Water Rights Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David Shallenberger

Senate Sponsor: Keven J. Stratton

LONG TITLE

Committee Note:

The Legislative Water Development Commission recommended this bill.

Legislative Vote: 10 voting for 0 voting against 4 absent

General Description:

This bill addresses water rights and the state engineer's actions related to water rights.

Highlighted Provisions:

This bill:

- addresses actions related to an application to appropriate public water;
- modifies the extent to which the state engineer may consider a protest;
- addresses temporary applications;
- modifies the grounds that the state engineer may consider in approving or rejecting an application, including what the state engineer may consider related to public welfare;
- clarifies who is an aggrieved person for purposes of seeking judicial review; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-3-1, as last amended by Laws of Utah 2010, Chapter 19

73-3-7, as last amended by Laws of Utah 1995, Chapter 19

73-3-8, as last amended by Laws of Utah 2024, Chapter 233

73-3-14, as last amended by Laws of Utah 2008, Chapters 165, 382

73-3d-102, as enacted by Laws of Utah 2023, Chapter 126

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

H.B. 60

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

73-3-1 . Appropriation -- Manner of acquiring water rights.

(1) A person may acquire a right to the use of the unappropriated public waters in this state only as provided for in this title.

(2) The appropriation of public waters in the state shall comply with the requirements of this title.

(3) Except as provided in Subsection (7), a person obtaining, initiating the use of, or providing notice of intent to appropriate a water right shall comply with the requirements of this chapter.

(4) An appropriation may be made only for a useful and beneficial purpose.

(5)[~~(a)~~] Between appropriators, the one first in time is first in rights.

[~~(b) A use designated by an application to appropriate any of the unappropriated waters of the state that would materially interfere with a more beneficial use of the water shall be dealt with as provided in Section 73-3-8.~~]

(6) A person may not acquire a right to the use of water either appropriated or unappropriated by adverse use or adverse possession.

(7) Notwithstanding Section 73-3-2, a person may directly capture and store precipitation as provided in Section 73-3-1.5.

Section 2. Section **73-3-7** is amended to read:

73-3-7 . Protests.

(1) [~~Any~~] Subject to Subsection (2), a person interested may file a protest with the state engineer:

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

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

(2) The state engineer shall:

(a) consider [~~the~~] a protest only to the extent the protest addresses a basis for which the state engineer may approve or reject the application; and [~~shall~~]

(b) approve or reject the application.

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

73-3-8 . Approval or rejection of application -- Requirements for approval -- Application for specified period of time -- Filing of royalty contract for removal of salt or minerals -- Request for agency action.

(1)(a) [~~It shall be the duty of the~~] The state engineer [~~to~~] shall approve an application if

there is reason to believe that:

(i) for an application to appropriate, there is unappropriated water in the proposed source;

(ii) the proposed use will not impair existing rights[~~ or interfere with the more beneficial use of the water~~];

(iii) the proposed plan:

(A) is physically and economically feasible, unless the application is filed by the United States Bureau of Reclamation; and

(B) would not prove detrimental to the public welfare;

(iv) the applicant has the financial ability to complete the proposed works;

(v) the application was filed in good faith and not for purposes of speculation or monopoly; and

(vi) if applicable, the application complies with a groundwater management plan adopted under Section 73-5-15.

[~~(b) If the state engineer, because of information in the state engineer's possession obtained either by the state engineer's own investigation or otherwise, has reason to believe that an application will interfere with the water's more beneficial use for irrigation, municipal and industrial, domestic or culinary, stock watering, power or mining development, or manufacturing, or will unreasonably affect public recreation or the natural stream environment, or will prove detrimental to the public welfare, the state engineer shall withhold approval or rejection of the application until the state engineer has investigated the matter.~~]

[~~(c)~~] (b) If an application does not meet the requirements of this section, [~~it shall be rejected~~] the state engineer shall reject the application.

(2)(a) [~~An~~] The state engineer may approve an application to appropriate water for industrial, power, mining development, manufacturing purposes, agriculture, or municipal purposes[~~ may be approved~~] for a specific and certain period from the time the water is placed to beneficial use under the application, but in no event may the state engineer grant an application[~~ be granted~~] for a period of time less than that ordinarily needed to satisfy the essential and primary purpose of the application or until the water is no longer available as determined by the state engineer.

(b) At the expiration of the period fixed by the state engineer the water shall revert to the public and is subject to appropriation as provided by this title.

(c) No later than 60 calendar days before the expiration date of the fixed time period, the

state engineer shall send notice by mail or by any form of electronic communication through which receipt is verifiable, to the applicant of record.

(d) Except as provided by Subsection (2)(e), the state engineer may extend [~~any~~] a limited water right upon a showing that:

(i) the essential purpose of the original application has not been satisfied;

(ii) the need for an extension is not the result of any default or neglect by the applicant; and

(iii) the water is still available.

(e) An extension under Subsection (2)(d) may not exceed the time necessary to satisfy the primary purpose of the original application.

(f) [~~A~~] An applicant shall file a request for extension of [~~the~~] a fixed time period [~~must be filed~~]in writing in the office of the state engineer on or before the expiration date of the application.

(3)(a) Before the approval of [~~any~~] an application to divert water from a navigable [~~lakes or streams~~] lake or stream of the state that contemplates the recovery of salts and other minerals or elements, as defined in Section 65A-17-101, [~~therefrom~~] from the navigable lake or stream by precipitation or otherwise, the applicant shall file with the state engineer a copy of:

(i) a contract for the payment of royalties to the state; and

(ii) any mineral lease.

(b) The state engineer shall reverse the approval of an application [~~shall be reversed~~]if the applicant fails to comply with terms of the royalty contract or mineral lease.

(4)(a) The state engineer shall investigate [~~all~~] a temporary change [~~applications~~] application.

(b) The state engineer is not required to publish notice of a temporary change application under Section 73-3-6.

[~~(b)~~] (c) The state engineer shall:

(i) approve the temporary change if the state engineer finds there is reason to believe that the temporary change [~~will~~] does not impair an existing right; and

(ii) [~~deny~~] reject the temporary change if the state engineer finds there is reason to believe the temporary change would impair an existing right.

(d) If the state engineer rejects a temporary change application, the applicant may file a permanent or fixed time change application.

(5)(a) With respect to a change application for a permanent or fixed time change:

(i) the state engineer shall follow the same procedures provided in this title for approving an application to appropriate water; and

(ii) the rights and duties of a change applicant are the same as the rights and duties of a person who applies to appropriate water under this title.

(b) The state engineer may waive notice for a permanent or fixed time change application if the application only involves a change in point of diversion of 660 feet or less.

(c) The state engineer may condition approval of a change application, including to:

(i) prevent an enlargement of the quantity of water depleted by the nature of the proposed use when compared with the nature of the currently approved use of water proposed to be changed; and

(ii) ensure that the recognition and subsequent use of saved water, as defined in Section 73-3-3:

(A) is quantified, reported, and verified;

(B) does not lead to an enlargement of the depletion or diversion amounts in the underlying water right that serves as the basis of the saved water, or an increase in the authorized number of irrigated acres unless depletion is accounted for and regulated in the condition;

(C) is limited to the net decrease in depletion and net reduction in diversion of the underlying water right that serves as the basis of the saved water;

(D) is limited to the volume of water that [~~will be~~] is sustained over time from the net decrease in depletion or net reduction in diversion of the underlying water right that serves as the basis of the saved water;

(E) does not violate an existing water agreement; and

(F) when based solely on a net reduction in diversion, the subsequent use is limited to nonconsumptive beneficial uses and does not increase the depletion allowed by the underlying water right that serves as the basis of the saved water or otherwise cause quantity impairment to an existing water right when the saved water is beneficially used separate from the underlying water right.

(d) Except for an application proposing to quantify saved water, a condition described in Subsection (5)(c) may not include a reduction in the currently approved diversion rate of water under the water right identified in the change application solely to account for the difference in depletion under the nature of the proposed use when compared with the nature of the currently approved use.

(6)(a) Except as provided in Subsection (6)(b), the state engineer shall reject a permanent or fixed time change application if the person proposing to make the change is unable to meet the burden described in Subsection 73-3-3(5).

(b) If otherwise proper, the state engineer may approve a change application upon one or more of the following conditions:

(i) for part of the water involved;

(ii) that the applicant acquire a conflicting right; or

(iii) that the applicant provide and implement a plan approved by the state engineer to mitigate impairment of an existing right.

(c)(i) There is a rebuttable presumption of quantity impairment, as defined in Section 73-3-3, to the extent that, for a period of at least seven consecutive years, a portion of the right identified in a change application [~~has not been~~] is not:

(A) diverted from the approved point of diversion; or

(B) beneficially used at the approved place of use.

(ii) The rebuttable presumption described in Subsection (6)(c)(i) does not apply if the beneficial use requirement is excused by:

(A) Subsection 73-1-4(2)(e);

(B) an approved nonuse application under Subsection 73-1-4(2)(b);

(C) Subsection 73-3-30(7); or

(D) the passage of time under Subsection 73-1-4(2)(c)(i).

(d) The state engineer may not consider quantity impairment based on the conditions described in Subsection (6)(c) unless the issue is raised in a:

(i) timely protest that identifies which of the protestant's existing rights the protestant reasonably believes will experience quantity impairment; or

(ii) written notice provided by the state engineer to the applicant within 90 days after the change application is filed.

(e) The written notice described in Subsection (6)(d)(ii) shall:

(i) specifically identify an existing right the state engineer reasonably believes may experience quantity impairment; and

(ii) be mailed to the owner of an identified right, as shown by the state engineer's records, if the owner has not protested the change application.

(f) The state engineer is not required to include all rights the state engineer believes may be impaired by the proposed change in the written notice described in Subsection (6)(d)(ii).

(g) The owner of a right who receives the written notice described in Subsection (6)(d)(ii) may not become a party to the administrative proceeding if the owner has not filed a timely protest.

(h) If a change applicant, the protestants, and the persons identified by the state engineer under Subsection (6)(d)(ii) come to a written agreement regarding how the issue of quantity impairment shall be mitigated, the state engineer may incorporate the terms of the agreement into a change application approval.

(7)(a) To determine whether a proposed plan would not prove detrimental to the public welfare under Subsection (1)(a)(iii), the state engineer may consider only issues directly related to:

(i) the beneficial use of water; or

(ii) the quantity, quality, or availability of water in the state.

(b) The state engineer may not consider or rely on detriment to the public welfare as a basis for the rejection of an application if:

(i) the prevention, regulation, or mitigation of the detrimental effect is reserved to, reasonably within the scope of authority of, or better suited to be addressed by another regulatory agency;

(ii) except as provided in Subsection (7)(c), the detriment to the public welfare is based on the volume of water on or flow of water across sovereign land, as defined in Section 65A-1-1, based on the land's status as sovereign land; or

(iii) the factors supporting a finding of a detriment to the public welfare:

(A) are not directly associated with the interests described in Subsection (7)(a); or

(B) are primarily related to indirect or negligible environmental, economic, social, or other effects of the proposed plan.

(c) The state engineer may consider the water present on or flowing across sovereign land, as defined in Section 65A-1-1, when addressing whether a proposed plan is detrimental to the public welfare if directed or authorized to do so by a statute other than this section.

Section 4. Section **73-3-14** is amended to read:

73-3-14 . Judicial review of state engineer order.

(1)(a) A person aggrieved by an order of the state engineer may obtain judicial review in accordance with Title 63G, Chapter 4, Administrative Procedures Act, and this section.

(b) A person is aggrieved by an order of the state engineer approving or rejecting an

application under Section 73-3-8 only if the person has suffered or will suffer a particularized injury from an action taken by the state engineer in accordance with Section 73-3-8.

[~~(b)~~] (c) Venue for judicial review of an informal adjudicative proceeding is in the county in which the water source or a portion of the water source is located.

(2) [~~The~~] A person who files a petition of judicial review shall join the state engineer [~~shall be joined~~]as a respondent in a petition to review the state engineer's decision, but [~~no~~] a court may not award a judgment for costs or expenses of the litigation [~~may be rendered~~] against the state engineer.

(3) A person who files a petition for judicial review as authorized in this section shall:

(a) name the state engineer as a respondent; and

(b) provide written notice in accordance with Subsection (5) to each person who filed a protest in accordance with Section 73-3-7 of:

(i) the filing of the petition for judicial review; and

(ii) the opportunity to intervene in accordance with Utah Rules of Civil Procedure, Rule 24.

(4) In addition to [~~the requirements of~~] complying with Subsection (3), a protestant in the adjudicative proceeding who files a petition for judicial review shall also name as a respondent the person:

(a) who requested the adjudicative proceeding; or

(b) against whom the state engineer brought the adjudicative proceeding.

(5) [~~The~~] A written notice required by this section shall:

(a) be mailed:

(i) within the time provided for by Utah Rules of Civil Procedure, Rule 4(b); and

(ii) to the address on record with the state engineer's office at the time the order is issued; and

(b) include:

(i) a copy of the petition; and

(ii) the address of the court in which the petition is pending.

(6) If a person who files a petition for judicial review fails to provide notice as required by this section, the court shall dismiss the petition without prejudice upon:

(a) the motion of a party;

(b) the special appearance of a person who:

(i) participated in the adjudicative proceeding; and

(ii) is not a party; or

(c) the court's own motion.

(7) A person who files a petition for judicial review is not required to:

(a) notwithstanding Subsection 63G-4-401(3)(b), name a respondent that is not required by this section; and

(b) notwithstanding Subsection 63G-4-402(2)(a)(iv), identify all parties to the adjudicative proceeding.

Section 5. Section **73-3d-102** is amended to read:

73-3d-102 . Scope of chapter.

(1)(a) The powers vested in the governor under this chapter are in addition to, and not in lieu of, any other emergency powers otherwise statutorily vested in the governor, including the power of the governor to authorize the use of water sources as necessary for fire suppression under Subsection 53-2a-204(1)(o).

(b) An executive order of the governor declaring a temporary water shortage emergency under this chapter is not a declaration of a state of emergency under Section 53-2a-206 and is not subject to Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act. To exercise an authority granted under Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act, related to a declaration of a state of emergency, the governor shall issue an executive order that is separate from an executive order declaring a temporary water shortage emergency.

(2) Nothing in this chapter modifies:

(a) the statutory duties of the state engineer under this title; or

(b) except as specifically provided in an executive order declaring a temporary water shortage emergency, Subsection [~~73-3-1(5)(a)~~] 73-3-1(5) or Section 73-3-21.1.

(3) Nothing in this chapter may be construed to extend or enlarge the powers of the governor except as specifically stated in this chapter.

Section 6. **Effective Date.**

This bill takes effect on May 6, 2026.