

Creek Lateral Irrigation Co. v. Davis, 17 Colo. 326, 29 P. 742 (1892).

This section is wholly inapplicable where both plaintiffs and defendants take the posi-

tion that a defendant's head ditch cannot be used for carrying waters to defendant's lands. Mott v. Coleman, 132 Colo. 306, 287 P.2d 655 (1955).

37-86-108. Incorporation of lateral ditch owners. Whenever the owners of sixty percent or more of the area of lands served by any one lateral ditch used for the delivery of water for irrigation from a common source organizes a corporation having for its object the taking over and owning of all of the interests of the incorporators in said lateral, said incorporators to receive shares of stock in said corporation for their holdings, the corporation as organized has power, under the eminent domain laws of the state of Colorado, to condemn the interest in said lateral belonging to the owners of the remaining forty percent or less of the lands so served by the lateral.

Source: L. 19: p. 505, § 1. C.L. § 1629. CSA: C. 90, § 12. CRS 53: § 147-3-7. C.R.S. 1963: § 148-3-7.

ANNOTATION

C.J.S. See 94 C.J.S., Waters, § 842.

A lateral ditch is a branch ditch which has its headgate in the main ditch and not in a natural watercourse. *New Multa Trina Ditch Co. v. Patch*, 123 Colo. 444, 230 P.2d 597 (1951).

Where the headgate of the ditch in question was located on the bank of a creek, not in

a ditch bank, and a water right had been adjudicated to the ditch and a priority number of appropriation assigned thereto, the ditch was not a lateral ditch as the term is employed in irrigation usage and in this section. *New Multa Trina Ditch Co. v. Patch*, 123 Colo. 444, 230 P.2d 597 (1951).

37-86-109. Consideration of incorporation benefits. In such condemnation proceedings, the court, jury, or commissioners having authority in the premises shall consider, as one of the elements of benefit accruing to the owners of the property so being condemned, the advantages accruing to said owner by reason of the organization of said corporation.

Source: L. 19: p. 505, § 2. C.L. § 1630. CSA: C. 90, § 13. CRS 53: § 147-3-8. C.R.S. 1963: § 148-3-8.

37-86-110. Payment of damages. It is lawful for such corporation to pay the damages, if any, assessed on account of the taking in such condemnation proceedings, in its own corporate stock at the same price per share paid therefor by the original incorporators, and the court, jury, or commissioners having authority in the premises, in arriving at the damage to be awarded, shall take into consideration the amount of stock which the original incorporators have received for their holdings.

Source: L. 19: p. 505, § 3. C.L. § 1631. CSA: C. 90, § 14. CRS 53: § 147-3-9. C.R.S. 1963: § 148-3-9.

37-86-111. Head of ditch may be extended upstream. In case the channel of any natural stream becomes so cut out, lowered, turned aside, or otherwise changed from any cause, as to prevent any ditch, canal, or feeder of any reservoir from receiving the proper inflow of water to which it may be entitled from such natural stream, the owners of such ditch, canal, or feeder have the right to extend the head of such ditch, canal, or feeder to such distance up the stream which supplies the same as may be necessary for securing a sufficient flow of water into the same. For that purpose they have the same right to maintain proceedings for condemnation of right-of-way for such extension as in case of constructing a new ditch. The priority of right to take water from such stream through such ditch, canal, or feeder as to any such ditch, canal, or feeder shall remain unaffected in any respect by reason of such extension; but no such extension shall interfere with the complete use or enjoyment of any ditch, canal, or feeder.

Source: L. 1881: p. 161, § 1. G.S. § 1719. R.S. 08: § 3173. C.L. § 1633. CSA: C. 90, § 16. CRS 53: § 147-3-11. C.R.S. 1963: § 148-3-11.

ANNOTATION

Rights to the use of water which depend for their existence upon a compliance with the requirements of the so-called map and state-ment statute, which has been held unconstitutional, cannot be enforced as against superior rights, notwithstanding the original appropriators of water relied upon the validity of the statute, and the rights of other appropriators of water in the same district have been adjudicated upon the assumption that the statute was valid. *Great Plains Water Co. v. Lamar Canal Co.*, 31 Colo. 96, 71 P. 1119 (1903).

Change of point of diversion must be without harm to others. Although the point of diversion may be changed in some instances, the statute provides an exclusive remedy, and the

change must be accomplished without harm to other appropriators. *Harvey v. Davis*, 655 P.2d 418 (Colo. 1982).

It is just as accurate to say of the extension of the right-of-way for a ditch that it has been made or enlarged, as to say that a ditch has been made or enlarged; for, as will be seen from this section, extending the right-of-way for a ditch by carrying the headgate farther up the stream necessarily involves the making of a ditch or other conduit for carrying water, that is, the extension is made by making a ditch, etc., and such extension may subsequently involve the enlarging of its capacity. *Lamar Canal Co. v. Amity Land & Irrigation Co.*, 26 Colo. 370, 58 P. 600 (1899).

37-86-112. Water to be prorated among consumers. If at any time any ditch or reservoir from which water is drawn for irrigation shall not be entitled to a full supply of water from the natural stream which supplies the same, the water actually received into and carried by such ditch, or held in such reservoir, shall be divided among all the consumers of water from such ditch or reservoir, as well as the owners, shareholders, or stockholders thereof, as the parties purchasing water therefrom and parties taking water partly under and by virtue of holding shares and partly by purchasing the same to each his share pro rata, according to the amount he is then entitled, so that all owners and purchasers shall suffer from the deficiency arising from the cause aforesaid each in proportion to the amount of water which he should have received in case no such deficiency of water had occurred.

Source: L. 1879: p. 97, § 4. G.S. § 1722. R.S. 08: § 3175. C.L. § 1635. CSA: C. 90, § 18. CRS 53: § 147-3-13. C.R.S. 1963: § 148-3-13.

ANNOTATION

C.J.S. See 94 C.J.S., Waters, §§ 888, 889.

This section provides for prorating the water actually received into and carried by any irrigating ditch, canal, or reservoir among all the consumers therefrom in time of scarcity, so that all such consumers shall suffer proportionately from the deficiency of water. *Farmers' High Line Canal & Reservoir Co. v. Southworth*, 13 Colo. 111, 21 P. 1028 (1889); *Larimer & Weld Irrigation Co. v. Wyatt*, 23 Colo. 480, 48 P. 528 (1897).

This section does not take away the consumer's right to water; it simply regulates the use of this right. *Farmers' High Line Canal & Reservoir Co. v. Southworth*, 13 Colo. 111, 21 P. 1028 (1889).

The consumer is allowed only his percentage of such proportion of the priority as is available. *Johnston v. Wanamaker Ditch Co.*, 95 Colo. 551, 38 P.2d 907 (1934).

Although in times of shortage these water owners may be best served by resorting to

rotation and sectionizing, but when necessity demands a resort to these expedients they are as applicable to him as to others. *Johnston v. Wanamaker Ditch Co.*, 95 Colo. 551, 38 P.2d 907 (1934).

The consumer is presumed to know that in times of scarcity his use may be subjected to two interruptions, viz.: First, that canals and ditches holding priorities antedating the diversion of his carrier may demand all the water in the natural stream, so that there will be none for him or any of his co-consumers; and second, that if there is water, but not the full quantity appropriated, he will be obliged to prorate with such co-consumers, and under these circumstances the consumer is hardly in position to resist the enforcement of the prorating statute or to assert that it operates harshly and unjustly upon him. *Farmers' High Line Canal & Reservoir Co. v. Southworth*, 13 Colo. 111, 21 P. 1028 (1889).