

WATER RIGHTS REVISIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kerry W. Gibson

Senate Sponsor: Ralph Okerlund

LONG TITLE

General Description:

This bill allows the state engineer to limit the approval of a change application for a water right to the amount of water that has been previously put to use.

Highlighted Provisions:

This bill:

- ▶ allows the state engineer to limit the approval of a change application for a water right to an amount less than the original water right if the use of water under that right has been in a quantity smaller than the original right allowed; and

- ▶ prevents the state engineer from limiting the quantity of water approved for a change if the reason for the nonuse of that quantity of water is protected from forfeiture or abandonment provisions.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-3-3, as last amended by Laws of Utah 2008, Chapter 311

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



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

29 **73-3-3. Permanent or temporary changes in point of diversion, place of use, or**
 30 **purpose of use.**

31 (1) For purposes of this section:

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

34 (b) "Temporary change" means a change for a fixed period of time not exceeding one
 35 year.

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

38 (i) point of diversion;

39 (ii) place of use; or

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

41 (b) Except as provided by Section 73-3-30, a change may not be made if it impairs a
 42 vested water right without just compensation.

43 (c) (i) In a change application proceeding, in order to prevent impairment of other
 44 water rights, the state engineer may review the use of water under the water right proposed to
 45 be changed and limit approval of the proposed change to the quantity of water determined to
 46 have been reasonably applied to beneficial use.

47 (ii) In making a determination under Subsection (2)(c)(i), the state engineer shall

48 **H→ [consider water to have been reasonably applied to beneficial use if the lack of use is protected**
 49 **from abandonment or forfeiture by Section 73-1-4 or otherwise excused by law:] :**

49a **(A) presume that the water right has been used to its full extent;**

49b **(B) consider the water right to have been used to its full extent if beneficial use is not**
 49c **required by Section 73-1-4 or otherwise excused by law; and**

49d **(C) not consider any unapproved quantity of water in connection with the change**
 49e **application proceeding to be forfeited or abandoned.**

49f **(iii) Any quantity of water not approved in connection with a change application**
 49g **proceeding remains valid for use in accordance with the previously approved water right. ←H**

50 (3) A person entitled to use water shall change a point of diversion, place of use, or
 51 purpose of water use, including water involved in a general adjudication or other suit, in the
 52 manner provided in this section.

53 (4) (a) A person entitled to use water may not make a change unless the state engineer
 54 approves the change application.

55 (b) A person entitled to use water shall submit a change application upon forms
56 furnished by the state engineer and shall set forth:
57 (i) the applicant's name;
58 (ii) the water right description;

- 59 (iii) the water quantity;
- 60 (iv) the stream or water source;
- 61 (v) if applicable, the point on the stream or water source where the water is diverted;
- 62 (vi) if applicable, the point to which it is proposed to change the diversion of the water;
- 63 (vii) the place, purpose, and extent of the present use;
- 64 (viii) the place, purpose, and extent of the proposed use; and
- 65 (ix) any other information that the state engineer requires.

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

70 (b) The state engineer may waive notice for a permanent change application involving
71 only a change in point of diversion of 660 feet or less.

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

73 (b) If the state engineer finds that the temporary change will not impair a vested water
74 right, the state engineer shall issue an order authorizing the change.

75 (c) If the state engineer finds that the change sought might impair a vested water right,
76 before authorizing the change, the state engineer shall give notice of the application to any
77 person whose right may be affected by the change.

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

81 (7) (a) Except as provided by Section 73-3-30, the state engineer may not reject a
82 permanent or temporary change application for the sole reason that the change would impair a
83 vested water right.

84 (b) If otherwise proper, the state engineer may approve a permanent or temporary
85 change application for part of the water involved or upon the condition that the applicant
86 acquire the conflicting water right.

87 (8) (a) A person holding an approved application for the appropriation of water may
88 change the point of diversion, place of use, or purpose of use.

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

- 90 (i) affect the priority of the original application; or
91 (ii) extend the time period within which the construction of work is to begin or be
92 completed.
- 93 (9) Any person who changes or who attempts to change a point of diversion, place of
94 use, or purpose of use, either permanently or temporarily, without first applying to the state
95 engineer in the manner provided in this section:
- 96 (a) obtains no right;
97 (b) is guilty of a crime punishable under Section 73-2-27 if the change or attempted
98 change is made knowingly or intentionally; and
99 (c) is guilty of a separately punishable offense for each day of the unlawful change.
- 100 (10) (a) This section does not apply to the replacement of an existing well by a new
101 well drilled within a radius of 150 feet from the point of diversion of the existing well.
102 (b) Any replacement well must be drilled in accordance with the requirements of
103 Section 73-3-28.

Legislative Review Note
as of 2-16-10 11:38 AM

Office of Legislative Research and General Counsel

H.B. 171 - Water Rights Revisions

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
