

## IMPORTANT TERMS

### **Prior Appropriation:**

The date a water right is developed determines the order of delivery during times of shortage.

### **Application, permit, license:**

The process for acquiring a new water right with the Idaho Department of Water Resources:

- **Application:** Filed to begin the process of developing a water right.
- **Permit:** A personal property right that authorizes the applicant to develop infrastructure and begin diverting water.
- **License:** A real property right based on the actual development and use of water.

**Decree:** A court order confirming a water right.

### **Domestic Use Water Right:**

Use of water for domestic purposes that does not require water right, so long as the use is limited to:

- No more than 13,000 gallons per day; and
- In home use; and
- Irrigation of no more than ½ acre. (I.C. § 42-111).

### **Water Entitlement:**

The right to use water based on payment of assessments as determined by:

- Land ownership (in the case of an irrigation district); or
- Ownership of shares (in the case of a canal company).

### **Canal, lateral, ditch:**

A channel, usually man-made, used to convey water to the place of use (i.e. farms, parks, yards, etc.)

### **Headgate:**

A structure used to control the flow of water into a canal, lateral, or ditch.

### **Pressurized Irrigation System:**

A system that distributes water through pressurized pipes to the end user (i.e. parks, residential yards, etc.).

**Ditch Owner:** The term 'ditch owner' refers to the owner or operator of a canal, lateral, or ditch. Canals and laterals are generally owned and/or operated by irrigation districts or canal companies for the purpose of delivering water to patrons. Ditches are generally owned or operated by the individuals, groups of individuals or users associations that receive water from the ditch.



## FAQS

If there is water on the property (i.e. in a ditch, stream, etc.), do I have a right to use that water? **You can search for possible water rights on your property at the Idaho Department of Water Resources.**

If there is a well on my property, how do I know who has a right to use the well and if there are water rights associated with the well? **Your neighbor may have a right to use that well. Look for a well agreement in your property records. Water rights can be identified on the IDWR webpage.**

There is a ditch on my property. Can I move it to a different location on my property? **The landowner may not move the ditch easement without written permission from the ditch owner.**

There is a ditch on my property. Can the ditch owner move it to a different location on my property? **The ditch owner may not move the ditch easement without written permission from the landowner.**

There is a ditch on my property. Can the landowner bury the ditch in a pipeline? **The landowner may not pipe the ditch without written permission from the ditch owner. Piping must meet "standard specifications" and cannot disrupt water delivery. Written permission from the landowner is not required.**

There is a ditch easement on my property. Can the ditch owner bury the ditch in a pipeline? **The ditch owner may pipe the ditch within the existing easement.**

I receive an assessment from an irrigation district. However, I cannot access the water. Do I still have to pay assessments? **Yes. Land within the service area of an irrigation district is subject to assessment, EVEN IF you do not use the water and EVEN IF you have no ability to access it. Landowners can petition to be excluded from the irrigation district.**

**CONTACT YOUR LOCAL IRRIGATION DISTRICT TO LEARN MORE:**

## 10 THINGS TO KNOW

# Real Estate Transactions & Water



**1** A recorded document is **NOT** required for a ditch easement to be valid. A visible ditch is evidence that an easement exists. (I.C. 42-1102(4))



**3 DITCH OWNER**

*Has the right to...*

- Enter the land during any season and without notice to inspect, maintain, repair, operate, etc.;

- An easement (including access roads) that is wide enough to "properly maintain the ditch";

- Clean vegetation, soil and other debris within the easement by removing it from the property, incorporating the debris into the easement or "depositing and leaving" it within the easement.

*Obligated to...*

- Keep the ditch in good repair and are liable for damages "occasioned by overflow thereof resulting from any neglect or accident".



**3 LAND OWNER**

*Has the right to...*

- Use the easement in a manner that does not interfere with the ditch owner's rights.

*May not...*

- Exclude the ditch owner from the property;
- Construct, place or permit any encroachment within the easement. *Encroachments include, but are not limited to, roads, utilities, fences, gates, pipelines, structures, landscaping, trees and other vegetation. Landowners are responsible for all costs associated with removing any encroachment.* (I.C. 42-1102 & 42-1209)

**6**

What type of water delivery entity delivers your water?



**CANAL COMPANY**

A private, non-profit corporation. The right to water is based on shares (or stock) owned.



**IRRIGATION DISTRICT**

A quasi-municipal organization. The right to water is based on land ownership. Irrigation districts have the right to take a tax deed on the property (i.e. acquired ownership) if assessments are unpaid for 3-years.

**7**

**HOW DO I KNOW if I have a domestic water right?**

A documented water right is not required for certain domestic uses. Talk to prior landowners to determine if you have a domestic water right.

**9**

What should a **SELLER** do during a property transaction?

- Identify all water rights/entitlements
- Is the seller retaining any water?
- Provide copies of water documents (water rights, shares, well agreements, etc.)



**SILENCE = CONVEYANCE**

*This includes all rights, obligations and assessments associated with the water use.*

**8**

What happens to the water when property changes hands?

All water rights are conveyed to the new owner unless the seller includes an express reservation in the sales documents. Water entitlements remain with the land, subject to the policies and procedures of the water delivery entity.

**10**

What should a **BUYER** do during a property transaction?

- Make sure water rights/entitlements are identified on the purchase agreement
- Update ownership records by contacting your local water delivery entity or the Idaho Department of Water Resources (I.C. 42-248 & 55-616).

The roadways along irrigation ditches and canals are **NOT** public property.

In fact, they are generally easements located on land owned by private landowners. Ditches passing through neighborhoods may cross property owned by hundreds of different landowners and are subject to trespass laws.

**2**



You can learn a lot by looking at the water right:

**OFFICIAL WATER RIGHT**

**WHO** ... is the owner?

**WHAT** ... is the source of water?

**WHAT** ... is the authorized use?

**WHEN** ... can it be used?

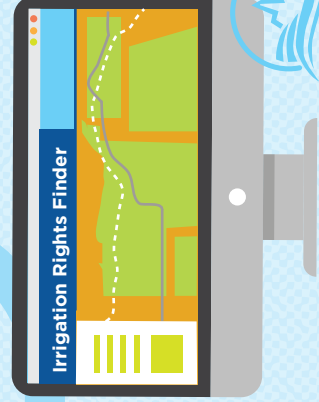
**WHERE** ... can the it be diverted and used?



How to determine if property has any water rights or entitlements.

**5**

IDWR Irrigation Rights Finder: [maps.idwr.idaho.gov/agol/irrigationrights](https://maps.idwr.idaho.gov/agol/irrigationrights)



**1.** Enter Address in the Search Bar

**2.** Click on the property in the map.

**3.** A box on the left will identify water rights and irrigation organizations associated with the property.

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