

Effective 5/12/2015

73-3-3 Permanent or temporary changes to a water right.

(1) For purposes of this section:

- (a) "Permanent change" means a change, for an indefinite period of time, to the:
 - (i) point of diversion;
 - (ii) place of use;
 - (iii) period of use;
 - (iv) nature of use; or
 - (v) storage of water.
- (b) "Person entitled to the use of water" means:
 - (i) the holder of an approved but unperfected application to appropriate water;
 - (ii) the record owner of a perfected water right;
 - (iii) a person who has written authorization from a person described in Subsection (1)(b)(i) or (ii) to file a change application on that person's behalf; or
 - (iv) a shareholder in a water company who is authorized to file a change application in accordance with Section 73-3-3.5.
- (c)
 - (i) "Quantity impairment" means any reduction in the amount of water a person is able to receive in order to satisfy an existing right to the use of water that would result from an action proposed in a change application, including:
 - (A) diminishing the quantity of water in the source of supply for the existing right;
 - (B) a change in the timing of availability of water from the source of supply for the existing right; or
 - (C) enlarging the quantity of water depleted by the nature of the proposed use when compared with the nature of the currently approved use.
 - (ii) "Quantity impairment" does not mean a decrease in the static level of water in an underground basin or aquifer that would result from an action proposed to be taken in a change application, if the volume of water necessary to satisfy an existing right otherwise remains reasonably available.
- (d) "Temporary change" means a change for a fixed period of time, not exceeding one year, to the:
 - (i) point of diversion;
 - (ii) place of use;
 - (iii) period of use;
 - (iv) nature of use; or
 - (v) storage of water.

(2)

- (a) A person who proposes to file a permanent or temporary change application may request consultation with the state engineer, or the state engineer's designee, before filing the application in order to review the requirements of the change application process, discuss potential issues related to the change, and provide the applicant with information.
- (b) Statements made and information presented in the consultation are not binding on the applicant or the state engineer.
- (c) The consultation described in Subsection (2)(a) may occur in the state engineer's regional office for the region where the proposed change would occur.

(3)

- (a) A person entitled to the use of water may make a permanent or temporary change to an existing right to use water, including a right involved in a general determination of rights or other suit, if:
 - (i) the person makes the change in accordance with this section;
 - (ii) except as provided by Section 73-3-30, the change does not impair an existing right without just compensation or adequate mitigation; and
 - (iii) the state engineer approves the change application, consistent with the requirements of Section 73-3-8.
- (b) A change application on a federal reclamation project water right shall be signed by:
 - (i) the local water users organization that is contractually responsible for:
 - (A) the operation and maintenance of the project; or
 - (B) the repayment of project costs; and
 - (ii) the record owner of the water right.
- (c) A change application on a United States Indian Irrigation Service water right that is serving the needs of a township or municipality shall be signed by:
 - (i) the local public water supplier that is responsible for the operation and maintenance of the public water supply system; and
 - (ii) the record owner of the water right.
- (4)
 - (a) Before making a permanent or temporary change, a person entitled to the use of water shall submit a change application upon forms furnished by the state engineer.
 - (b) The application described in Subsection (4)(a) shall include:
 - (i) the applicant's name;
 - (ii) the water right description, including the water right number;
 - (iii) the water quantity;
 - (iv) the stream or water source;
 - (v) if applicable, the point on the stream or water source where the water is diverted;
 - (vi) if applicable, the point to which it is proposed to change the diversion of the water;
 - (vii) the place, nature, period, and extent of the currently approved use;
 - (viii) the place, nature, period, and extent of the proposed use;
 - (ix) if the change applicant is submitting a change application in accordance with Section 73-3-3.5, the information required by Section 73-3-3.5;
 - (x) any proposed change to the storage of water; and
 - (xi) any other information that the state engineer requires.
 - (c) A shareholder in a water company who seeks to make a permanent or temporary change to a water right to which the water company is the record owner shall file a change application in accordance with Section 73-3-3.5.
- (5) In a proceeding before the state engineer, the applicant has the burden of producing evidence sufficient to support a reasonable belief that the change can be made in compliance with this section and Section 73-3-8, including evidence:
 - (a) that the change will not cause a specific existing right to experience quantity impairment; or
 - (b) if applicable, rebutting the presumption of quantity impairment described in Subsection 73-3-8(6)(c).
- (6) A change of an approved application to appropriate water does not:
 - (a) affect the priority of the original application to appropriate water; or
 - (b) extend the time period within which the construction of work is to begin or be completed.
- (7) Any person who makes a permanent or temporary change without first filing and obtaining approval of a change application providing for such change:

- (a) obtains no right by the change;
 - (b) is guilty of an offense punishable under Section 73-2-27 if the change is made knowingly or intentionally; and
 - (c) shall comply with the change application process.
- (8)
- (a) This section does not apply to the replacement of an existing well by a new well drilled within a radius of 150 feet from the point of diversion of the existing well.
 - (b) Any replacement well must be drilled in accordance with the requirements of Section 73-3-28.

Amended by Chapter 245, 2015 General Session

Amended by Chapter 249, 2015 General Session

Amended by Chapter 249, 2015 General Session, (Coordination Clause)

Amended by Chapter 251, 2015 General Session

Amended by Chapter 298, 2015 General Session