

1 73-3-3.5. Application for a change of ~~point of diversion, place of use, or purpose of use of~~
2 water company water rights in a water company made by a shareholder.

3 (1) As used in this section:

4 (a) "Shareholder" means the owner of a share of stock, or other evidence of stock
5 ownership, ~~that~~ which entitles the person to a proportionate share of water in a water
6 company.

7 (b) "Water company" means any company, operating for profit or not for profit, in which
8 a shareholder has the right to receive a proportionate share, based on that shareholder's
9 ownership interest, of water delivered by the company.

10 (c) "Water company water rights" means water rights to which the water company holds
11 title or on which a water company is entitled by law to file a change application.

12 (d) "Water company change application" means a change application filed under 73-3-3
13 seeking to modify water company water rights.

14 ~~(2) A shareholder who seeks to change the point of diversion, place of use, or purpose of use of~~
15 ~~the shareholder's proportionate share of water in the water company shall submit a request for the~~
16 ~~change, in writing, to the water company. This request shall include the following information:~~

17 (a) A person proposing a water company change application, including a water company filing a
18 water company change application on its own water rights, shall submit a water company change
19 application proposal to the president and secretary of the water company which shall include the
20 following information:

21 (ai) a statement of the details of the requested~~proposed~~ changes, which may include to the
22 point of diversion, period of use, place, ~~or~~ nature of use, or any other changes allowed by
23 law;

24 (bii) the quantity or quantities of water sought to be changed;

25 (eiii) the certificate number or other identification of the stock, if any, affected by that
26 may become restricted under subsection 11 as a result of the proposed change;

27 (div) a description of the any present uses of the water that will be abandoned, including,
28 if applicable, land proposed to be retired from irrigation pursuant to Section 73-3-3, if the
29 proposed change in place or nature of use of the water involves a situation where the
30 water was previously used for irrigation;

31 (ev) if required by the water company, an agreement by that the a shareholder submitting
32 a water company change application proposal to will continue to pay all applicable
33 corporate assessments on the any shares affected by the change; ~~and~~
34 (fvi) any other information that the water company may ~~reasonably need~~require to
35 evaluate the ~~requested change application proposal~~;
36 (vii) an analysis of the impacts the proposed change may have on the water company
37 water rights and any contract, indebtedness, or other obligations of the water company;
38 (viii) unless waived by the water company, a report certified by a professional engineer
39 or other qualified individual approved by the water company evaluating the effects of the
40 proposed change, if implemented, on company operations, including water distribution
41 systems, and company shareholders;
42 (ix) any agreement entered pursuant to subsection (4); and
43 (x) a deposit as required in subsection (6).

44 (b) If the water company change application process is initiated by a shareholder, the
45 requirement for an engineer's report may be waived by written agreement between the
46 shareholder proposing the change and the water company.

47 (c) The company may provide notice to shareholders of any water company change application
48 proposal. Any shareholder in good standing may, subject to Section 16-6a-1601, obtain from the
49 water company a copy of any documents provided to the water company under this subsection
50 (2).

51 (3) (a) After receiving from a shareholder a water company change application proposal that
52 substantially meets the requirements of subsection (2), A a water company shall make issue a
53 written decision on the request proposal and provide written notice of that decision on a
54 shareholder's request for a change application within ~~120~~90 days from actual receipt of the
55 ~~request proposal~~.

56 (b) Based on the facts and circumstances of each ~~proposed change~~water company change
57 application proposal, a water company may, in its written decision, take any of the following
58 actions:

- 59 (i) approve the ~~change request proposal~~ or any part of it;
- 60 (ii) approve the ~~change request proposal~~ or any part of it with conditions; or
- 61 (iii) deny the ~~change request proposal~~ in whole or in part.

62 (c) If the water company fails to ~~respond to~~ issue its written decision within the prescribed 90
63 days in response to a shareholder's ~~request for a water company~~ change application proposal,
64 ~~pursuant to Subsection (3)(a)~~, the failure to respond shall be considered to be a denial of the
65 ~~request~~proposal.

66 ~~(d)~~ The water company may not withhold approval if any potential damage, liability, or
67 impairment to the water company, or its shareholders, can be reasonably mitigated without cost
68 to the water company and other shareholders, other than any shareholders who have agreed in
69 writing to bear such costs, and have provided a copy of that agreement to the water company
70 under subsection (2). The water company may also agree in writing to bear all or any portion of
71 such costs.

72 ~~(e)~~ A water company may consider the following factors in evaluating a water company change
73 applications proposal, regardless of who submits the proposal:

74 ~~(i)~~ a any increased cost to the water company or its shareholders;

75 ~~(ii)~~ b interference with the water company's ability to manage and distribute water for the benefit
76 of all shareholders;

77 ~~(iii) whether the proposed change represents more water than the shareholder's pro rata~~
78 ~~share of the water company's right;~~

79 ~~(iv)~~ c impairment of either the quantity or quality of water delivered to other any shareholders
80 under the existing water rights of the water company, including rights to an accounting for
81 carrier water;

82 (d) whether the proposed change will cause the water company to violate any contract,
83 indebtedness, or other obligations of the water company;

84 ~~(v)~~ e whether the proposed change would cause a violation of any statute, ordinance, regulation,
85 or order of a court or governmental agency;

86 ~~(vi)~~ f whether the shareholder person who submitted the water company change application
87 proposal has or can arrange for the abandonment of any beneficial use of the water that may be
88 required for implementation of the proposed change, including to be retired retirement of land
89 from irrigation within the water company's service area under the proposed change; or

90 (g) whether the proposed change would create preferential access to or use of particular company
91 water rights to the detriment of other shareholders, and

92 (~~with~~) the cumulative effects that the approval of the water company change application, along
93 with other water company change applications, regardless of whether presently filed or that may
94 be filed, may will have on other shareholders or water company operations.

95 (46) ~~The water company may require that a~~All costs associated with the water company change
96 application process, including the cost of implementing the changes, any costs in evaluating the
97 changesproposal, the cost of any related administrative or judicial proceedings, and costs of
98 submitting proof, shall be paid by the ~~shareholder~~person who submitted the water company
99 change application proposal. The water company may require that the shareholder deposit an
100 amount based on a reasonable estimate of such costs prior to the water company taking any
101 action on the water company change application proposal. The 90-day time set for consideration
102 of the proposal under subsection 3 shall not commence until such deposit, if required, is paid.

103 (57) (a) The water company may require that any shareholder ~~requesting-submitting the a water~~
104 company change application proposal ~~must~~ be current on all water company assessments and
105 agree to continue to pay all applicable future assessments, except that the shareholder may
106 choose to prepay any portion of ~~the water company~~ assessments due or that may become due that
107 are attributable to an existing debt of the water company.

108 (b) Other than ~~prepaid~~ assessments prepaid by the shareholder under (a) above, the water
109 company may require that the shareholder continue to pay all applicable assessments.

110 (68) ~~If the water company approves the requested change, with or without conditions, the change~~
111 application may be filed with the state engineer, and mustThe state engineer shall not accept a
112 water company change application for filing unless the application is:

113 (a) ~~be~~ signed on behalf of the water company; or

114 (b) ~~be~~ accompanied by written authorization certification from the water company assenting to
115 the change ~~that the requirements of subsection (3) above have been completed.~~

116 (79) (a) The state engineer may evaluate a water company change application authorized by a
117 water company under this section in the same manner and using the same criteria that he or she
118 uses to evaluate any other change application.

119 (b) Nothing in this section shall limit the authority of the state engineer in evaluating and
120 processing any change application.

121 (810) If ~~an application authorized by a~~ water company change application initially proposed by a
122 shareholder under this section is approved by the state engineer, the shareholder may file requests

123 for extensions of time to submit proof of beneficial use under the water company change
124 application without further permission of the water company.

125 ~~(911)~~ (a) ~~Change applications approved under this section~~ Water company change applications
126 are subject to all conditions imposed by the water company in a written decision consenting to
127 the application and any requirements the state engineer or a court of proper jurisdiction may
128 order.

129 (b) If a shareholder who submits a water company change application proposal fails to comply
130 with all of the conditions ~~imposed by~~ to the water company's approval of a water company
131 change application proposal, or any requirements the state engineer or a court of proper
132 jurisdiction may order pertaining to such water company change application, the water company
133 may, after written notice to the shareholder and after allowing reasonable time to remedy the
134 failure, withdraw its approval ~~of the application~~, and petition the state engineer for an order
135 canceling the water company change application.

136 (c) The water company may not revoke its approval of the water company change application or
137 seek an order canceling the water company change application if the conditions are substantially
138 satisfied.

139 ~~(1012)~~ If a water company change application initially proposed by a shareholder is approved by
140 the state engineer, the water company may impose on any shares supporting the change such
141 restrictions as are necessary to assure that any conditions imposed by the water company, the
142 state engineer, or a court of proper jurisdiction as a result of the changes will be binding on
143 future owners of the stock and that the future owners have notice of such restrictions.

144 ~~(13)~~ (a) ~~The A~~ shareholder ~~requesting submitting the a~~ water company change application
145 proposal shall have a cause of action, including an award of actual damages incurred, against the
146 water company if the water company:

147 (i) unreasonably withholds approval of ~~a requested the water company~~ change application
148 proposal;

149 (ii) imposes unreasonable conditions in its approval; or

150 (iii) withdraws approval of a water company change application in a manner other than as
151 provided in Subsection (911).

152 (b) The action referred to in Subsection (~~10~~13)(a) shall be referred to mediation ~~by the court~~
153 under Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act, by the court having
154 jurisdiction over the case unless both parties decline mediation.

155 (c) If mediation is declined, the prevailing party to the action shall be entitled to costs and
156 reasonable attorney fees.