

90 (ii) In appointing another person to arbitrate a dispute, the Office of the Property Rights  
91 Ombudsman shall appoint an arbitrator who is agreeable to:

92 (A) both parties; or

93 (B) the Office of the Property Rights Ombudsman and the party paying for the  
94 arbitrator.

95 (iii) The Office of the Property Rights Ombudsman may, on its own initiative or upon  
96 agreement of both parties, appoint a panel of arbitrators to conduct the arbitration.

97 (iv) The Department of Commerce may pay an arbitrator per diem and reimburse  
98 expenses incurred in the performance of the arbitrator's duties at the rates established by the  
99 Division of Finance under Sections [63A-3-106](#) and [63A-3-107](#).

100 (d) In arbitrating a dispute, the arbitrator shall apply the relevant statutes, case law,  
101 regulations, and rules of Utah and the United States in conducting the arbitration and in  
102 determining the award.

103 (e) ~~§~~→ (i) ←~~§~~ The property owner and government entity, or other condemning entity, may  
103a agree

104 in advance of arbitration that the arbitration is binding and that no de novo review may occur.

104a ~~§~~→ **(ii) The private property owner and facility owner of a water conveyance facility, as**  
104b **described in Section 73-1-15.5, may agree in advance of arbitration that the arbitration is**  
104c **binding and that no de novo review may occur.** ←~~§~~

105 (f) Arbitration by or through the Office of the Property Rights Ombudsman is not  
106 necessary before bringing legal action to adjudicate any claim.

107 (g) The lack of arbitration by or through the Office of the Property Rights Ombudsman  
108 does not constitute, and may not be interpreted as constituting, a failure to exhaust available  
109 administrative remedies or as a bar to bringing legal action.

110 (h) Arbitration under this section is not subject to Title 63G, Chapter 4, Administrative  
111 Procedures Act, or Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act.

112 (i) Within 30 days after an arbitrator issues a final award, and except as provided in  
113 Subsection (3)(e), any party to the arbitration may submit the dispute, the award, or any issue  
114 upon which the award is based, to the district court for review by trial de novo.

115 (4) The filing with the Office of the Property Rights Ombudsman of a request for  
116 mediation or arbitration of a constitutional taking issue does not stay:

117 (a) a county or municipal land use decision;

118 (b) a land use appeal authority decision; or

119 (c) the occupancy of the property.

120 (5) A member of the Office of the Property Rights Ombudsman, or an arbitrator

121 appointed by the office, may not be compelled to testify in a civil action filed concerning the  
 122 subject matter of any review, mediation, or arbitration by the Office of the Property Rights  
 123 Ombudsman.

124 Section 2. Section **73-1-15** is amended to read:

125 **73-1-15. Obstructing canals or other watercourses -- Penalties.**

126 (1) (a) Whenever any person has a right-of-way of any established type or title for any  
 127 canal or other watercourse it shall be unlawful for any person to place or maintain in place any  
 128 obstruction, or change of the water flow by fence or otherwise, along or across or in such canal  
 129 or watercourse, except as where said watercourse inflicts damage to private property, without  
 130 first:

131 (i) receiving written permission for the change and providing gates sufficient for the  
 132 passage of the owner or owners of such canal or watercourse[-]; or

133 (ii) complying with the requirements of Section 73-1-15.5.

134 (b) That the vested rights in the established canals and watercourse shall be protected  
 135 against all encroachments.

136 (c) That indemnifying agreements may be entered as may be just and proper by  
 137 governmental agencies.

138 (2) Any person violating this section is guilty of a crime punishable under Section  
 139 73-2-27.

140 (3) Any person who commits an act defined as a crime under this section is also liable  
 141 for damages or other relief and costs in a civil action to any person injured by that act.

142 (4) (a) A civil action under this section may be brought independent of a criminal  
 143 action.

144 (b) Proof of the elements of a civil action under this section need only be made by a  
 145 preponderance of the evidence.

146 Section 3. Section **73-1-15.5** is enacted to read:

147 **73-1-15.5. Relocation of easements for a water conveyance facility -- Alteration of**  
 148 **a water conveyance facility.**

149 (1) As used in this section:

150 (a) "Facility owner" means an individual, entity, mutual water company, or  
 151 unincorporated organization ~~§~~ → :

151a (i) ~~←~~ ~~§~~ operating ~~§~~ → [or owning:] a water conveyance facility; ~~←~~ ~~§~~

152           ~~§~~→ [(ii)] **(ii) owning** ←~~§~~ any interest in a water conveyance facility; or  
 153           ~~§~~→ [(iii)] **(iii) having** ←~~§~~ a property interest in ~~§~~→ **[which]** real property based on the  
 153a **presence of** ←~~§~~ the water conveyance facility ~~§~~→ **[operates]** located and operating on the real  
 153b **property** ←~~§~~ .

154           (b) (i) "Water conveyance facility" means a ditch, canal, flume, pipeline, or other  
 155 watercourse used to convey water used for irrigation and any related easement for the ditch,  
 156 canal, flume, pipeline, or other watercourse.

157           (ii) "Water conveyance facility" does not mean a ditch, canal, flume, pipeline, or other  
 158 watercourse used to convey water used for culinary or industrial water or any federal water  
 159 project facility.

160           (2) Unless prohibited by the terms of a written grant of easement or an agreement for  
 161 which consideration was given, a property owner may make reasonable changes in the location  
 162 and method of delivery of a water conveyance facility located on the property owner's real  
 163 property after:

164           (a) having a licensed engineer:

165           (i) redesign the water conveyance facility, which may include relocating the water  
 166 conveyance facility to a new location on the property owner's real property or on the real  
 167 property of another person who consents to the relocation; and

168           (ii) certify that the engineered redesign of the water conveyance facility and method of  
 169 delivery meets the requirements of Subsection (4):

170           (b) providing the plans designed by the licensed engineer under Subsection (2)(a)(i) to  
 171 the facility owner;

172           (c) allowing the facility owner a reasonable time to review the plans designed by the  
 173 licensed engineer under Subsection (2)(a)(i), provide comments to the plans, and subject to  
 174 Subsection (3), require changes and approve the planned redesign before commencing the  
 175 modifications;

176           (d) allowing the facility owner to inspect the modified water conveyance facility during  
 177 construction of the modification and require reasonable changes if construction of the  
 178 modification is not occurring according to an approved redesign plan as required by Subsection  
 179 (3)(b); and

180           (e) providing the facility owner with the ability to reasonably access, operate, maintain,  
 181 and replace the modified water conveyance facility.

182           (3) A facility owner: