

Effective 5/4/2022

Superseded 5/3/2023

73-3-30 Change application for an instream flow.

(1) As used in this section:

- (a) "Division" means the Division of Wildlife Resources created in Section 23-14-1, the Division of State Parks created in Section 79-4-201, or the Division of Forestry, Fire, and State Lands created in Section 65A-1-4.
- (b) "Person entitled to the use of water" means the same as that term is defined in Section 73-3-3.
- (c) "Sovereign lands" means the same as that term is defined in Section 65A-1-1.
- (d) "Wildlife" means species of animals, including mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, that are protected or regulated by a statute, law, regulation, ordinance, or administrative rule.

(2)

- (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 section unless the proposed instream flow or use on sovereign lands will contribute to:
 - (i) the propagation or maintenance of wildlife;
 - (ii) the management of state parks; 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.

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

- (a) a legal description of:

- (i) the segment of the natural or altered stream that will be the place of use for an instream flow;
or
- (ii) the location where the water will be used on sovereign lands; and
- (b) appropriate studies, reports, or other information required by the state engineer demonstrating:
 - (i) the projected benefits to the public resulting from the change; and
 - (ii) the necessity for the proposed instream flow or use on sovereign lands.
- (5) 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.
- (6) Water used in accordance with this section is considered to be beneficially used, as required by Section 73-3-1.
- (7) A physical structure or physical diversion from the stream is not required to implement a change under this section.
- (8) 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.