

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 a person to negotiate in good faith to form a contract before the use or enlargement of another person's canal or ditch to convey water.

Highlighted Provisions:

This bill:

- ▶ requires a person to negotiate in good faith to form a contract before the use or enlargement of another person's canal or ditch to convey water;
- ▶ prohibits a person seeking to use or enlarge another person's canal or ditch from relying on the right of way provisions of Section 73-1-6 unless the person has, after negotiating in good faith, failed to enter into a contract;
- ▶ 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:



26 AMENDS:

27 73-1-7, Utah Code Annotated 1953



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

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

36 (a) the canal or ditch can be:

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

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

41 (b) the person compensates:

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

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

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

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

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

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

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

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

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

61 (a) the canal or ditch owner; and

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

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

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

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

68 (ii) failed to enter into a contract;

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

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

72 (ii) failed to enter into a contract.

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

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

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

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

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

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

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

87 (g) is liable for an equitable proportion of any liability arising out of the operation or

88 maintenance of the canal or ditch unless the event giving rise to the liability was caused solely
89 by the person or by the owner of the canal or ditch;

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

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

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

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