

1 **WATER SHAREHOLDER AMENDMENTS**

2 2024 GENERAL SESSION

3 STATE OF UTAH

4

5 **LONG TITLE**

6 **General Description:**

7 This bill addresses change applications by a shareholder in a water company.

8 **Highlighted Provisions:**

9 This bill:

- 10 ▶ addresses the timing of a water company's response to a shareholder's proposed
- 11 change application; and
- 12 ▶ makes technical changes.

13 **Money Appropriated in this Bill:**

14 None

15 **Other Special Clauses:**

16 This bill provides a special effective date.

17 This bill provides retrospective operation.

18 **Utah Code Sections Affected:**

19 AMENDS:

20 **73-3-3.5 (Effective 03/01/24)**, as last amended by Laws of Utah 2023, Chapter 238

21

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

23 Section 1. Section **73-3-3.5 (Effective 03/01/24)** is amended to read:

24 **73-3-3.5 (Effective 03/01/24). Application for a change of point of diversion, place**
25 **of use, or purpose of use of water in a water company made by a shareholder.**

26 (1) As used in this section:

27 (a) "Shareholder" means the owner of a share of stock, or other evidence of stock
28 ownership, that entitles the person to a proportionate share of water in a water company.

29 (b) "Water company" means, except as described in Subsection (1)(c), any company,
30 operating for profit or not for profit, where a shareholder has the right to receive a
31 proportionate share, based on that shareholder's ownership interest, of water delivered by the
32 company.

33 (c) "Water company" does not include a public water supplier, as defined in Section
34 73-1-4.

35 (2) (a) A shareholder who seeks to file a change application under Section 73-3-3 to
36 make a change to some or all of the water rights represented by the shareholder's shares in a
37 water company shall:

38 (i) prepare a proposed change application on forms furnished by the state engineer; and

39 (ii) provide the proposed change application to the water company by personal delivery
40 with a signed receipt, certified mail, or electronic mail with confirmation of receipt.

41 (b) The water company and the shareholder shall cooperate in supplying information
42 relevant to preparation or correction of the shareholder's change application.

43 (c) In addition to the information required under Section 73-3-3, the proposed change
44 application shall include:

45 (i) the certificate number of the stock affected by the change;

46 (ii) a description of the land proposed to be retired from irrigation in accordance with
47 Section 73-3-3, if the proposed change in place or nature of use of the water involves a
48 situation where the water was previously used for irrigation;

49 (iii) an agreement by the shareholder to continue to pay all applicable corporate
50 assessments on the share affected by the change; and

51 (iv) any other information that the water company may reasonably need to evaluate the
52 proposed change application.

53 (3) (a) The water company shall respond to the proposed change application described
54 in Subsection (2) within[:]

55 [~~(i) for a permanent change application,~~] 120 days after the day on which the water
56 company receives the proposed change application[~~, or~~].

57 [~~(ii) for a temporary change application, 60 days after the day on which the water~~
58 ~~company receives the proposed change application.~~]

59 (b) The water company's response to the proposed change application shall be in
60 writing and shall:

61 (i) consent to the proposed change;

62 (ii) consent to the proposed change, subject to certain conditions described by the water
63 company; or

64 (iii) decline to consent to the proposed change, describing the reasons for declining to
65 consent.

66 (c) If the water company fails to timely respond, as described in Subsection (3)(a), the
67 failure to respond shall be considered the water company's consent to the proposed change
68 application and the shareholder may file the change application with the state engineer.

69 (4) (a) In reviewing a shareholder's proposed change application, a water company may
70 consider:

71 (i) whether an increased cost to the water company or [~~its~~] the water company's
72 shareholders results from the proposed change;

73 (ii) whether the proposed change will interfere with the water company's ability to
74 manage and distribute water for the benefit of all shareholders;

75 (iii) whether the proposed change represents more water than the shareholder's
76 proportionate share of the water company's right;

77 (iv) whether the proposed change would create preferential access to use of particular
78 company water rights to the detriment of other shareholders;

79 (v) whether the proposed change will impair the quantity or quality of water delivered
80 to other shareholders under the existing water rights of the water company, including rights to
81 carrier water;

82 (vi) whether the proposed change violates a statute, ordinance, regulation, or order of a
83 court or government agency;

84 (vii) if applicable, whether the shareholder has or can arrange for the beneficial use of
85 water to be retired from irrigation within the water company's service area under the proposed
86 change; and

87 (viii) the cumulative effects that the approval of the change application may have on
88 other shareholders or water company operations.

89 (b) The water company may not withhold consent if any potential damage, liability, or
90 impairment to the water company, or [~~its~~] the water company's shareholders, can be reasonably
91 mitigated without cost to the water company.

92 (c) The water company may require the shareholder to pay all reasonable and necessary
93 costs associated with the change application, but may not impose unreasonable exactions.

94 (5) (a) If the water company declines to consent to the proposed change application,

95 stating its reasons, the shareholder may file an action in district court, seeking court review of
96 the reasonableness of the conditions imposed for giving consent or the reasons stated for
97 declining consent and a final order allowing the shareholder to file the proposed change
98 application with the state engineer.

99 (b) If the water company consents to the proposed change application subject to
100 conditions to which the shareholder does not agree, the shareholder may file the change
101 application with the state engineer as provided in Subsection (6), without waiving the
102 shareholder's right to contest conditions set by the water company under Subsection (3)(b)(ii).

103 (c) During or after the completion of the proceeding before the state engineer
104 commenced under Subsection (6), the shareholder may file an action in district court seeking
105 court review of the reasonableness of the conditions imposed by the water company for giving
106 consent.

107 (d) In an action brought under Subsection (5)(a), (b), or (c), the court:

108 (i) shall refer the parties to mediation under Title 78B, Chapter 6, Part 2, Alternative
109 Dispute Resolution Act, unless one or both parties decline mediation; and

110 (ii) may award costs and reasonable attorney fees to the prevailing party if mediation
111 does not occur because the other party declined to participate in mediation.

112 (6) If the water company consents to the proposed change, the water company fails to
113 respond as required by Subsection (3)(a), the court has entered an order described in
114 Subsection (5)(a), or the water company consents to the proposed change subject to conditions
115 to which the shareholder does not agree, as described in Subsection (5)(b), the shareholder may
116 commence an administrative proceeding by filing the change application with the state
117 engineer in accordance with Section 73-3-3 and this section.

118 (7) The shareholder shall include as part of the change application filed with the state
119 engineer under Subsection (5)(b) or (6):

120 (a) the water company's response to the shareholder's proposed change application;

121 (b) if applicable, an affidavit signed by the shareholder documenting the water
122 company's failure to respond in the time period described in Subsection (3)(a); or

123 (c) if applicable, the court order described in Subsection (5)(a).

124 (8) (a) The state engineer shall evaluate a shareholder's change application in the same
125 manner used to evaluate a change application submitted under Section 73-3-3, using the criteria

126 described in Section 73-3-8.

127 (b) Nothing in this section limits the authority of the state engineer in evaluating and
128 processing a change application, including the authority to require or allow a shareholder or
129 water company to submit additional relevant information, if the state engineer finds an absence
130 of prejudice and allows adequate time and opportunity for the other party to respond.

131 (9) If the state engineer approves a shareholder's change application, the state engineer
132 may, for shares included in the approval, require that the shareholder requesting the change be
133 current on all water company assessments and continue to pay all reasonably applicable future
134 assessments, with credit given to the shareholder for any cost savings to the company resulting
135 from the change.

136 (10) By mutual agreement only, and when the shares will rely upon a different
137 diversion and delivery system, the water company and the shareholder may negotiate a buyout
138 from the water company that may include a pro rata share of the water company's existing
139 indebtedness assignable to the shares.

140 (11) After an application has been approved by the state engineer, the shareholder may
141 file requests for extensions of time to submit proof of beneficial use under the change
142 application without further involvement of the water company.

143 (12) If, after a proposed change has been approved and gone into effect, a shareholder
144 fails to substantially comply with a condition described in Subsection (9), or any condition
145 reasonably imposed by the water company and agreed to by the shareholder, and neglects to
146 remedy the failure after written notice from the water company that allows the shareholder a
147 reasonable opportunity to remedy the failure, no less than 90 days after the day on which the
148 water company gives notice, the water company may petition the state engineer to order a
149 reversal of the change application approval.

150 (13) (a) The shareholder requesting the change shall have a cause of action, including
151 an award of actual damages incurred, against the water company if the water company:

152 (i) unreasonably withholds approval of a requested change;

153 (ii) imposes unreasonable conditions in [~~its~~] the water company's approval; or

154 (iii) withdraws approval of a change application in a manner other than as provided in
155 Subsection (12).

156 (b) The court may award costs and reasonable attorney fees:

157 (i) to the shareholder if the court finds that the water company acted in bad faith when
158 [it] the water company declined to consent to the proposed change or conditioned [its] the
159 water company's consent on excessive exactions or unreasonable conditions; or

160 (ii) to the water company if [it] the court finds that the shareholder acted in bad faith in
161 refusing to accept conditions reasonably necessary to protect other shareholders if the
162 shareholder's change application is approved.

163 Section 2. **Effective date.**

164 If approved by two-thirds of all the members elected to each house, this bill takes effect
165 upon approval by the governor, or the day following the constitutional time limit of Utah
166 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
167 the date of veto override.

168 Section 3. **Retrospective operation.**

169 The amendments in this bill to Section 73-3-3.5 (Effective 03/01/24) have retrospective
170 operation to March 1, 2024.