

1 **WATER LAW - CRIMINAL PENALTIES**

2 **AMENDMENTS**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Ben C. Ferry**

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the criminal penalties for violations of various provisions of Title 73,
10 Water and Irrigation, and Title 76, Chapter 10, Offenses against Public Health, Safety,
11 Welfare, and Morals.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ removes criminal penalties from certain provisions requiring report to the state
15 engineer;
- 16 ▶ provides for graduated criminal penalties for violations of various criminal
17 provisions pertaining to the regulation and distribution of water; and
- 18 ▶ makes technical changes.

19 **Monies Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **73-1-14**, Utah Code Annotated 1953

26 **73-1-15**, as last amended by Chapter 156, Laws of Utah 1965

27 **73-2-20**, Utah Code Annotated 1953



- 28 73-3-3, as last amended by Chapter 136, Laws of Utah 2001
- 29 73-3-22, as last amended by Chapter 25, Laws of Utah 1987
- 30 73-3-25, as last amended by Chapter 191, Laws of Utah 2004
- 31 73-3-26, as last amended by Chapter 178, Laws of Utah 1986
- 32 73-3-29, as last amended by Chapter 61, Laws of Utah 1992
- 33 73-5-8, Utah Code Annotated 1953
- 34 73-5-9, Utah Code Annotated 1953
- 35 76-10-201, as enacted by Chapter 196, Laws of Utah 1973
- 36 76-10-202, as enacted by Chapter 196, Laws of Utah 1973
- 37 76-10-203, as enacted by Chapter 196, Laws of Utah 1973

38 ENACTS:

- 39 73-2-27, Utah Code Annotated 1953



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

42 Section 1. Section 73-1-14 is amended to read:

43 **73-1-14. Interfering with waterworks or with apportioning official -- Penalty and**
44 **liability.**

45 (1) Any person, who in any way unlawfully interferes with, injures, destroys or
46 removes any dam, head gate, weir, casing, valve, cap or other appliance for the diversion,
47 apportionment, measurement or regulation of water, or who interferes with any person
48 authorized to apportion water while in the discharge of his duties, is guilty of a [~~misdemeanor;~~
49 ~~and~~] crime punishable under Section 73-2-27.

50 (2) Any person who commits an act defined as a crime under this section is also liable
51 [~~in~~] in a civil action for damages or other relief to any person injured by [~~such unlawful act~~]
52 that act.

53 (3) (a) A civil action under this section may be brought independent of a criminal
54 action.

55 (b) Proof of the elements of a civil action under this section need only be made by a
56 preponderance of the evidence.

57 Section 2. Section 73-1-15 is amended to read:

58 **73-1-15. Obstructing canals or other watercourses -- Penalties.**

59 (1) Whenever any person, partnership, company, or corporation has a right-of-way of
 60 any established type or title for any canal or other watercourse it shall be unlawful for any
 61 person, persons, or governmental agencies to place or maintain in place any obstruction, or
 62 change of the water flow by fence or otherwise, along or across or in such canal or watercourse,
 63 except as where said watercourse inflicts damage to private property, without first receiving
 64 written permission for the change and providing gates sufficient for the passage of the owner or
 65 owners of such canal or watercourse. That the vested rights in the established canals and
 66 watercourse shall be protected against all encroachments. That indemnifying agreements may
 67 be entered as may be just and proper by governmental agencies.

68 (2) Any person, partnership, company, or corporation violating ~~[the provisions of]~~ this
 69 section is guilty of a ~~[misdemeanor and is subject to damages and costs]~~ crime punishable
 70 under Section 73-2-27.

71 (3) Any person who commits an act defined as a crime under this section is also liable
 72 for damages or other relief and costs in a civil action to any person injured by that act.

73 (4) (a) A civil action under this section may be brought independent of a criminal
 74 action.

75 (b) Proof of the elements of a civil action under this section need only be made by a
 76 preponderance of the evidence.

77 Section 3. Section **73-2-20** is amended to read:

78 **73-2-20. Employees authorized to enter and cross lands -- Injuring monuments a**
 79 **misdemeanor.**

80 (1) In order to carry out the purposes of this ~~[act]~~ title any person ~~[or persons]~~ properly
 81 employed hereunder ~~[are]~~ is authorized to enter and cross all lands within the state~~;~~ ; ~~provided,~~
 82 ~~that in so doing]~~ if no damage is done to private property.

83 (2) It ~~[shall be]~~ is a ~~[misdemeanor]~~ crime punishable under Section 73-2-27 for any
 84 person ~~[or persons]~~ to willfully and maliciously ~~[to]~~ remove or injure any equipment,
 85 permanent marks, or monuments made or installed ~~[for the purpose of carrying on these~~
 86 ~~investigations]~~ by any person properly employed under this title.

87 Section 4. Section **73-2-27** is enacted to read:

88 **73-2-27. Criminal Penalties.**

89 (1) This section applies to offenses committed under:

90 (a) Section 73-1-14;

91 (b) Section 73-1-15;

92 (c) Section 73-2-20;

93 (d) Subsection 73-3-3(9);

94 (e) Section 73-3-25;

95 (f) Section 73-3-26;

96 (g) Section 73-3-29;

97 (h) Section 73-5-9;

98 (i) Section 76-10-201;

99 (j) Section 76-10-202; and

100 (k) Section 76-10-203.

101 (2) Violation of a provision listed in Subsection (1) is punishable:

102 (a) as a felony of the third degree if:

103 (i) the value of the water diverted or property damaged or taken is \$2,500 or greater;

104 and

105 (ii) the person violating the provision has previously been convicted of a provision

106 listed in Subsection (1);

107 (b) as a class A misdemeanor if:

108 (i) the value of the water diverted or property damaged or taken is \$2,500 or greater; or

109 (ii) the person violating the provision has previously been convicted of a provision

110 listed in Subsection (1); or

111 (c) as a class B misdemeanor if Subsection (2)(a) or (b) do not apply.

112 Section 5. Section **73-3-3** is amended to read:

113 **73-3-3. Permanent or temporary changes in point of diversion, place of use, or**

114 **purpose of use.**

115 (1) For purposes of this section:

116 (a) "Permanent changes" means changes for an indefinite length of time with an intent

117 to relinquish the original point of diversion, place of use, or purpose of use.

118 (b) "Temporary changes" means changes for fixed periods not exceeding one year.

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

120 changes in the:

- 121 (i) point of diversion;
122 (ii) place of use; or
123 (iii) purpose of use for which the water was originally appropriated.
- 124 (b) A change may not be made if it impairs any vested right without just compensation.
- 125 (3) Both permanent and temporary changes of point of diversion, place of use, or
126 purpose of use of water, including water involved in general adjudication or other suits, shall
127 be made in the manner provided in this section.
- 128 (4) (a) A change may not be made unless the change application is approved by the
129 state engineer.
- 130 (b) Applications shall be made upon forms furnished by the state engineer and shall set
131 forth:
- 132 (i) the name of the applicant;
133 (ii) a description of the water right;
134 (iii) the quantity of water;
135 (iv) the stream or source;
136 (v) the point on the stream or source where the water is diverted;
137 (vi) the point to which it is proposed to change the diversion of the water;
138 (vii) the place, purpose, and extent of the present use;
139 (viii) the place, purpose, and extent of the proposed use; and
140 (ix) any other information that the state engineer requires.
- 141 (5) (a) The state engineer shall follow the same procedures, and the rights and duties of
142 the applicants with respect to applications for permanent changes of point of diversion, place of
143 use, or purpose of use shall be the same, as provided in this title for applications to appropriate
144 water.
- 145 (b) The state engineer may, in connection with applications for permanent change
146 involving only a change in point of diversion of 660 feet or less, waive the necessity for
147 publishing a notice of application.
- 148 (6) (a) The state engineer shall investigate all temporary change applications.
- 149 (b) If the state engineer finds that the temporary change will not impair any vested
150 rights of others, he shall issue an order authorizing the change.
- 151 (c) If the state engineer finds that the change sought might impair vested rights, before

152 authorizing the change, he shall give notice of the application to any person whose rights may
153 be affected by the change.

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

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

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

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

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

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

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

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

171 (a) obtains no right; ~~[and]~~

172 (b) is guilty of a ~~[class B misdemeanor,]~~ crime punishable under Section 73-2-27; and

173 (c) is guilty of a separately punishable offense for each day of the unlawful change
174 ~~[constituting a separate offense, separately punishable].~~

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

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

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

183 [~~of Utah~~] for:

- 184 (i) the propagation of fish;
185 (ii) public recreation; or
186 (iii) the reasonable preservation or enhancement of the natural stream environment.

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

- 188 (i) perfected water rights presently owned by the respective division;
189 (ii) perfected water rights purchased by the respective division for the purpose of
190 providing water for instream flows, through funding provided for that purpose by legislative
191 appropriation or acquired by lease, agreement, gift, exchange, or contribution; or
192 (iii) appurtenant water rights acquired with the acquisition of real property by either
193 division.

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

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

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

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

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

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

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

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

209 (g) This Subsection (11) does not authorize either division to:

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

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

214 (h) This Subsection (11) applies only to change applications filed on or after April 28,
215 1986.

216 (12) (a) Sixty days before the date on which proof of change for instream flows under
217 Subsection (11) is due, the state engineer shall notify the applicant by registered mail or by any
218 form of electronic communication through which receipt is verifiable of the date when proof of
219 change is due.

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

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

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

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

226 (C) the period of use; and

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

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

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

231 Section 6. Section **73-3-22** is amended to read:

232 **73-3-22. Underground water -- Report of well and tunnel drillers.**

233 [(+) Any person constructing a well or tunnel for the purpose of utilizing or
234 monitoring underground waters shall, within 30 days after the completion or abandonment of
235 the construction, report to the state engineer data relating to each well or tunnel. The report
236 shall be made on forms furnished by the state engineer and shall contain information required
237 by the state engineer.

238 [~~2) Any person who fails to comply with the provisions of this section is guilty of a~~
239 ~~class B misdemeanor.~~]

240 Section 7. Section **73-3-25** is amended to read:

241 **73-3-25. Well driller's license -- Bond -- Revocation or suspension for**
242 **noncompliance.**

243 (1) (a) Every person that constructs a well in the state shall obtain a license from the
244 state engineer.

245 (b) The state engineer shall enact rules defining the form, the expiration date, and the
246 renewal cycle of the application for a license.

247 (c) Well drillers' licenses are not transferable. The state engineer shall enact rules for
248 well construction according to the procedures and requirements of Title 63, Chapter 46a, Utah
249 Administrative Rulemaking Act.

250 (2) (a) (i) A person who constructs a well in this state must first obtain a license as
251 provided in this section.

252 (ii) Before a well driller's license will be issued, the applicant must file a well driller
253 bond with the state engineer.

254 (iii) The bond shall be made payable to the Office of the State Engineer.

255 (iv) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
256 the state engineer may make rules to set the amount, form, and general administrative
257 requirements of a well driller bond. Proper compliance with the provisions of this section and
258 the rules enacted under the authority of this section are required to obtain or renew a license.

259 (b) (i) Well drillers shall comply with the rules enacted by the state engineer under this
260 chapter.

261 (ii) If the state engineer determines, following an investigation, that the licensee has
262 failed to comply with these rules, the state engineer may revoke or suspend the license, and
263 exact the bond and deposit the money as a nonlapsing dedicated credit.

264 (iii) The state engineer may expend the funds to investigate or correct any deficiencies
265 which could adversely affect the public interest resulting from noncompliance with the rules
266 promulgated under this chapter by any well driller.

267 (iv) The state engineer may refuse to issue a license to a well driller if it appears that
268 there has been a violation of the rules or a failure to comply with Section 73-3-22.

269 (c) A person who violates this section is guilty of a crime punishable under Section
270 73-2-27.

271 Section 8. Section **73-3-26** is amended to read:

272 **73-3-26. Violations -- Penalty.**

273 (1) Any person[~~, firm, copartnership, association, or corporation~~] drilling a well or
274 wells in the state or who advertises or holds himself or itself out as a well driller, or who
275 follows such business, without first having obtained a permit as provided by this act or who

276 drills a well or wells after revocation or expiration of his permit theretofore issued, or who
277 drills a well or wells in violation of the rules and regulations is guilty of a [~~class-B~~
278 ~~misdemeanor~~] crime punishable under Section 73-2-27.

279 (2) Each day that a violation under Subsection (1) continues is a separate offense.

280 Section 9. Section **73-3-29** is amended to read:

281 **73-3-29. Relocation of natural streams -- Written permit required -- Emergency**
282 **work -- Violations.**

283 (1) Except as provided in Subsection (2), a state agency, county, city, corporation, or
284 person may not relocate any natural stream channel or alter the beds and banks of any natural
285 stream without first obtaining the written approval of the state engineer.

286 (2) (a) The state engineer may issue an emergency permit or order to relocate a natural
287 stream channel or alter the beds and banks of a natural stream as provided by this Subsection
288 (2) and Section 63-46b-20.

289 (b) If an emergency situation arises which involves immediate or actual flooding and
290 threatens injury or damage to persons or property, steps reasonably necessary to alleviate or
291 mitigate the threat may be taken before a written permit is issued subject to the requirements of
292 this section.

293 (c) (i) If the threat occurs during normal working hours, the state engineer or his
294 representative must be notified immediately of the threat. After receiving notification of the
295 threat, the state engineer or his representative may orally approve action to alleviate or mitigate
296 the threat.

297 (ii) If the threat does not occur during normal working hours, action may be taken to
298 alleviate or mitigate the threat and the state engineer or his representative shall be notified of
299 the action taken on the first working day following the work.

300 (d) A written application outlining the action taken or the action proposed to be taken
301 to alleviate or mitigate the threat shall be submitted to the state engineer within two working
302 days following notification of the threat to the state engineer or his representative.

303 (e) (i) The state engineer shall inspect in a timely manner the site where the emergency
304 action was taken.

305 (ii) After inspection, additional requirements, including mitigation measures, may be
306 imposed.

307 (f) Adjudicative proceedings following the emergency work shall be informal unless
308 otherwise designated by the state engineer.

309 (3) An application to relocate any natural stream channel or alter the beds and banks of
310 any natural stream shall be in writing and shall contain the following:

311 (a) the name and address of the applicant;

312 (b) a complete and detailed statement of the location, nature, and type of relocation or
313 alteration;

314 (c) the methods to be employed;

315 (d) the purposes of the application; and

316 (e) any additional information that the state engineer considers necessary, including,
317 but not limited to, plans and specifications of the proposed construction of works.

318 (4) (a) The state engineer shall, without undue delay, conduct investigations that may
319 be reasonably necessary to determine whether the proposed relocation or alteration will:

320 (i) impair vested water rights;

321 (ii) unreasonably or unnecessarily affect any recreational use or the natural stream
322 environment;

323 (iii) unreasonably or unnecessarily endanger aquatic wildlife; or

324 (iv) unreasonably or unnecessarily diminish the natural channel's ability to conduct
325 high flows.

326 (b) The application shall be approved unless the proposed relocation or alteration will:

327 (i) impair vested water rights;

328 (ii) unreasonably or unnecessarily adversely affect any public recreational use or the
329 natural stream environment;

330 (iii) unreasonably or unnecessarily endanger aquatic wildlife; or

331 (iv) unreasonably or unnecessarily diminish the natural channel's ability to conduct
332 high flows.

333 (c) The state engineer may approve the application, in whole or in part, with any
334 reasonable terms to protect vested water rights, any public recreational use, the natural stream
335 environment, or aquatic wildlife.

336 (5) No cost incurred by the applicant, including any cost incurred to comply with the
337 terms imposed by the state engineer, is reimbursable by the Division of Water Rights.

338 (6) Any officer or employee of any state agency, county, city, or corporation, or any
339 other person who violates the provisions of this section is guilty of a [~~class B misdemeanor~~
340 crime punishable under Section 73-2-27].

341 Section 10. Section **73-5-8** is amended to read:

342 **73-5-8. Reports by users to engineer.**

343 Every person using water from any river system or water source, when requested by the
344 state engineer [~~for any season~~], shall within [~~thirty~~] 30 days after such request report to the state
345 engineer in writing:

346 (1) the nature of the use of any such water[;];

347 (2) the area on which used [~~and~~];

348 (3) the kind of crops to be grown; and [~~he shall likewise, upon such request, furnish~~
349 ~~statements of~~]

350 (4) water elevations on wells or tunnels and quantity of underground water used.

351 [~~Failure to comply with the provisions of this section shall constitute a misdemeanor.~~]

352 Section 11. Section **73-5-9** is amended to read:

353 **73-5-9. Powers of state engineer as to waste, pollution, or contamination of**
354 **waters.**

355 (1) To prevent waste, loss, pollution, or contamination of any waters whether above or
356 below the ground, the state engineer may require the repair or construction of head gates or
357 other devices on ditches or canals, and the repair or installation of caps, valves, or casings on
358 any well or tunnel or the plugging or filling thereof to accomplish the purposes of this section.

359 (2) Any requirement made by the state engineer in accordance with this section shall be
360 executed by and at the cost and expense of the owner, lessee or person having control of such
361 diverting works affected.

362 (3) If within ten days after notice of such requirement as provided in this section, the
363 owner, lessee or person having control of the water affected, has not commenced to carry out
364 such requirement, or if he has commenced to comply therewith but shall not thereafter proceed
365 diligently to complete the work, the state engineer may forbid the use of water from such
366 source until the user thereof shall comply with such requirement.

367 (4) Failure to comply with any requirement made by the state engineer [~~in accordance~~
368 ~~with the provisions of~~] under this section [~~shall constitute a misdemeanor~~] is a crime

369 punishable under Section 73-2-27.

370 (5) Each day that such violation is permitted to continue shall constitute a separate
371 offense.

372 Section 12. Section **76-10-201** is amended to read:

373 **76-10-201. Interference with water flow.**

374 Every person who in any way interferes with or alters the flow of water in any stream,
375 ditch, or lateral while under the control or management of any water commissioner is guilty of
376 a [~~class B misdemeanor~~] crime punishable under Section 73-2-27.

377 Section 13. Section **76-10-202** is amended to read:

378 **76-10-202. Taking water out of turn or excess amount -- Damaging facilities.**

379 (1) [~~Every person who~~] No person may, in violation of any right of any other person[;]:

380 (a) willfully [~~turns~~] turn or [~~uses~~] use the water, or any part thereof, of any canal, ditch,
381 pipeline, or reservoir, except at a time when the use of the water has been duly distributed to
382 the person[; ~~or~~];

383 (b) willfully [~~uses~~] use any greater quantity of the water than has been duly distributed
384 to him[; ~~or~~];

385 (c) in any way [~~changes~~] change the flow of water when lawfully distributed for
386 irrigation or other useful purposes, except when duly authorized to make the change[;]; or

387 (d) willfully and maliciously [~~breaks~~] break or [~~injures~~] injure any dam, canal, pipeline,
388 watergate, ditch, or other means of diverting or conveying water for irrigation or other useful
389 purposes[;].

390 (2) Any person who violates this section is guilty of a [~~class B misdemeanor~~] crime
391 punishable under Section 73-2-27.

392 Section 14. Section **76-10-203** is amended to read:

393 **76-10-203. Obstruction of watergates.**

394 Every person who rafts or floats logs, timber, or wood down any river or stream and
395 allows the logs, timber, or wood to accumulate at or obstruct the watergates owned by any
396 person or irrigation company taking or diverting the water of the river or stream for irrigation
397 or manufacturing purposes is guilty of a [~~class B misdemeanor~~] crime punishable under Section
398 73-2-27.

Legislative Review Note

as of 12-14-04 3:40 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Legislative Committee Note

as of 12-15-04 8:32 AM

The Water Issues Task Force recommended this bill.

Fiscal Note
Bill Number HB0038

Water Law-Criminal Penalties Amendments

24-Jan-05

11:08 AM

State Impact

The implementation of this bill will require .5 FTE Engineer.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
General Fund	\$40,000	\$40,000	\$0	\$0
TOTAL	\$40,000	\$40,000	\$0	\$0

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst