they have to remove the debris?

A: No. Idaho law allows cleaning debris (mud, vegetation) to be left on the ditch bank (42-1102). Most people are good neighbors. If you provide a trash can, they'll probably use it.

Q: I use the water and keep my section of the ditch clean. Do I need to maintain it on someone else's property too?

A: Perhaps. You are partially responsible for ensuring the water flows from the headgate to your property. You must take reasonable precautions to avoid flooding your neighbors (42-1204). Please get involved in your lateral association and consider helping less able neighbors with their ditches.

Q: The ditch is buried/piped through my yard. If the pipe fails, is it my responsibility?

A: Yes. Idaho law says that the property owner, and future owners, are responsible for the maintenance and repair of buried conduits. If your pipe is broken or blocked, you must fix it (42-1207).

Q: This ditch was piped years ago by a previous owner. Why am I responsible?

A: Idaho law says that when a ditch is piped or buried: "...the landowner, his heirs, executors, administrators, successors and assigns shall be responsible for any increased operation and maintenance costs, including rehabilitation and replacement, unless otherwise agreed in writing..." (42-1207).

Q: Can I pipe or reroute the ditch in my property?

A: Maybe. Written permission must be obtained from the lateral association, a license agreement must be signed, technical specifications must be followed, and you will incur the costs of additional future maintenance (42-1207).

Q: Can I daylight a buried ditch on my property?

A: Probably. Talk to the lateral association or canal company first.

Q My shed is in the easement. Do I need to move it?

A: Unless you have a license agreement, BCCC or the lateral association can require you to remove the shed (42-1209). However, we recognize the urban nature of our canal, and we try not to cause unnecessary disruption.

Q: My shed has been blocking the easement for decades. Is it 'grandfathered'?

A: No. There is no right of adverse possession on irrigation easements (42-1208).

Q: There appears to be an old unused ditch in my backyard. Can I fill it in?

A: Maybe. Blocking or obstructing irrigation ditches, even if presently unused, is a misdemeanor (18-4306). Please contact BCCC, and we can tell you whether it's part of our system.

Q: There is a big tree in the easement. Are you going to cut it down?

A: Trees are beautiful, shady, and expensive to remove. Although we have the right to remove the tree if it interferes with the easement (42-1102), we prefer not to. We are not responsible for maintaining vegetation simply because it is in the easement (42-1204).

Q: I am a water user. Nobody upstream of me is maintaining the ditch, and I'm having trouble getting water. What can I do?

A: You and the other users on your ditch have a duty to maintain it, and thus a right of access (42-1202). If fences prevent access, ask your lateral association to demand they be removed or that gates be installed. If there is no lateral association, consider forming one. You may also ask BCCC for assistance.

Q: What is the relationship between BCCC and the lateral ditches?

A: BCCC operates the main canal that flows from Warm Springs Golf Course, under downtown, and through the West End, Sunset and Collister neighborhoods. It delivers water to the lateral ditches, who operate independently. As a courtesy, BCCC has at times assisted lateral associations.

Q: I want to find out more. Where can I look?

A: Read Idaho Code Title 42, Chapters 11-13, and Title 18, Chapter 43. Consult the Idaho Department of Water Resources booklet 'Statutes Pertaining to Canals and Laterals'.

Q: Who do I call if there's a problem?

A: First: the manager of your lateral ditch. If you don't know who the manager is, or there isn't one, ask your neighbors that use the water. You may also contact BCCC. We will try and help, although we are unable to intervene in every situation.

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