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WATER RIGHT TRANSFER AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Leonard M. Blackham

This act modifies the Water and Irrigation Code to allow an owner of shares of stock in a mutual water corporation to apply for a change in the point of diversion, place of use, or purpose of use of the water represented by the shares of stock.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

73-3-3, as last amended by Chapter 208, Laws of Utah 1992

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **73-3-3** is amended to read:

73-3-3. Permanent or temporary changes in point of diversion, place of use, or purpose of use.

(1) For purposes of this section:

(a) "Permanent changes" means changes for an indefinite length of time with an intent to relinquish the original point of diversion, place of use, or purpose of use.

(b) "Person entitled to the use of water" means:

(i) the owner of a water right evidenced by:

(A) a decree;

(B) a certificate of appropriation;

(C) a diligence claim to the use of surface or underground water;

(D) a water user's claim filed in general determination proceedings; or

(E) an approved application to appropriate water; or

(ii) the owner of a share of stock, or other evidence of ownership, that entitles the person to a proportionate share of water of a water corporation.

~~[(b)]~~ (c) "Temporary changes" means changes for fixed periods not exceeding one year.

(2) (a) Any person entitled to the use of water may make permanent or temporary changes in the:

(i) point of diversion;

(ii) place of use; or

(iii) purpose of use for which the water was originally appropriated.

(b) A change may not be made if it impairs any vested right without just compensation.

(3) Both permanent and temporary changes of point of diversion, place of use, or purpose of use of water, including water involved in general adjudication or other suits, shall be made in the manner provided in this section.

(4) (a) A change may not be made unless the change application is approved by the state engineer.

(b) Applications shall be made upon forms furnished by the state engineer and shall set forth:

(i) the name of the applicant;

(ii) a description of the water right;

(iii) the quantity of water;

(iv) the stream or source;

(v) the point on the stream or source where the water is diverted;

(vi) the point to which it is proposed to change the diversion of the water;

(vii) the place, purpose, and extent of the present use;

(viii) the place, purpose, and extent of the proposed use; and

(ix) any other information that the state engineer requires.

(5) (a) The state engineer shall follow the same procedures, and the rights and duties of the applicants with respect to applications for permanent changes of point of diversion, place of use, or purpose of use shall be the same, as provided in this title for applications to appropriate water.

(b) The state engineer may, in connection with applications for permanent change involving only a change in point of diversion of 660 feet or less, waive the necessity for publishing a notice of application.

(6) (a) The state engineer shall investigate all temporary change applications.

(b) If the state engineer finds that the temporary change will not impair any vested rights

59 of others, he shall issue an order authorizing the change.

60 (c) If the state engineer finds that the change sought might impair vested rights, before
61 authorizing the change, he shall give notice of the application to any person whose rights may be
62 affected by the change.

63 (d) Before making an investigation or giving notice, the state engineer may require the
64 applicant to deposit a sum of money sufficient to pay the expenses of the investigation and
65 publication of notice.

66 (7) (a) The state engineer may not reject applications for either permanent or temporary
67 changes for the sole reason that the change would impair the vested rights of others.

68 (b) If otherwise proper, permanent or temporary changes may be approved for part of the
69 water involved or upon the condition that conflicting rights are acquired.

70 (8) (a) Any person holding an approved application for the appropriation of water may
71 either permanently or temporarily change the point of diversion, place of use, or purpose of use.

72 (b) A change of an approved application does not:

73 (i) affect the priority of the original application; or

74 (ii) extend the time period within which the construction of work is to begin or be
75 completed.

76 (9) Any person who changes or who attempts to change a point of diversion, place of use,
77 or purpose of use, either permanently or temporarily, without first applying to the state engineer
78 in the manner provided in this section:

79 (a) obtains no right; and

80 (b) is guilty of a class B misdemeanor, each day of the unlawful change constituting a
81 separate offense, separately punishable.

82 (10) (a) This section does not apply to the replacement of an existing well by a new well
83 drilled within a radius of 150 feet from the point of diversion of the existing well.

84 (b) Any replacement well must be drilled in accordance with the requirements of Section
85 73-3-28.

86 (11) (a) In accordance with the requirements of this section, the Division of Wildlife
87 Resources or Division of Parks and Recreation may file applications for permanent or temporary
88 changes for the purpose of providing water for instream flows, within a designated section of a
89 natural stream channel or altered natural stream channel, necessary within the state of Utah for:

- 90 (i) the propagation of fish;
91 (ii) public recreation; or
92 (iii) the reasonable preservation or enhancement of the natural stream environment.

93 (b) Applications may be filed for changes on:

- 94 (i) perfected water rights presently owned by the respective division;
95 (ii) perfected water rights purchased by the respective division for the purpose of providing
96 water for instream flows, through funding provided for that purpose by legislative appropriation
97 or acquired by lease, agreement, gift, exchange, or contribution; or
98 (iii) appurtenant water rights acquired with the acquisition of real property by either
99 division.

100 (c) A physical structure or physical diversion from the stream is not required to implement
101 a change for instream flow use.

102 (d) this Subsection (11) does not allow enlargement of the water right sought to be
103 changed nor may the change impair any vested water right.

104 (e) In addition to the other requirements of this section, an application filed by either
105 division shall:

106 (i) set forth the legal description of the points on the stream between which the necessary
107 instream flows will be provided by the change; and

108 (ii) include appropriate studies, reports, or other information required by the state engineer
109 that demonstrate the necessity for the instream flows in the specified section of the stream and the
110 projected benefits to the public that will result from the change.

111 (f) The Division of Wildlife Resources and Division of Parks and Recreation may:

112 (i) purchase water rights for the purposes provided in Subsection (11)(a) only with funds
113 specifically appropriated by the Legislature for water rights purchases; or

114 (ii) accept a donated water right without legislative approval.

115 (g) this Subsection (11) does not authorize either division to:

116 (i) appropriate unappropriated water under Section 73-3-2 for the purpose of providing
117 instream flows; or

118 (ii) acquire water rights by eminent domain for instream flows or for any other purpose.

119 (h) this Subsection (11) applies only to change applications filed on or after April 28,
120 1986.

(12) (a) Sixty days before the date on which proof of change for instream flows under Subsection (11) is due, the state engineer shall notify the applicant by registered mail of the date when proof of change is due.

(b) Before the date when proof of change is due, the applicant must either:

(i) file a verified statement with the state engineer that the instream flow uses have been perfected, which shall set forth:

(A) the legal description of the points on the natural stream channel or altered natural stream channel between which the necessary instream flows have been provided;

(B) detailed measurements of the flow of water in second feet changed;

(C) the period of use; and

(D) any additional information required by the state engineer; or

(ii) apply for a further extension of time as provided for in Section 73-3-12.

(c) Upon approval of the verified statement required under Subsection (12)(b)(i), the state engineer shall issue a certificate of change for instream flow use.

(13) If the state engineer approves a permanent or temporary change in the point of diversion, place of use, or purpose of use of water represented by a share of stock in a mutual water corporation, the mutual water corporation may, pursuant to its articles of incorporation or bylaws, impose conditions on the change which are necessary to prevent:

(a) increased costs to the corporation; or

(b) interference with the corporation's ability to manage and distribute the water supply for the benefit of all its shareholders.

Legislative Review Note

as of 1-10-01 9:49 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel