

Superseded 5/12/2015

73-3-3.5 Application for a change of point of diversion, place of use, or purpose of use of water in a water company made by a shareholder.

- (1) As used in this section:
 - (a) "Shareholder" means the owner of a share of stock, or other evidence of stock ownership, that entitles the person to a proportionate share of water in a water company.
 - (b) "Water company" means any company, operating for profit or not for profit, in which a shareholder has the right to receive a proportionate share, based on that shareholder's ownership interest, of water delivered by the company.
- (2) A shareholder who seeks to change the point of diversion, place of use, or purpose of use of the shareholder's proportionate share of water in the water company shall submit a request for the change, in writing, to the water company. This request shall include the following information:
 - (a) the details of the requested change, which may include the point of diversion, period of use, place, or nature of use;
 - (b) the quantity of water sought to be changed;
 - (c) the certificate number of the stock affected by the change;
 - (d) a description of the land proposed to be retired from irrigation pursuant to Section 73-3-3, if the proposed change in place or nature of use of the water involves a situation where the water was previously used for irrigation;
 - (e) an agreement by the shareholder to continue to pay all applicable corporate assessments on the share affected by the change; and
 - (f) any other information that the water company may reasonably need to evaluate the requested change application.
- (3)
 - (a) A water company shall make a decision and provide written notice of that decision on a shareholder's request for a change application within 120 days from receipt of the request.
 - (b) Based on the facts and circumstances of each proposed change, a water company may take the following action:
 - (i) approve the change request;
 - (ii) approve the change request with conditions; or
 - (iii) deny the change request.
 - (c) If the water company fails to respond to a shareholder's request for a change application, pursuant to Subsection (3)(a), the failure to respond shall be considered to be a denial of the request.
 - (d) The water company may not withhold approval if any potential damage, liability, or impairment to the water company, or its shareholders, can be reasonably mitigated without cost to the water company.
 - (e) A water company may consider the following factors in evaluating change applications:
 - (i) any increased cost to the water company or its shareholders;
 - (ii) interference with the water company's ability to manage and distribute water for the benefit of all shareholders;
 - (iii) whether the proposed change represents more water than the shareholder's pro rata share of the water company's right;
 - (iv) impairment of either the quantity or quality of water delivered to other shareholders under the existing water rights of the water company, including rights to carrier water;
 - (v) whether the proposed change would cause a violation of any statute, ordinance, regulation, or order of a court or governmental agency;

- (vi) whether the shareholder has or can arrange for the beneficial use of water to be retired from irrigation within the water company's service under the proposed change; or
 - (vii) the cumulative effects that the approval of the change application may have on other shareholders or water company operations.
- (4) The water company may require that all costs associated with the change application, including costs of submitting proof, be paid by the shareholder.
- (5)
- (a) The shareholder requesting the change must be current on all water company assessments and agree to continue to pay all applicable future assessments, except that the shareholder may choose to prepay any portion of the water company assessments attributable to an existing debt of the water company.
 - (b) Other than prepaid assessments, the water company may require that the shareholder continue to pay all applicable assessments.
- (6) If the water company approves the requested change, with or without conditions, the change application may be filed with the state engineer, and must:
- (a) be signed on behalf of the water company; or
 - (b) be accompanied by written authorization from the water company assenting to the change.
- (7)
- (a) The state engineer may evaluate a change application authorized by a water company under this section in the same manner and using the same criteria that he or she uses to evaluate any other change application.
 - (b) Nothing in this section shall limit the authority of the state engineer in evaluating and processing any change application.
- (8) If an application authorized by a water company under this section is approved by the state engineer, the shareholder may file requests for extensions of time to submit proof of beneficial use under the change application without further permission of the water company.
- (9)
- (a) Change applications approved under this section are subject to all conditions imposed by the water company and the state engineer.
 - (b) If a shareholder fails to comply with all of the conditions imposed by the water company, the water company may, after written notice to the shareholder and after allowing reasonable time to remedy the failure, withdraw its approval of the application, and petition the state engineer for an order canceling the change application.
 - (c) The water company may not revoke its approval of the change application or seek an order canceling the application if the conditions are substantially satisfied.
- (10)
- (a) The shareholder requesting the change shall have a cause of action, including an award of actual damages incurred, against the water company if the water company:
 - (i) unreasonably withholds approval of a requested change;
 - (ii) imposes unreasonable conditions in its approval; or
 - (iii) withdraws approval of a change application in a manner other than as provided in Subsection (9).
 - (b) The action referred to in Subsection (10)(a) shall be referred to mediation by the court under Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act, unless both parties decline mediation.
 - (c) If mediation is declined, the prevailing party to the action shall be entitled to costs and reasonable attorney fees.