

73-1-7 Enlargement for joint use of ditch.

- (1) When a person with no existing shareholder or contractual rights in the canal or ditch described in this Subsection (1) desires to convey water for irrigation or any other beneficial purpose and there is a canal or ditch already constructed that can be used or enlarged to convey the required quantity of water, the person may use or enlarge the canal or ditch already constructed if:
 - (a) the canal or ditch can be:
 - (i) used without displacing current users or exceeding free board capacity; or
 - (ii) enlarged to convey the required quantity of water necessary to deliver all water authorized for delivery to authorized users of the canal or ditch, provide adequate free board capacity, and carry the additional quantity of water requested by the person;
 - (b) the person compensates:
 - (i) the owner of the canal or ditch to be used or enlarged for the damage caused by the use or enlargement; and
 - (ii) each landowner whose land is encumbered by an easement related to the canal or ditch if the carrying of additional water will expand the scope of the easement;
 - (c) the person pays an equitable proportion of the maintenance and operation of the canal or ditch jointly used or enlarged; and
 - (d) the person complies with Subsections (2) through (4).
- (2) An enlargement made in accordance with Subsection (1) shall be made between October 1 and March 1, unless another time is agreed to with:
 - (a) the owner of the canal or ditch; and
 - (b) each landowner whose land is encumbered by an easement related to the canal or ditch if the carrying of additional water will expand the scope of the easement.
- (3) The additional water turned in to the canal or ditch shall bear its proportion of loss by evaporation and seepage.
- (4) Before use or enlargement is allowed in accordance with this section, the person seeking to use or enlarge the canal or ditch shall negotiate in good faith to enter into a written contract governing the relationship, including terms of use and payment, between the person and the following:
 - (a) the canal or ditch owner; and
 - (b) each landowner whose land is encumbered by an easement related to the canal or ditch if the carrying of additional water will expand the scope of the easement.
- (5) A person seeking to use or enlarge a canal or ditch in accordance with this section may not rely on the right-of-way provisions of Section 73-1-6 against:
 - (a) an owner of the canal or ditch unless the person has:
 - (i) attempted in good faith to enter into a written contract pursuant to Subsection (4)(a); and
 - (ii) failed to enter into a written contract; and
 - (b) a landowner whose land is encumbered by an easement related to the canal or ditch if the carrying of additional water will expand the scope of the easement unless the person has:
 - (i) attempted in good faith to enter into a written contract pursuant to Subsection (4)(b); and
 - (ii) failed to enter into a written contract.
- (6) Unless otherwise agreed to in the written contract referenced in Subsection (4)(a), a person using an existing canal or ditch under this section:
 - (a) does not acquire any voting rights in the entity owning the canal or ditch not already possessed by a person;
 - (b) does not acquire any rights to direct the operation of the canal or ditch;

- (c) may not add water to the canal or ditch that impairs the water quality in the canal or ditch, or increases the cost of any treatment, to a degree that adversely impacts the intended use of the water already in the canal or ditch;
 - (d) may not add water to the canal or ditch that exceeds the capacity of the canal or ditch, including free board capacity;
 - (e) may not modify any water rights without state engineer approval;
 - (f) shall pay an equitable proportion of construction or upgrade costs, including any related debt service, incurred by the owner of the canal or ditch within five years before the day on which the person begins use of the existing canal or ditch;
 - (g) is liable for an equitable proportion of any liability arising out of the operation or maintenance of the canal or ditch unless the event giving rise to the liability was caused solely by the person or by the owner of the canal or ditch;
 - (h) is solely liable for any liability arising out of the operation or maintenance of the canal or ditch if the event giving rise to the liability was caused solely by the person; and
 - (i) is not liable for any liability arising out of the operation or maintenance of the canal or ditch if the event giving rise to the liability was caused solely by the owner of the canal or ditch.
- (7) This section is not applicable to any type of water conveyance infrastructure other than a canal or ditch described in this section.
- (8) Nothing in this section will eliminate a criminal penalty resulting from conduct prohibited by Section 73-1-15.

Amended by Chapter 136, 2011 General Session