

## SB0108S01 compared with SB0108

~~deleted text~~ shows text that was in SB0108 but was deleted in SB0108S01.

inserted text shows text that was not in SB0108 but was inserted into SB0108S01.

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Senator Dennis E. Stowell proposes the following substitute bill:

### JOINT USE OF ~~WATER INFRASTRUCTURE~~ A CANAL OR DITCH

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Dennis E. Stowell**

House Sponsor: \_\_\_\_\_

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#### 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.

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### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

73-1-7, Utah Code Annotated 1953

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

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

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

(1) When ~~[any]~~ a person 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, ~~[such]~~ the person ~~[shall have the right to]~~ may use or enlarge ~~[such]~~ the canal or ditch already constructed, by:

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

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

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

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

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

(4) ~~[(a)]~~ Before use or enlargement is allowed in accordance with this section ~~;~~

(a) the person seeking to use or enlarge the canal or ditch shall enter into a contract governing the relationship between the person and the canal or ditch owner, including terms of use ~~;~~ and payment ~~;~~ and ~~other matters as appropriate.~~

(b) ~~The~~the person seeking to use or enlarge a canal or ditch in accordance with this section and the owner of the canal or ditch shall negotiate in good faith ~~;~~

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### Legislative Review Note

as of 1-18-11 4:21 PM

~~Office of Legislative Research and General Counsel~~ to agree to mutually acceptable contract terms.

(5) Unless otherwise agreed to in the contract referenced in Subsection (4), 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 or any rights to direct the operation of the canal or ditch;

(b) may not add water to the canal or ditch that reduces the water quality in the canal or ditch in a manner that adversely impacts the intended use of the water already in the canal or ditch;

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

(d) shall pay an equitable proportion of construction or upgrade costs 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;

(e) 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;

(f) 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

(g) 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.

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