

30 Section 1. Section **73-1-7** is amended to read:

31 **73-1-7. Enlargement for joint use of ditch.**

32 (1) When [any] a person with no existing shareholder or contractual rights in the canal
33 or ditch described in this Subsection (1) desires to convey water for irrigation or any other
34 beneficial purpose and there is a canal or ditch already constructed that can be used or enlarged
35 to convey the required quantity of water, [such] the person [shall have the right to] may use or
36 enlarge [such] the canal or ditch already constructed[; by compensating] if:

37 (a) the canal or ditch can be:

38 (i) used without displacing current users or exceeding free board capacity; or

39 (ii) enlarged to convey the required quantity of water necessary to deliver all water
40 authorized for delivery to authorized users of the canal or ditch, provide adequate free board
41 capacity, and carry the additional quantity of water requested by the person;

42 (b) the person compensates:

43 (i) the owner of the canal or ditch to be used or enlarged for the damage caused by
44 [such] the use or enlargement[; and by paying]; and

45 (ii) each landowner whose land is encumbered by an easement related to the canal or
46 ditch if the carrying of additional water will expand the scope of the easement;

47 (c) the person pays an equitable proportion of the maintenance and operation of the
48 canal or ditch jointly used or enlarged[; provided, that such]; and

49 (d) the person complies with Subsections (2) through (4).

50 (2) An enlargement made in accordance with Subsection (1) shall be made between
51 [the 1st day of October and the 1st day of March, or at any other] October 1 and March 1,
52 unless another time [that may be] is agreed [upon] to with:

53 (a) the owner of [such] the canal or ditch[;]; and

54 (b) each landowner whose land is encumbered by an easement related to the canal or
55 ditch if the carrying of additional water will expand the scope of the easement.

56 (3) The additional water turned in to the canal or ditch shall bear its proportion of loss
57 by evaporation and seepage.

58 (4) Before use or enlargement is allowed in accordance with this section, the person
59 seeking to use or enlarge the canal or ditch shall negotiate in good faith to enter into a written
60 contract governing the relationship, including terms of use and payment, between the person
61 and the following:

62 (a) the canal or ditch owner; and

63 (b) each landowner whose land is encumbered by an easement related to the canal or
64 ditch if the carrying of additional water will expand the scope of the easement.

65 (5) A person seeking to use or enlarge a canal or ditch in accordance with this section
66 may not rely on the right-of-way provisions of Section 73-1-6 against:

67 (a) an owner of the canal or ditch unless the person has:

68 (i) attempted in good faith to enter into a written contract pursuant to Subsection 4(a);
69 and

70 (ii) failed to enter into a written contract; and

71 (b) a landowner whose land is encumbered by an easement related to the canal or ditch
72 if the carrying of additional water will expand the scope of the easement unless the person has:

73 (i) attempted in good faith to enter into a written contract pursuant to Subsection
74 (4)(b); and

75 (ii) failed to enter into a written contract.

76 (6) Unless otherwise agreed to in the written contract referenced in Subsection (4)(a), a
77 person using an existing canal or ditch under this section:

78 (a) does not acquire any voting rights in the entity owning the canal or ditch not already
79 possessed by a person;

80 (b) does not acquire any rights to direct the operation of the canal or ditch;

81 (c) may not add water to the canal or ditch that impairs the water quality in the canal or
82 ditch, or increases the cost of any treatment, to a degree that adversely impacts the intended use
83 of the water already in the canal or ditch;

84 (d) may not add water to the canal or ditch that exceeds the capacity of the canal or
85 ditch, including free board capacity;

86 (e) may not modify any water rights without state engineer approval;

87 (f) shall pay an equitable proportion of construction or upgrade costs, including any
88 related debt service, incurred by the owner of the canal or ditch within five years before the day
89 on which the person begins use of the existing canal or ditch;

90 (g) is liable for an equitable proportion of any liability arising out of the operation or
91 maintenance of the canal or ditch unless the event giving rise to the liability was caused solely
92 by the person or by the owner of the canal or ditch;

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

95 (i) is not liable for any liability arising out of the operation or maintenance of the canal
96 or ditch if the event giving rise to the liability was caused solely by the owner of the canal or
97 ditch.

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

100 (8) Nothing in this section will eliminate a criminal penalty resulting from conduct
101 prohibited by Section 73-1-15.