

David Shallenberger proposes the following substitute bill:

1 **Water Rights Amendments**

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David Shallenberger

Senate Sponsor: Keven J. Stratton

2 **LONG TITLE**

3 **General Description:**

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

5 **Highlighted Provisions:**

6 This bill:

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- 8 ▶ addresses actions related to an application to appropriate public water;
- 9 ▶ modifies the extent to which the state engineer may consider a protest;
- 10 ▶ addresses temporary applications;
- 11 ▶ 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;
- 12 ▶ clarifies who is an aggrieved person for purposes of seeking judicial review; and
- 13 ▶ makes technical and conforming changes.

14 **Money Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 None

18 **Utah Code Sections Affected:**

19 **AMENDS:**

20 **73-3-1**, as last amended by Laws of Utah 2010, Chapter 19
21 **73-3-7**, as last amended by Laws of Utah 1995, Chapter 19
22 **73-3-8**, as last amended by Laws of Utah 2024, Chapter 233
23 **73-3-14**, as last amended by Laws of Utah 2008, Chapters 165, 382
24 **73-3d-102**, as enacted by Laws of Utah 2023, Chapter 126

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

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

29 **73-3-1 . Appropriation -- Manner of acquiring water rights.**

30 (1) A person may acquire a right to the use of the unappropriated public waters in this state
31 only as provided for in this title.
32 (2) The appropriation of public waters in the state shall comply with the requirements of
33 this title.
34 (3) Except as provided in Subsection (7), a person obtaining, initiating the use of, or
35 providing notice of intent to appropriate a water right shall comply with the
36 requirements of this chapter.
37 (4) An appropriation may be made only for a useful and beneficial purpose.
38 (5)[(a)] Between appropriators, the one first in time is first in rights.

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

42 (6) A person may not acquire a right to the use of water either appropriated or
43 unappropriated by adverse use or adverse possession.
44 (7) Notwithstanding Section 73-3-2, a person may directly capture and store precipitation as
45 provided in Section 73-3-1.5.

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

47 **73-3-7 . Protests.**

48 (1) [Any] Subject to Subsection (2), a person interested may file a protest with the state
49 engineer:
50 (a) within 20 days after the notice is published, if the adjudicative proceeding is
51 informal; and
52 (b) within 30 days after the notice is published, if the adjudicative proceeding is formal.
53 (2) The state engineer shall:
54 (a) consider [the] a protest only to the extent the protest addresses a basis for which the
55 state engineer may approve or reject the application; and [shall]
56 (b) approve or reject the application.

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

58 **73-3-8 . Approval or rejection of application -- Requirements for approval --**

59 **Application for specified period of time -- Filing of royalty contract for removal of salt or**
60 **minerals -- Request for agency action.**

61 (1)(a) [It shall be the duty of the] The state engineer [to] shall approve an application if
62 there is reason to believe that:

63 (i) for an application to appropriate, there is unappropriated water in the proposed
64 source;
65 (ii) the proposed use will not impair existing rights[~~or interfere with the more~~
66 ~~beneficial use of the water~~];
67 (iii) the proposed plan:
68 (A) is physically and economically feasible, unless the application is filed by the
69 United States Bureau of Reclamation; and
70 (B) would not prove detrimental to the public welfare;
71 (iv) the applicant has the financial ability to complete the proposed works;
72 (v) the application was filed in good faith and not for purposes of speculation or
73 monopoly; and
74 (vi) if applicable, the application complies with a groundwater management plan
75 adopted under Section 73-5-15.

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

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

86 (2)(a) [An] The state engineer may approve an application to appropriate water for
87 industrial, power, mining development, manufacturing purposes, agriculture, or
88 municipal purposes[may be approved] for a specific and certain period from the time
89 the water is placed to beneficial use under the application, but in no event may the
90 state engineer grant an application[~~be granted~~] for a period of time less than that
91 ordinarily needed to satisfy the essential and primary purpose of the application or
92 until the water is no longer available as determined by the state engineer.
93 (b) At the expiration of the period fixed by the state engineer the water shall revert to the
94 public and is subject to appropriation as provided by this title.
95 (c) No later than 60 calendar days before the expiration date of the fixed time period, the
96 state engineer shall send notice by mail or by any form of electronic communication

97 through which receipt is verifiable, to the applicant of record.

98 (d) Except as provided by Subsection (2)(e), the state engineer may extend [any] a
99 limited water right upon a showing that:
100 (i) the essential purpose of the original application has not been satisfied;
101 (ii) the need for an extension is not the result of any default or neglect by the
102 applicant; and
103 (iii) the water is still available.

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

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

109 (3)(a) Before the approval of [any] an application to divert water from a navigable [lakes
110 or streams] lake or stream of the state that contemplates the recovery of salts and
111 other minerals or elements, as defined in Section 65A-17-101, [therefrom] from the
112 navigable lake or stream by precipitation or otherwise, the applicant shall file with
113 the state engineer a copy of:
114 (i) a contract for the payment of royalties to the state; and
115 (ii) any mineral lease.

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

118 (4)(a) The state engineer shall investigate [aH] a temporary change [applications]
119 application.

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

122 [(b)] (c) The state engineer shall:
123 (i) approve the temporary change if the state engineer finds there is reason to believe
124 that the temporary change [wiH] does not impair an existing right; and
125 (ii) [deny] reject the temporary change if the state engineer finds there is reason to
126 believe the temporary change would impair an existing right.

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

129 (5)(a) With respect to a change application for a permanent or fixed time change:
130 (i) the state engineer shall follow the same procedures provided in this title for

131 approving an application to appropriate water; and

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

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

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

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

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

143 (A) is quantified, reported, and verified;

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

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

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

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

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

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

164 (6)(a) Except as provided in Subsection (6)(b), the state engineer shall reject a

165 permanent or fixed time change application if the person proposing to make the
166 change is unable to meet the burden described in Subsection 73-3-3(5).

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

169 (i) for part of the water involved;

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

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

173 (c)(i) There is a rebuttable presumption of quantity impairment, as defined in Section
174 73-3-3, to the extent that, for a period of at least seven consecutive years, a portion
175 of the right identified in a change application [has not been] is not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

198 (g) The owner of a right who receives the written notice described in Subsection

199 (6)(d)(ii) may not become a party to the administrative proceeding if the owner has
200 not filed a timely protest.

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

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

207 (i) the effect of the proposed plan on:
208 (A) the beneficial use of water; or
209 (B) the quantity, quality, or availability of water; and
210 (ii) other factors as specifically directed by statute.

211 (b) The state engineer may not consider or rely on detriment to the public welfare under
212 Subsection (1)(a)(iii) as a basis for the rejection of an application if:

213 (i) the prevention, regulation, or mitigation of the detrimental effect is reserved to,
214 reasonably within the scope of authority of, or better suited to be addressed by
215 another regulatory agency; or
216 (ii) the factors supporting a finding of a detriment to the public welfare:
217 (A) are not directly associated with the interests described in Subsection (7)(a); or
218 (B) will have a negligible effect on the interests described in Subsection (7)(a).

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

220 **73-3-14 . Judicial review of state engineer order.**

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

224 (b) A person is aggrieved by an order of the state engineer approving or rejecting an
225 application under Section 73-3-8 only if the person has suffered or will suffer a
226 particularized injury from an action taken by the state engineer in accordance with
227 Section 73-3-8.

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

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

233 against the state engineer.

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

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

236 (b) provide written notice in accordance with Subsection (5) to each person who filed a

237 protest in accordance with Section 73-3-7 of:

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

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

240 Rule 24.

241 (4) In addition to ~~[the requirements of]~~ complying with Subsection (3), a protestant in the

242 adjudicative proceeding who files a petition for judicial review shall also name as a

243 respondent the person:

244 (a) who requested the adjudicative proceeding; or

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

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

247 (a) be mailed:

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

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

250 issued; and

251 (b) include:

252 (i) a copy of the petition; and

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

254 (6) If a person who files a petition for judicial review fails to provide notice as required by

255 this section, the court shall dismiss the petition without prejudice upon:

256 (a) the motion of a party;

257 (b) the special appearance of a person who:

258 (i) participated in the adjudicative proceeding; and

259 (ii) is not a party; or

260 (c) the court's own motion.

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

262 (a) notwithstanding Subsection 63G-4-401(3)(b), name a respondent that is not required

263 by this section; and

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

265 adjudicative proceeding.

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

267 **73-3d-102 . Scope of chapter.**

268 (1)(a) The powers vested in the governor under this chapter are in addition to, and not in
269 lieu of, any other emergency powers otherwise statutorily vested in the governor,
270 including the power of the governor to authorize the use of water sources as
271 necessary for fire suppression under Subsection 53-2a-204(1)(o).
272 (b) An executive order of the governor declaring a temporary water shortage emergency
273 under this chapter is not a declaration of a state of emergency under Section
274 53-2a-206 and is not subject to Title 53, Chapter 2a, Part 2, Disaster Response and
275 Recovery Act. To exercise an authority granted under Title 53, Chapter 2a, Part 2,
276 Disaster Response and Recovery Act, related to a declaration of a state of emergency,
277 the governor shall issue an executive order that is separate from an executive order
278 declaring a temporary water shortage emergency.
279 (2) Nothing in this chapter modifies:
280 (a) the statutory duties of the state engineer under this title; or
281 (b) except as specifically provided in an executive order declaring a temporary water
282 shortage emergency, Subsection [73-3-1(5)(a)] 73-3-1(5) or Section 73-3-21.1.
283 (3) Nothing in this chapter may be construed to extend or enlarge the powers of the
284 governor except as specifically stated in this chapter.

285 **Section 6. Effective Date.**

286 This bill takes effect on May 6, 2026.