

Senator Dennis E. Stowell proposes the following substitute bill:

JOINT USE OF A CANAL OR DITCH

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dennis E. Stowell

House Sponsor: Melvin R. Brown

LONG TITLE

General Description:

This bill requires the formation of a contract before the enlargement and use of another person's canal or ditch to convey water.

Highlighted Provisions:

This bill:

- ▶ requires the formation of a contract before the enlargement and use of another person's canal or ditch to convey water;
- ▶ requires that a person seeking to enlarge or use another person's canal or ditch and the person who owns the canal or ditch to negotiate in good faith;
- ▶ describes certain obligations of a person using another person's canal or ditch unless otherwise agreed to by contract; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 73-1-7, Utah Code Annotated 1953

27

28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section 73-1-7 is amended to read:

30 **73-1-7. Enlargement for joint use of ditch.**

31 (1) When [any] a person desires to convey water for irrigation or any other beneficial
32 purpose and there is a canal or ditch already constructed that can be used or enlarged to convey
33 the required quantity of water, [such] the person [shall have the right to] may use or enlarge
34 [such] the canal or ditch already constructed, by:

35 (a) compensating the owner of the canal or ditch to be used or enlarged for the damage
36 caused by [such] the use or enlargement[; and by];

37 (b) paying an equitable proportion of the maintenance and operation of the canal or
38 ditch jointly used or enlarged[; provided, that such]; and

39 (c) complying with Subsections (2) through (4).

40 (2) An enlargement made in accordance with Subsection (1) shall be made between
41 [the 1st day of October and the 1st day of March] October 1 and March 1, or at any other time
42 that may be agreed upon with the owner of [such] the canal or ditch.

43 (3) The additional water turned in shall bear its proportion of loss by evaporation and
44 seepage.

45 (4) Before use or enlargement is allowed in accordance with this section:

46 (a) the person seeking to use or enlarge the canal or ditch shall enter into a contract
47 governing the relationship between the person and the canal or ditch owner, including terms of
48 use and payment; and

49 (b) the person seeking to use or enlarge a canal or ditch in accordance with this section
50 and the owner of the canal or ditch shall negotiate in good faith to agree to mutually acceptable
51 contract terms.

52 (5) Unless otherwise agreed to in the contract referenced in Subsection (4), a person
53 using an existing canal or ditch under this section:

54 (a) does not acquire any voting rights in the entity owning the canal or ditch or any
55 rights to direct the operation of the canal or ditch;

56 (b) may not add water to the canal or ditch that reduces the water quality in the canal or

57 ditch in a manner that adversely impacts the intended use of the water already in the canal or
58 ditch;

59 (c) may not add water to the canal or ditch that exceeds the capacity of the canal or
60 ditch;

61 (d) shall pay an equitable proportion of construction or upgrade costs incurred by the
62 owner of the canal or ditch within five years before the day on which the person begins use of
63 the existing canal or ditch;

64 (e) is liable for an equitable proportion of any liability arising out of the operation or
65 maintenance of the canal or ditch unless the event giving rise to the liability was caused solely
66 by the person or by the owner of the canal or ditch;

67 (f) is solely liable for any liability arising out of the operation or maintenance of the
68 canal or ditch if the event giving rise to the liability was caused solely by the person; and

69 (g) is not liable for any liability arising out of the operation or maintenance of the canal
70 or ditch if the event giving rise to the liability was caused solely by the owner of the canal or
71 ditch.

72 (6) This section is not applicable to any type of water conveyance infrastructure other
73 than a canal or ditch described in this section.

FISCAL NOTE

S.B. 108 1st Sub. (Green)

SHORT TITLE: **Joint Use of a Canal or Ditch**

SPONSOR: **Stowell, D.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.