

**42-391. Refusal to furnish water upon tender of charges; penalty; rights of parties owning ditch or other works.** Every person, association or corporation owning or controlling, or claiming to own or control any ditch, canal or reservoir such as is mentioned in K.S.A. 42-389, any officer or agent of such association or corporation, who shall, after demand in writing made upon him for the carriage or delivery of water for irrigation, milling, sanitary or domestic purposes to be carried in or delivered from the ditch, canal or reservoir owned, possessed or controlled by him, and after tender of the lawful rate of compensation therefor in lawful money, refuse to furnish and deliver from such ditch, canal or reservoir any water so applied for, or carry therein any water the carriage whereof is so applied for, which water can or may be, by use of reasonable diligence in that behalf and within the carrying or storage capacity of such ditch, canal or reservoir, lawfully carried, furnished and delivered without infringement of prior rights, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five thousand dollars, or imprisonment for a term of not less than three months nor more than one year, or both such fine and imprisonment, in the discretion of the court: Provided, however, That when any person, association or corporation has heretofore constructed or shall hereafter construct any ditch, canal, conduit, reservoir or other works for the carrying or storage of waters in part for the irrigation of land belonging to such person or corporation, or for the enjoyment of such waters in part by such person or corporation for any other purpose whatsoever, and in part for the use of other persons or corporations, nothing herein contained shall be so construed as to require such person or corporation to yield up or deliver to others, or to suffer to be used by others, the water by him or it devoted to beneficial uses.

**History:** L. 1891, ch. 133, art. 8, § 3; May 20; R.S. 1923, 42-391.