

WATER COMMISSIONER AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael R. Styler

AN ACT RELATING TO WATER AND IRRIGATION; CREATING THE WATER COMMISSIONER FUND; SPECIFYING THE CONTENTS OF THE FUND AND USES OF THE FUND MONIES; AND MAKING TECHNICAL AMENDMENTS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

73-5-1, as last amended by Chapter 36, Laws of Utah 1989

ENACTS:

73-5-1.5, Utah Code Annotated 1953

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

Section 1. Section **73-5-1** is amended to read:

73-5-1. Appointment of water commissioners -- Procedure -- Hearing to determine adequacy of underground water supply.

(1) (a) If, in the judgment of the state engineer or the district court, it is necessary to appoint [~~one or more water commissioners~~] a water commissioner for the distribution of water from any river system or water source, the commissioner [~~or commissioners~~] shall be appointed annually by the state engineer.

(b) The state engineer shall determine whether all or a part of a river system or other water source shall be served by a commissioner, [~~or commissioners,~~] and if only a part is to be served, the state engineer shall determine the boundaries of that part.

(c) The state engineer may [~~also~~] appoint:

(i) more than one commissioner to distribute water from all or a part of a water source; or

(ii) a single commissioner to [~~act on~~] distribute water from several separate and distinct water sources.

(2) (a) The state engineer shall consult with the water users before appointing a commissioner. The form of consultation and notice to be given shall be determined by the state

engineer so as to best suit local conditions, while providing for full expression of majority opinion.

~~[(a)]~~ (b) If a majority of the water users ~~[, as a result of such consultation: (i)]~~ agree upon ~~[some competent]~~ a qualified person ~~[or persons]~~ to be appointed as water commissioner ~~[or commissioners]~~, the duties the person ~~[or persons]~~ shall perform, and the compensation the person ~~[or persons]~~ shall receive~~;~~, and ~~[(ii)]~~ they make recommendations to the state engineer ~~[as to such matters or either of them, then]~~ on the appointment, duties, and compensation, the state engineer shall act in accordance with their recommendations.

~~[(b)]~~ (c) If a majority of water users do not agree ~~[as to such matters, then]~~ on the appointment, duties, or compensation, the state engineer shall make a determination for them.

(3) (a) The salary and expenses of the commissioner ~~[or commissioners]~~ and all other expenses of distribution, including printing, postage, equipment, water users' expenses, and any other expenses considered necessary by the state engineer, shall be borne pro rata by the users of water from ~~[such]~~ the river system or water source~~[, upon]~~ in accordance with a schedule to be fixed by the state engineer. The schedule shall be based on the established rights of each water user, and the pro rata share shall be paid by each water user to the state engineer ~~[in advance]~~ on or before May 1 of each year.

(b) The payments shall be deposited in the Water Commissioner Fund created in Section 73-5-1.5.

~~[(b)]~~ (c) ~~[Upon any failure to do so]~~ If a water user fails to pay the assessment as provided by Subsection (3)(a), the state engineer may do any or all of the following:

(i) create a lien upon the water right affected by filing a notice of lien in the office of the county recorder in the county where the water is diverted and bring an action to enforce the lien;

(ii) forbid the use of water by ~~[any such]~~ the delinquent~~;~~ water user or ~~[by any of the delinquent's]~~ the delinquent water user's successors or ~~[assigns]~~ assignees, while the default continues; or

(iii) bring an action in the district court for the unpaid expense and salary~~[, and foreclose the lien, or the district court having jurisdiction of the person may issue upon any delinquent user an order to show cause why a judgment for such sum should not be entered].~~

~~[(c)]~~ (d) In any action brought to collect any unpaid assessment or to enforce any lien under this section, the delinquent water user shall be liable for the amount of the assessment, interest, any penalty, and for all costs of collection, including all court costs and a reasonable attorney fee.

(4) (a) ~~[The]~~ A commissioner ~~[or commissioners]~~ may be removed by the state engineer for cause.

(b) The users of water from any river system or water source may petition the district court for the removal of ~~[any such]~~ a commissioner ~~[or commissioners,]~~ and after notice and hearing, the court may order the removal of ~~[such]~~ the commissioner ~~[or commissioners]~~ and direct the state engineer to appoint ~~[successors as necessary]~~ a successor.

(5) (a) In addition to the power granted to the state engineer to appoint water commissioners for the distribution of water, the state engineer may, at any time, hold a hearing, or upon a petition signed by not less than one-third of the users of underground waters in any area as defined by the state engineer, shall hold a hearing, to determine whether the underground water supply within such area is adequate for the existing claims.

(b) (i) Notice of the hearing shall be given in a form and manner which, in the judgment of the state engineer, best suits local conditions.

(ii) The state engineer may make a full investigation and provide findings for the hearing.

(c) If the findings show that the water supply is inadequate for existing claims, the state engineer shall divide, or ~~[cause to be divided by the]~~ request that the water commissioner ~~[or water commissioners as provided in this section]~~ divide, the ~~[waters within such area]~~ water supply among the ~~[several]~~ claimants entitled to the water in accordance with their respective rights.

Section 2. Section **73-5-1.5** is enacted to read:

73-5-1.5. Water Commissioner Fund.

(1) There is created an expendable trust fund known as the Water Commissioner Fund.

(2) The fund consists of assessments paid to the state engineer by water users pursuant to Subsection 73-5-1(3).

(3) (a) The fund shall earn interest.

(b) Interest earned on fund monies shall be deposited into the fund.

(4) The state engineer shall use fund monies to pay for salary and expenses of water commissioners and other expenses related to the distribution of water specified in Subsection 73-5-1(3).