

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

2 (1) Whenever any person has a right-of-way of any established type or title for any canal  
3 or other watercourse it shall be unlawful for any person to place or maintain in place any  
4 obstruction, or change of the water flow by fence or otherwise, along or across or in such canal  
5 or watercourse, except as where said watercourse inflicts damage to private property, without  
6 first receiving written permission for the change and providing gates sufficient for the passage of  
7 the owner or owners of such canal or watercourse. That the vested rights in the established canals  
8 and watercourse shall be protected against all encroachments. That indemnifying agreements  
9 may be entered as may be just and proper by governmental agencies.

10 (2) Any person violating this section is guilty of a crime punishable under Section 73-2-  
11 27.

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

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

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

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19 **73-1-15.5 Relocation of Easements for Water Conveyance Facilities, Alteration of Water**  
20 **Conveyance Facilities**

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22 (1) Definitions:

23 (a) For purposes of this section, a water conveyance facility means a ditch, canal, flume,  
24 pipeline, or other water course used to convey water for primarily irrigation purposes.

25 (b) For purposes of this section, person means an individual, entity, mutual water company, or  
26 an unincorporated organization operating a water conveyance facility to deliver primarily irrigation  
27 water to water users.

28 (c) The burdened property owner is the owner of real property encumbered by an easement for  
29 a water conveyance facility of any established type or title.

30 (d) Easement means an encumbrance over real property owned by another, for a water  
31 conveyance facility regardless of how established and the type of title obtained by the easement owner,  
32 together with rights of ingress and egress for purposes of operation, maintenance, repair and  
33 replacement of the water conveyance facility.

34 (2) (a) Unless prohibited by the terms of a written grant of easement for which  
35 consideration has been given, the burdened property owner may relocate an easement for a water  
36 conveyance facility or alter the water conveyance facility only upon receipt of:

37 (i) The written consent of the easement owner; or,

38 (ii) Authorization of the court pursuant to a declaratory judgment in accordance with subsection 3. .

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**Commented [sc1]:** This is the existing language of 73-1-15. I think we need to keep this language to affirm the dominate nature of the canal or ditch easement, and because it addresses obstructing flows and blocking access, and acts as a deterrent to self-help. I suggest we then add a new section 73-1-15.5 to address relocation of canal easements or alteration of the canal with the easement owner's consent or by court order.

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40 (b) If the easement is relocated pursuant to a written agreement or a court decree, the  
41 easement owner will record an instrument that extinguishes the existing easement in exchange for a  
42 written grant of an easement for the relocated water conveyance facility by the burdened property  
43 owner.

44 (c) The newly granted easement shall be in a form mutually acceptable to the easement owner  
45 and the burdened property owner;

46 (d) The relocated water conveyance facility will be engineered, designed and constructed by the  
47 burdened property owner at its sole expense, in accordance with plans and specification approved by  
48 the easement owner or approved by the court in accordance with section (3) (b).

49 (e) The newly granted easement shall be recorded in the county in which the easement is  
50 located. The burdened property owner shall pay the recording fees for both the instrument that  
51 extinguishes the prior easement and the newly granted easement.

52 (f) If the water conveyance facility is altered but not relocated, the alteration will be accomplished at  
53 the sole expense of the burdened estate owner and in accordance with plans and specifications  
54 approved by the owner of the water conveyance facility or as approved by the court in accordance with  
55 section (3)(b). (3) If the easement owner will not agree to for the relocation of the easement or to the  
56 alteration of the water conveyance facility, the burdened property owner may:

57 (a) Request the owner of the easement to mediate the requested relocation of the easement or  
58 alteration of the water conveyance facility, which mediation may proceed either:

59 (i) With the Utah Property Rights Ombudsman pursuant to the Property Rights Ombudsman Act,  
60 in accordance with Section 13-43-101, \_\_\_\_\_, or

61 (ii) Through private mediation under the Utah Uniform Mediation Act, Section 78B-10-101.

62 (b) Alternatively, the burdened property owner may file a declaratory judgment action pursuant  
63 to Section 78B-6-401, against the owner of the easement in the district court where the easement is  
64 located.

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66 (c) If mediation is pursued, the mediation process shall be initiated by the burdened property  
67 owner making a written request to the easement owner to mediate the requested relocation of the  
68 easement or the alteration of the water conveyance facility.

69 (i) The easement owner must respond in writing to the written request for mediation within 15  
70 days of the receipt of the written request, either:

71 (A) Agreeing to mediate; or,

72 (B) Rejecting the request to mediate.

73 (C) Failure to respond to the written request to mediate within 15 days of the date of  
74 receipt shall be deemed a rejection of the request to mediate.

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- 75           ii) If the easement owner agrees to mediate, the mediation shall occur in accordance with  
76 Section 13-43-204 or Section 78B-10-101. The parties will share any expenses of mediation equally.
- 77           (d) The burdened property owner may file a declaratory judgment action against the easement  
78 owner if the easement owner:
- 79           (i) Rejects the request to mediate, or
- 80           (ii) If the parties mediate but are unable to reach an acceptable mediated resolution.
- 81           (iii) Mediation is not a precondition to filing a declaratory judgment action.
- 82 (4)
- 83           (a) In any such action for declaratory relief, the burdened property owner shall show by clear  
84 and convincing evidence that the proposed relocation of the easement or alteration of the water  
85 conveyance facility will not:
- 86           (i) Significantly lessen the utility of the easement to the easement owner;
- 87           (ii) Frustrate the purpose for which the easement was created;
- 88           (iii) Increase the easement owner's liability; or,
- 89           (iv) Increase any other burdens on the easement owner in its use and enjoyment of the  
90 easement.
- 91           (a) In determining whether the proposed easement relocation or alteration of the water  
92 conveyance facility will cause any of the consequences identified in subsection (a) (i) through (iv), the  
93 court may consider:
- 94           (i) whether the proposed relocation or alteration may effect the operation, maintenance,  
95 repair, access to, or replacement of the water conveyance facility;
- 96           (ii) whether the proposed relocation or alteration may present increased costs on the easement  
97 owner or its shareholders;
- 98           (iii) whether the proposed relocation or alteration may interfere with the easement holder's  
99 right or ability to manage and distribute water to shareholders;
- 100           (iv) whether the proposed relocation or alteration may impair the quantity or quality of water  
101 delivered to other shareholders;
- 102           (v) whether the proposed relocation or alteration presents a violation of statute, ordinance,  
103 regulation, or order of a court or government agency;
- 104           (vi) the cumulative effects of the proposed relocation or alteration on the easement owner and  
105 its shareholders as a whole; and
- 106           (vii) the deference afforded to the business judgment of the easement owner's officers and  
107 directors.
- 108 (5)

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109 (a) If the court finds that the proposed relocation of the easement or alteration of the water  
110 conveyance facility will cause any of the adverse impacts of section (4) (a), the court shall deny the  
111 request of the burdened property owner to relocate the easement or alter the water conveyance  
112 facility, unless the adverse impacts found by the court to exist may be satisfactorily mitigated in  
113 accordance with sound engineering practices.

114 (b) If the court finds that the proposed relocation of the easement or alteration of the water  
115 conveyance facility will not cause any of the adverse impacts of section (4) (a), the court may:

116 (i) Authorize the burdened property owner to relocate the easement to its proposed location;  
117 or,

118 (ii) Alter the water conveyance facility,

119 (c) Either the relocation of the easement or alteration of the water conveyance facility shall be  
120 accomplished:

121 (i) In accordance with engineering plans and specifications approved by the court; and,

122 (ii) At the burdened property owner's sole expense.

123 (d) If the court finds that the relocation of the easement or alteration of the water conveyance  
124 facility will cause the easement owner to incur an increase in costs of operation and maintenance of the  
125 easement or water conveyance facility, the court as a condition to authorizing the relocation of the  
126 easement or alteration of the water conveyance facility may:

127 (i) Require the burdened property owner to pay lump sum payment to the easement owner  
128 equal to 10 years of the increased costs of operation and maintenance that will be incurred by  
129 the easement owner; and,

130 (ii) The required payment shall be calculated as the time value of the reasonable increase in the  
131 annual costs of operation and maintenance of the relocated portion of the easement or altered water  
132 conveyance facility, for a period of up to 10 years, using the most recent costs of operation and  
133 maintenance incurred by the easement owner as the base year for purposes of the calculation. The 10  
134 years will run from the date of substantial completion of the relocation or alteration project as  
135 authorized by the court. (e) The court shall award costs and reasonable attorney's fees to the prevailing  
136 party.

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**Commented [sc2]:** Imposing this seems reasonable. Developers complete projects, sell and move on. HOA's often don't function, go bankrupt making it difficult for the easement owner to recover its increased costs. An upfront payment of 10 year's increased costs reasonably off-sets the increased maintenance burden on the easement owner.