

HB0187S02 compared with HB0187

{Omitted text} shows text that was in HB0187 but was omitted in HB0187S02

inserted text shows text that was not in HB0187 but was inserted into HB0187S02

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1

Water Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Colin W. Jack

Senate Sponsor:Don L. Ipson

2

LONG TITLE

3

General Description:

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This bill addresses water in the lower basin as defined by the Colorado River Compact.

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Highlighted Provisions:

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This bill:

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▶ exempts from provisions related to abandonment or forfeiture for nonuse certain water rights of a water conservancy district that are related to the lower basin;

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▶ prohibits certain instream flow change applications related to the lower basin; {and}

9

▶ provides a coordination clause between this bill and H.B. 348, Dedicated Water

Amendments, to include dedicated water applications in certain prohibitions of instream flow applications related to the lower basin; and

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▶ makes technical and conforming amendments.

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Money Appropriated in this Bill:

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None

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Other Special Clauses:

14

This bill provides coordination clauses.

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19 **Utah Code Sections Affected:**

20 AMENDS:

21 **73-1-4 (Effective 05/06/26) (Partially Repealed 12/31/30)**, as last amended by Laws of Utah
2024, Chapter 233

23 **73-3-30 (Effective 05/06/26)**, as last amended by Laws of Utah 2023, Chapters 34, 253

24 **Utah Code Sections affected by Coordination Clause:**

25 **73-3-30 (05/06/26)** , as last amended by Laws of Utah 2023, Chapters 34, 253

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

28 Section 1. Section **73-1-4** is amended to read:

29 **73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within seven years**

30 **-- Saved water -- Nonuse application.**

31 (1) As used in this section:

32 (a) "Lower basin" means the same as that term is defined in Section 73-12a-2.

33 (b) "Public entity" means:

34 (i) the United States;

35 (ii) an agency of the United States;

36 (iii) the state;

37 (iv) a state agency;

38 (v) a political subdivision of the state; or

39 (vi) an agency of a political subdivision of the state.

40 [t~~b~~] (c) "Public water supplier" means an entity that:

41 (i) supplies water, directly or indirectly, to the public for municipal, domestic, or industrial use; and

42 (ii) is:

43 (A) a public entity;

44 (B) a water corporation, as defined in Section 54-2-1, that is regulated by the Public Service
45 Commission;

46 (C) a community water system:

47 (I) that:

48 (Aa) supplies water to at least 100 service connections used by year-round residents; or

49 (Bb) regularly serves at least 200 year-round residents; and

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48 (II) whose voting members:

49 (Aa) own a share in the community water system;

50 (Bb) receive water from the community water system in proportion to the member's share in the
community water system; and

52 (Cc) pay the rate set by the community water system based on the water the member receives; or

54 (D) a water users association:

55 (I) in which one or more public entities own at least 70% of the outstanding shares; and

57 (II) that is a local sponsor of a water project constructed by the United States Bureau of Reclamation.

59 [~~e~~] d "Saved water" means the same as that term is defined in Section 73-3-3.

60 [~~d~~] e "Shareholder" means the same as that term is defined in Section 73-3-3.5.

61 [~~e~~] f "Water company" means the same as that term is defined in Section 73-3-3.5.

62 (g) "Water conservancy district" means the same as that term is defined in Section 73-10-32.

64 [~~f~~] h "Water supply entity" means an entity that supplies water as a utility service or for irrigation
purposes and is also:

66 (i) a municipality, water conservancy district, metropolitan water district, irrigation district, or other
public agency;

68 (ii) a water company regulated by the Public Service Commission; or

69 (iii) any other owner of a community water system.

70 (2)

75 (a) Except as provided in Subsection (2)(b) or (e), when an appropriator or the appropriator's successor
in interest abandons or ceases to beneficially use all or a portion of a water right for a period of at
least seven years, the water right or the unused portion of that water right is subject to forfeiture in
accordance with Subsection (2)(c).

77 (b)

79 (i) An appropriator or the appropriator's successor in interest may file an application for nonuse with the
state engineer.

81 (ii) A nonuse application may be filed on all or a portion of the water right, including water rights held
by a water company.

83 (iii) After giving written notice to the water company, a shareholder may file a nonuse application with
the state engineer on the water represented by the stock.

85 (iv)

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- (A) The approval of a nonuse application excuses the requirement of beneficial use of water from the date of filing.
- 83 (B) The time during which an approved nonuse application is in effect does not count toward the seven-year period described in Subsection (2)(a).
- 85 (v) The filing or approval of a nonuse application or a series of nonuse applications under Subsection (3) does not:
 - 87 (A) constitute beneficial use of a water right;
 - 88 (B) protect a water right that is already subject to forfeiture under this section; or
 - 89 (C) bar a water right owner from:
 - 90 (I) using the water under the water right as permitted under the water right; or
 - 91 (II) claiming the benefit of Subsection (2)(e) or any other forfeiture defense provided by law.
 - 93 (c)
 - (i) Except as provided in Subsection (2)(c)(ii), a water right or a portion of the water right may not be forfeited unless a judicial action to declare the right forfeited is commenced:
 - 96 (A) within 15 years from the end of the latest period of nonuse of at least seven years; or
 - 98 (B) within the combined time of 15 years from the end of the most recent period of nonuse of at least seven years and the time the water right was subject to one or more nonuse applications.
 - 101 (ii)
 - (A) The state engineer, in a proposed determination of rights filed with the court and prepared in accordance with Section 73-4-11, may not assert that a water right was forfeited unless the most recent period of nonuse of seven years ends or occurs:
 - 105 (I) during the 15 years immediately preceding the day on which the state engineer files the proposed determination of rights with the court; or
 - 107 (II) during the combined time immediately preceding the day on which the state engineer files the proposed determination of rights consisting of 15 years and the time the water right was subject to one or more approved nonuse applications.
 - 111 (B) After the day on which a proposed determination of rights is filed with the court a person may not assert that a water right subject to that determination was forfeited before the issuance of the proposed determination, unless the state engineer asserts forfeiture in the proposed determination, or a person, in accordance with Section 73-4-11, makes an objection to the proposed determination that asserts forfeiture.

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117 (iii) A water right, found to be valid in a decree entered in an action for general determination of rights under Chapter 4, Determination of Water Rights, is subject to a claim of forfeiture based on a seven-year period of nonuse that begins after the day on which the state engineer filed the related proposed determination of rights with the court, unless the decree provides otherwise.

122 (iv) If in a judicial action a court declares a water right forfeited, on the date on which the water right is forfeited:

124 (A) the right to beneficially use the water reverts to the public; and

125 (B) the water made available by the forfeiture:

126 (I) first, satisfies other water rights in the hydrologic system in order of priority date; and

128 (II) second, may be appropriated as provided in this title.

129 (d) Except as provided in Subsection (2)(e), this section applies whether the unused or abandoned water or a portion of the water is:

131 (i) permitted to run to waste; or

132 (ii) beneficially used by others without right with the knowledge of the water right holder.

134 (e) This section does not apply to:

135 (i) the beneficial use of water according to a written, terminable lease or other agreement with the appropriator or the appropriator's successor in interest;

137 (ii) a water right if [its] the water right's place of use is contracted under an approved state agreement or federal conservation fallowing program;

139 (iii) those periods of time when a surface water or groundwater source fails to yield sufficient water to satisfy the water right;

141 (iv) a water right when water is unavailable because of the water right's priority date;

142 (v) a water right to store water in a surface reservoir, or an aquifer in accordance with Chapter 3b, Groundwater Recharge and Recovery Act, if the water is stored for present or future beneficial use;

145 (vi) a water right if a water user has beneficially used substantially all of the water right within a seven-year period, provided that this exemption does not apply to the adjudication of a water right in a general determination of water rights under Chapter 4, Determination of Water Rights;

149 (vii) except as provided by Subsection (2)(g), a water right:

150 (A) (I) owned by a public water supplier;

151 (II) represented by a public water supplier's ownership interest in a water company; or

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153 (III) to which a public water supplier owns the right of beneficial use; and

154 (B) conserved or held for the reasonable future water requirement of the public, which is determined
according to Subsection (2)(f);

156 (viii) a supplemental water right during a period of time when another water right available to the
appropriator or the appropriator's successor in interest provides sufficient water so as to not require
beneficial use of the supplemental water right;

159 (ix) a period of nonuse of a water right during the time the water right is subject to an approved change
application where the applicant is diligently pursuing certification;

162 (x) a water right to store water in a surface reservoir if:

163 (A) storage is limited by a safety, regulatory, or engineering restraint that the appropriator or the
appropriator's successor in interest cannot reasonably correct; and

166 (B) not longer than seven years have elapsed since the limitation described in Subsection (2)(e)(x)(A) is
imposed;

168 (xi) a water right subject to an approved change application for use within a water bank that has been
authorized but not dissolved under Chapter 31, Water Banking Act, during the period of time the
state engineer authorizes the water right to be used within the water bank; [or]

172 (xii) subject to Subsection (2)(h), that portion of a water right that is quantified as saved water in a
final order from the state engineer approving a change application, but not to exceed the amount
subsequently verified by the state engineer in a certificate issued under Section 73-3-17[.] ; or

176 (xiii) a water right or a portion of a water right that a water conservancy district:

177 (A)

178 (I) uses or diverts within the lower basin;

178 (II) has an approval or a certificate from the state engineer to use or divert within the lower basin; or

180 (III) plans to use or divert within the lower basin, as demonstrated by an affidavit signed by the water
conservancy district's general manager; and

182 (B)

182 (I) owns, including as a beneficial owner of a water right conveyed to the state, acting through the
Board of Water Resources or Division of Water Resources, in connection with a loan agreement;

185 (II) leases; or

186 (III) is contractually entitled to use.

187 (f)

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- (i) The reasonable future water requirement of the public is the amount of water needed in the next 40 years by:
 - (A) the persons within the public water supplier's reasonably anticipated service area based on reasonably anticipated population growth; or
 - (B) other water use demand.
- (ii) For purposes of Subsection (2)(f)(i), a community water system's reasonably anticipated service area:
 - (A) is the area served by the community water system's distribution facilities; and
 - (B) expands as the community water system expands the distribution facilities in accordance with Title 19, Chapter 4, Safe Drinking Water Act.
- (iii) The state engineer shall by rule made in accordance with Subsection 73-2-1(4) establish standards for a written plan that may be presented as evidence in conformance with this Subsection (2)(f), except that before a rule establishing standards for a written plan under this Subsection (2)(f) takes effect, in addition to complying with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the state engineer shall present the rule to:
 - (A) if the Legislature is not in session, the Natural Resources, Agriculture, and Environment Interim Committee; or
 - (B) if the Legislature is in session, the House of Representatives and Senate Natural Resources, Agriculture, and Environment standing committees.
- (g) For a water right acquired by a public water supplier on or after May 5, 2008, Subsection (2)(e)(vii) applies if:
 - (i) the public water supplier submits a change application under Section 73-3-3; and
 - (ii) the state engineer approves the change application.
- (h) Saved water does not retain the protection of Subsection (2)(e)(xii) and any period of nonuse for saved water begins to run the day on which:
 - (i) the underlying water right that serves as the basis for the saved water is declared by court decree to have been lost due to forfeiture under this section; or
 - (ii) the title of a right to saved water segregated under Section 73-3-27 is conveyed independent of the underlying water right.

(3)

- (a) The state engineer shall furnish a nonuse application form requiring the following information:

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219 (i) the name and address of the applicant;

220 (ii) a description of the water right or a portion of the water right, including the point of diversion,
place of use, and priority;

222 (iii) the quantity of water;

223 (iv) the period of use;

224 (v) the extension of time applied for;

225 (vi) a statement of the reason for the nonuse of the water; and

226 (vii) any other information that the state engineer requires.

227 (b)

229 (i) Upon receipt of the application, the state engineer shall publish a notice of the application once a
week for two successive weeks:

231 (A) in a newspaper of general circulation in the county in which the source of the water supply is
located and where the water is to be beneficially used; and

233 (B) as required in Section 45-1-101.

235 (ii) The notice shall:

237 (A) state that an application has been made; and

239 (B) specify where the interested party may obtain additional information relating to the application.

241 (c) An interested person may file a written protest with the state engineer against the granting of the
application:

243 (i) within 20 days after the notice is published, if the adjudicative proceeding is informal; and

245 (ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.

247 (d) In a proceeding to determine whether the nonuse application should be approved or rejected, the
state engineer shall follow Title 63G, Chapter 4, Administrative Procedures Act.

249 (e) After further investigation, the state engineer may approve or reject the application.

251 (4)

253 (a) The state engineer shall grant a nonuse application on all or a portion of a water right for a period of
time not exceeding seven years if the applicant shows a reasonable cause for nonuse.

255 (b) A reasonable cause for nonuse includes:

257 (i) a demonstrable financial hardship or economic depression;

259 (ii) a physical cause or change that renders use beyond the reasonable control of the water right owner
so long as the water right owner acts with reasonable diligence to resume or restore the use;

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254 (iii) the initiation of water conservation or an efficiency practice, or the operation of a groundwater
recharge recovery program approved by the state engineer;

256 (iv) operation of a legal proceeding;

257 (v) the holding of a water right or stock in a mutual water company without use by a water supply entity
to meet the reasonable future requirements of the public;

259 (vi) situations where, in the opinion of the state engineer, the nonuse would assist in implementing an
existing, approved water management plan; or

261 (vii) the loss of capacity caused by deterioration of the water supply or delivery equipment if the
applicant submits, with the application, a specific plan to resume full use of the water right by
replacing, restoring, or improving the equipment.

264 (5)

267 (a) Sixty days before the expiration of a nonuse application, the state engineer shall notify the applicant
by mail or by a form of electronic communication through which receipt is verifiable, of the date
when the nonuse application will expire.

267 (b) An applicant may file a subsequent nonuse application in accordance with this section.

275 Section 2. Section **73-3-30** is amended to read:

276 **73-3-30. Change application for an instream flow -- Change application for delivery to a
reservoir.**

272 (1) As used in this section:

273 (a) "Colorado River System" means the same as that term is defined in Sections 73-12a-2 and 73-13-10.

275 (b) "Division" means:

276 (i) the Division of Wildlife Resources created in Section 23A-2-201[.] ;

277 (ii) the Division of State Parks created in Section 79-4-201[.] ; or

278 (iii) the Division of Forestry, Fire, and State Lands created in Section 65A-1-4.

279 (c) "Person entitled to the use of water" means the same as that term is defined in Section 73-3-3.

281 (d) "Sovereign lands" means the same as that term is defined in Section 65A-1-1.

282 (e) "Wildlife" means a species of [animals, including mammals, birds, fish, reptiles, amphibians,
mollusks, and crustaceans, that are] animal, including a mammal, bird, fish, reptile, amphibian,
mollusk, or crustacean, that is protected or regulated by a statute, law, regulation, ordinance, or
administrative rule.

286 (2)

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(a) Pursuant to Section 73-3-3, a division may file a permanent change application, a fixed time change application, or a temporary change application, or a person entitled to the use of water may file a fixed time change application or a temporary change application, to provide water within the state for:

(i) an instream flow within a specified section of a natural or altered stream; or

(ii) use on sovereign lands.

(b) The state engineer may not approve a change application filed under this Subsection (2) unless the proposed instream flow or use on sovereign lands will contribute to:

(i) the propagation or maintenance of wildlife;

(ii) the management of a state [parks] park; or

(iii) the reasonable preservation or enhancement of the natural aquatic environment.

(c) A division may file a change application on:

(i) a perfected water right:

(A) presently owned by the division;

(B) purchased by the division for the purpose of providing water for an instream flow or use on sovereign lands, through funding provided for that purpose by legislative appropriation; or

(C) secured by lease, agreement, gift, exchange, or contribution; or

(ii) an appurtenant water right acquired with the acquisition of real property by the division.

(d) A division may:

(i) purchase a water right for the purposes described in Subsection (2)(a) only with funds specifically appropriated by the Legislature for water rights purchases; or

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

(e) A division may not acquire water rights by eminent domain for an instream flow, use on sovereign lands, or for any other purpose.

(3)

(a) A person entitled to the use of water shall obtain a division director's approval of the proposed change before filing a fixed time change application or a temporary change application with the state engineer.

(b) By approving a proposed fixed time change application or temporary change application, a division director attests that the water that is the subject of the application can be used consistent with the statutory mandates of the director's division.

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319 (4)

(a) Pursuant to Section 73-3-3, a person entitled to the use of water may file a fixed time change application or a temporary change application for a project to deliver water to a reservoir located partially or entirely within the Colorado River System in the state in accordance with:

323 (i) Colorado River Drought Contingency Plan Authorization Act, Public Law 116-14;

324 (ii) a water conservation program funded by the Bureau of Reclamation; or

325 (iii) a water conservation program authorized by the state.

326 (b) Before filing a change application under this Subsection (4), a person entitled to the use of water shall obtain the approval from the executive director of the Colorado River Authority of Utah, appointed under Section 63M-14-401.

329 (c) By approving a proposed fixed time change application or temporary change application, the executive director of the Colorado River Authority of Utah attests that the water that is the subject of the application can be used consistent with this section.

333 (5) In addition to the requirements of Section 73-3-3, an application authorized by this section shall include:

335 (a) a legal description of:

336 (i) the segment of the natural or altered stream that will be the place of use for an instream flow;

338 (ii) the location where the water will be used on sovereign lands; or

339 (iii) the reservoir located partially or entirely within the Colorado River System in the state that the water will be delivered to; and

341 (b) appropriate studies, reports, or other information required by the state engineer demonstrating:

343 (i) the projected benefits benefit to the public resulting from the change; and

344 (ii) the necessity for the proposed instream flow or use on sovereign lands.

345 (6) A person may not appropriate unappropriated water under Section 73-3-2 for the purpose of providing an instream flow or use on sovereign lands.

347 (7) Water used in accordance with this section is considered to be beneficially used, as required by Section 73-3-1.

349 (8) A physical structure or physical diversion from the stream is not required to implement a change under this section.

351 (9) An approved change application described in this section does not create a right of access across private property or allow any infringement of a private property right.

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353 (10) Notwithstanding the other provisions of this section, if the diversion point under a proposed
permanent, fixed time, or temporary change application is located within the lower basin, as defined
in Section 73-12a-2:

356 (a) a person entitled to the use of water, other than a division, may not file the change application under
this section; and

358 (b) a division may not file the change application under Subsection (4).

365 Section 3. **Effective date.**

Effective Date.

This bill takes effect on May 6, 2026.

367 Section 4. **Coordinating H.B. 187 with H.B. 348**

If H.B. 187, Water Amendments, and H.B. 348, Dedicated Water Amendments, both
pass and become law, the Legislature intends that, on May 6, 2026, Subsection 73-3-30(10)
enacted in H.B. 187 be amended to read:

"(10) Notwithstanding the other provisions of this section, if the diversion point under a
proposed permanent, fixed time, or temporary change application or proposed dedicated water
application is located within the lower basin, as defined in Section 73-12a-2:

(a) a person entitled to the use of water, other than a division, may not file the change
application or dedicated water application under this section; and

(b) a division may not file the change application or dedicated water application under
Subsection (4).".

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