

## 2nd Sub. S.B. 108 JOINT USE OF A CANAL OR DITCH

Senator **Dennis E. Stowell** proposes the following amendments:

1. *Page 1, Line 9:*

9 This bill requires a person to negotiate in good faith to form a written contract before the use or

2. *Page 1, Lines 13 through 19:*

13 ▶ requires a person to negotiate in good faith to form a written contract before the use or  
14 enlargement of another person's canal or ditch to convey water;

15 ▶ prohibits a person seeking to use or enlarge another person's canal or ditch from  
16 relying on the ~~{right-of-way}~~ right-of-way provisions of Section 73-1-6 unless the person has, after  
17 negotiating in good faith, failed to enter into a written contract;

18 ▶ describes certain obligations of a person using another person's canal or ditch unless  
19 otherwise agreed to by written contract; and

3. *Page 2, Lines 32 through 40:*

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

40 capacity, and carry the additional quantity of water requested by the person;

4. *Page 3, Line 58:*

58 seeking to use or enlarge the canal or ditch shall negotiate in good faith to enter into a written contract

5. *Page 3, Lines 64 through 74:*

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}~~ 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 written contract pursuant to Subsection 4(a); and  
68 (ii) failed to enter into a written contract; and  
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 written contract pursuant to Subsection (4)(b); and  
72 (ii) failed to enter into a written contract.  
73 (6) Unless otherwise agreed to in the written contract referenced in Subsection (4)(a), a person  
74 using an existing canal or ditch under this section: