

Amendments to House Bill No. 149
1st Reading Copy

Requested by Representative Pat Connell

For the House Agriculture Committee

Prepared by Joe Kolman
February 19, 2013 (8:35am)

1. Page 1, line 9.

Insert: "WHEREAS, inflexible notions of dominant and servient estates hamper the common-sense approach that competing uses of property between two interested owners should be accommodated where possible; and

WHEREAS, the Colorado Supreme Court recognizes that ditch easements are a property right that the burdened estate owner may not alter without consent of the ditch owner; however, there may be some circumstances in which an alteration would not harm the ditch owner but would greatly benefit the burdened estate owner; and

WHEREAS, in a ruling on secondary easements to maintain ditches, the Montana Supreme Court concluded that some permanent encroachments may not justify a finding of unreasonable interference."

2. Page 1, line 13.

Strike: "No"

Insert: "Except as provided in [section 2], no"

3. Page 1, line 15 through line 30.

Strike: subsection (3) through subsection (4) in their entirety

Renumber: subsequent subsections

4. Page 2, line 6.

Following: line 5

Insert: "NEW SECTION. **Section 2. Alteration of canal or ditch easements -- consent or court ruling required.** (1) A person who owns property where there is a canal or ditch easement who desires to relocate or alter the canal or ditch shall, in writing, seek consent from the owner of the canal or ditch prior to relocation or alteration.

(2) A canal or ditch may be relocated or altered if:

(a) the canal or ditch owner consents in writing; and

(b) the relocation or alteration would not violate a setback or separation requirement in regulations adopted under 50-2-116 or in rules adopted under 75-6-103 or 76-4-104.

(3) If a canal or ditch owner does not consent in writing to relocation or alteration of the canal or ditch, the property owner may seek a declaration from district court that the

relocation or alteration would not harm the canal or ditch owner or frustrate the purpose of the canal or ditch easement.

(4) In seeking a district court declaration, the property owner shall:

(a) agree to pay all costs of the relocation or alteration, as well as any costs associated with increased operation and maintenance of the canal or ditch due to the relocation or alteration;

(b) show that the relocation or alteration does would not violate a setback or separation requirement in regulations adopted under 50-2-116 or in rules adopted under 75-6-103 or 76-4-104;

(c) show that the utility of the canal or ditch would not be lessened, including assurance that the relocation or alteration:

(i) will not occur when the canal or ditch is being used to deliver water; and

(ii) does not create an impoundment of water or affect the delivery of the water, which includes the volume and timing of the delivery; and

(d) show that the canal or ditch owner would not incur additional, uncompensated burdens from the relocation or alteration.

(5) The canal or ditch owner shall demonstrate the actual damage the relocation or alteration would cause. If the court finds that actual damage would be caused, the court shall decline to permit the relocation or alteration. The court may award court costs and attorney fees to the canal or ditch owner for a finding under this subsection.

(6) If the canal or ditch owner does not demonstrate damages, the court may permit a specific relocation or alteration. A relocation or alteration under this section does not impair the primary or secondary easement of the canal or ditch in any other way."

Insert: "NEW SECTION. **Section 3. {standard} Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 70, chapter 17, part 1, and the provisions of Title 70, chapter 17, part 1, apply to [section 2]."

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