

**WATER LAW - CRIMINAL PENALTIES**

**AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ben C. Ferry**

Senate Sponsor: Beverly Ann Evans

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**LONG TITLE**

**General Description:**

This bill modifies the criminal penalties for violations of various provisions of Title 73, Water and Irrigation, and Title 76, Chapter 10, Offenses against Public Health, Safety, Welfare, and Morals.

**Highlighted Provisions:**

This bill:

- ▶ removes criminal penalties from certain provisions requiring reports to the state engineer;
- ▶ clarifies applicable standards of criminal intent for violations;
- ▶ provides for graduated criminal penalties for violations of various criminal provisions pertaining to the regulation and distribution of water; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**73-1-14**, Utah Code Annotated 1953

**73-1-15**, as last amended by Chapter 156, Laws of Utah 1965

**73-2-20**, Utah Code Annotated 1953

73-3-3, as last amended by Chapter 136, Laws of Utah 2001  
73-3-22, as last amended by Chapter 25, Laws of Utah 1987  
73-3-26, as last amended by Chapter 178, Laws of Utah 1986  
73-3-29, as last amended by Chapter 61, Laws of Utah 1992  
73-5-8, Utah Code Annotated 1953  
73-5-9, Utah Code Annotated 1953  
76-10-201, as enacted by Chapter 196, Laws of Utah 1973  
76-10-202, as enacted by Chapter 196, Laws of Utah 1973  
76-10-203, as enacted by Chapter 196, Laws of Utah 1973

ENACTS:

73-2-27, Utah Code Annotated 1953

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

Section 1. Section **73-1-14** is amended to read:

**73-1-14. Interfering with waterworks or with apportioning official -- Penalty and liability.**

(1) Any person, who in any way unlawfully interferes with, injures, destroys or removes any dam, head gate, weir, casing, valve, cap or other appliance for the diversion, apportionment, measurement or regulation of water, or who interferes with any person authorized to apportion water while in the discharge of his duties, is guilty of a ~~[misdemeanor, and]~~ crime punishable under Section 73-2-27.

(2) Any person who commits an act defined as a crime under this section is also liable ~~[in]~~ in a civil action for damages or other relief to any person injured by ~~[such unlawful act]~~ that act.

(3) (a) A civil action under this section may be brought independent of a criminal action.

(b) Proof of the elements of a civil action under this section need only be made by a preponderance of the evidence.

Section 2. Section **73-1-15** is amended to read:

**73-1-15. Obstructing canals or other watercourses -- Penalties.**

(1) Whenever any person~~[, partnership, company or corporation]~~ has a right-of-way of any established type or title for any canal or other watercourse it shall be unlawful for any person~~[, persons or governmental agencies]~~ to place or maintain in place any obstruction, or change of the water flow by fence or otherwise, along or across or in such canal or watercourse, except as where said watercourse inflicts damage to private property, without first receiving written permission for the change and providing gates sufficient for the passage of the owner or owners of such canal or watercourse. That the vested rights in the established canals and watercourse shall be protected against all encroachments. That indemnifying agreements may be entered as may be just and proper by governmental agencies.

(2) Any person~~[, partnership, company or corporation]~~ violating ~~[the provisions of]~~ this section is guilty of a ~~[misdemeanor and is subject to damages and costs]~~ crime punishable under Section 73-2-27.

(3) Any person who commits an act defined as a crime under this section is also liable for damages or other relief and costs in a civil action to any person injured by that act.

(4) (a) A civil action under this section may be brought independent of a criminal action.

(b) Proof of the elements of a civil action under this section need only be made by a preponderance of the evidence.

Section 3. Section **73-2-20** is amended to read:

**73-2-20. Employees authorized to enter and cross lands -- Injuring monuments a crime.**

(1) In order to carry out the purposes of this ~~[act]~~ title any person ~~[or persons]~~ properly employed hereunder ~~[are]~~ is authorized to enter and cross all lands within the state~~;~~ ~~provided,~~ ~~that in so doing]~~ if no damage is done to private property.

(2) It ~~[shall be]~~ is a ~~[misdemeanor]~~ crime punishable under Section 73-2-27 for any person ~~[or persons willfully and maliciously]~~ to knowingly or intentionally remove or injure any equipment, permanent marks, or monuments made or installed ~~[for the purpose of carrying on these investigations]~~ by any person properly employed under this title.

Section 4. Section **73-2-27** is enacted to read:

**73-2-27. Criminal penalties.**

(1) This section applies to offenses committed under:

(a) Section 73-1-14;

(b) Section 73-1-15;

(c) Section 73-2-20;

(d) Subsection 73-3-3(9);

(e) Section 73-3-26;

(f) Section 73-3-29;

(g) Section 73-5-9;

(h) Section 76-10-201;

(i) Section 76-10-202; and

(j) Section 76-10-203.

(2) Under circumstances not amounting to an offense with a greater penalty under Subsection 76-6-106(2)(b)(ii) or Section 76-6-404, violation of a provision listed in Subsection (1) is punishable:

(a) as a felony of the third degree if:

(i) the value of the water diverted or property damaged or taken is \$2,500 or greater; and

(ii) the person violating the provision has previously been convicted of violating the same provision;

(b) as a class A misdemeanor if:

(i) the value of the water diverted or property damaged or taken is \$2,500 or greater; or

(ii) the person violating the provision has previously been convicted of violating the same provision; or

(c) as a class B misdemeanor if Subsection (2)(a) or (b) do not apply.

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

**73-3-3. Permanent or temporary changes in point of diversion, place of use, or purpose of use.**

(1) For purposes of this section:

(a) "Permanent changes" means changes for an indefinite length of time with an intent to relinquish the original point of diversion, place of use, or purpose of use.

(b) "Temporary changes" means changes for fixed periods not exceeding one year.

(2) (a) Any person entitled to the use of water may make permanent or temporary changes in the:

(i) point of diversion;

(ii) place of use; or

(iii) purpose of use for which the water was originally appropriated.

(b) A change may not be made if it impairs any vested right without just compensation.

(3) Both permanent and temporary changes of point of diversion, place of use, or purpose of use of water, including water involved in general adjudication or other suits, shall be made in the manner provided in this section.

(4) (a) A change may not be made unless the change application is approved by the state engineer.

(b) Applications shall be made upon forms furnished by the state engineer and shall set forth:

(i) the name of the applicant;

(ii) a description of the water right;

(iii) the quantity of water;

(iv) the stream or source;

(v) the point on the stream or source where the water is diverted;

(vi) the point to which it is proposed to change the diversion of the water;

(vii) the place, purpose, and extent of the present use;

(viii) the place, purpose, and extent of the proposed use; and

(ix) any other information that the state engineer requires.

(5) (a) The state engineer shall follow the same procedures, and the rights and duties of the applicants with respect to applications for permanent changes of point of diversion, place of

use, or purpose of use shall be the same, as provided in this title for applications to appropriate water.

(b) The state engineer may, in connection with applications for permanent change involving only a change in point of diversion of 660 feet or less, waive the necessity for publishing a notice of application.

(6) (a) The state engineer shall investigate all temporary change applications.

(b) If the state engineer finds that the temporary change will not impair any vested rights of others, he shall issue an order authorizing the change.

(c) If the state engineer finds that the change sought might impair vested rights, before authorizing the change, he shall give notice of the application to any person whose rights may be affected by the change.

(d) Before making an investigation or giving notice, the state engineer may require the applicant to deposit a sum of money sufficient to pay the expenses of the investigation and publication of notice.

(7) (a) The state engineer may not reject applications for either permanent or temporary changes for the sole reason that the change would impair the vested rights of others.

(b) If otherwise proper, permanent or temporary changes may be approved for part of the water involved or upon the condition that conflicting rights are acquired.

(8) (a) Any person holding an approved application for the appropriation of water may either permanently or temporarily change the point of diversion, place of use, or purpose of use.

(b) A change of an approved application does not:

(i) affect the priority of the original application; or

(ii) extend the time period within which the construction of work is to begin or be completed.

(9) Any person who changes or who attempts to change a point of diversion, place of use, or purpose of use, either permanently or temporarily, without first applying to the state engineer in the manner provided in this section:

(a) obtains no right; [~~and~~]

(b) is guilty of a [~~class B misdemeanor~~], crime punishable under Section 73-2-27 if the change or attempted change is made knowingly or intentionally; and

(c) is guilty of a separately punishable offense for each day of the unlawful change [~~constituting a separate offense, separately punishable~~].

(10) (a) This section does not apply to the replacement of an existing well by a new well drilled within a radius of 150 feet from the point of diversion of the existing well.

(b) Any replacement well must be drilled in accordance with the requirements of Section 73-3-28.

(11) (a) In accordance with the requirements of this section, the Division of Wildlife Resources or Division of Parks and Recreation may file applications for permanent or temporary changes for the purpose of providing water for instream flows, within a designated section of a natural stream channel or altered natural stream channel, necessary within the state [~~of Utah~~] for:

- (i) the propagation of fish;
- (ii) public recreation; or
- (iii) the reasonable preservation or enhancement of the natural stream environment.

(b) Applications may be filed for changes on:

- (i) perfected water rights presently owned by the respective division;
- (ii) perfected water rights purchased by the respective division for the purpose of providing water for instream flows, through funding provided for that purpose by legislative appropriation or acquired by lease, agreement, gift, exchange, or contribution; or

- (iii) appurtenant water rights acquired with the acquisition of real property by either division.

(c) A physical structure or physical diversion from the stream is not required to implement a change for instream flow use.

(d) This Subsection (11) does not allow enlargement of the water right sought to be changed nor may the change impair any vested water right.

(e) In addition to the other requirements of this section, an application filed by either division shall:

(i) set forth the legal description of the points on the stream between which the necessary instream flows will be provided by the change; and

(ii) include appropriate studies, reports, or other information required by the state engineer that demonstrate the necessity for the instream flows in the specified section of the stream and the projected benefits to the public that will result from the change.

(f) The Division of Wildlife Resources and Division of Parks and Recreation may:

(i) purchase water rights for the purposes provided in Subsection (11)(a) only with funds specifically appropriated by the Legislature for water rights purchases; or

(ii) accept a donated water right without legislative approval.

(g) This Subsection (11) does not authorize either division to:

(i) appropriate unappropriated water under Section 73-3-2 for the purpose of providing instream flows; or

(ii) acquire water rights by eminent domain for instream flows or for any other purpose.

(h) This Subsection (11) applies only to change applications filed on or after April 28, 1986.

(12) (a) Sixty days before the date on which proof of change for instream flows under Subsection (11) is due, the state engineer shall notify the applicant by registered mail or by any form of electronic communication through which receipt is verifiable of the date when proof of change is due.

(b) Before the date when proof of change is due, the applicant must either:

(i) file a verified statement with the state engineer that the instream flow uses have been perfected, which shall set forth:

(A) the legal description of the points on the natural stream channel or altered natural stream channel between which the necessary instream flows have been provided;

(B) detailed measurements of the flow of water in second feet changed;

(C) the period of use; and

(D) any additional information required by the state engineer; or

(ii) apply for a further extension of time as provided for in Section 73-3-12.



(c) Upon approval of the verified statement required under Subsection (12)(b)(i), the state engineer shall issue a certificate of change for instream flow use.

Section 6. Section **73-3-22** is amended to read:

**73-3-22. Underground water -- Report of well and tunnel drillers.**

~~[(+)]~~ Any person constructing a well or tunnel for the purpose of utilizing or monitoring underground waters shall, within 30 days after the completion or abandonment of the construction, report to the state engineer data relating to each well or tunnel. The report shall be made on forms furnished by the state engineer and shall contain information required by the state engineer.

~~[(2) Any person who fails to comply with the provisions of this section is guilty of a class B misdemeanor.]~~

Section 7. Section **73-3-26** is amended to read:

**73-3-26. Violations -- Penalty.**

(1) Any person~~[- firm, copartnership, association, or corporation]~~ drilling a well or wells in the state or who advertises or holds himself ~~[or itself]~~ out as a well driller, or who follows such business, without first having obtained a ~~[permit]~~ license as provided by this act or who drills a well or wells after revocation or expiration of his ~~[permit]~~ license theretofore issued, ~~[or who drills a well or wells in violation of the rules and regulations]~~ is guilty of a ~~[class B misdemeanor]~~ crime punishable under Section 73-2-27.

(2) Each day that a violation under Subsection (1) continues is a separate offense.

Section 8. Section **73-3-29** is amended to read:

**73-3-29. Relocation of natural streams -- Written permit required -- Emergency work -- Violations.**

(1) Except as provided in Subsection (2), a state agency, county, city, corporation, or person may not relocate any natural stream channel or alter the beds and banks of any natural stream without first obtaining the written approval of the state engineer.

(2) (a) The state engineer may issue an emergency permit or order to relocate a natural stream channel or alter the beds and banks of a natural stream as provided by this Subsection (2)

and Section 63-46b-20.

(b) If an emergency situation arises which involves immediate or actual flooding and threatens injury or damage to persons or property, steps reasonably necessary to alleviate or mitigate the threat may be taken before a written permit is issued subject to the requirements of this section.

(c) (i) If the threat occurs during normal working hours, the state engineer or his representative must be notified immediately of the threat. After receiving notification of the threat, the state engineer or his representative may orally approve action to alleviate or mitigate the threat.

(ii) If the threat does not occur during normal working hours, action may be taken to alleviate or mitigate the threat and the state engineer or his representative shall be notified of the action taken on the first working day following the work.

(d) A written application outlining the action taken or the action proposed to be taken to alleviate or mitigate the threat shall be submitted to the state engineer within two working days following notification of the threat to the state engineer or his representative.

(e) (i) The state engineer shall inspect in a timely manner the site where the emergency action was taken.

(ii) After inspection, additional requirements, including mitigation measures, may be imposed.

(f) Adjudicative proceedings following the emergency work shall be informal unless otherwise designated by the state engineer.

(3) An application to relocate any natural stream channel or alter the beds and banks of any natural stream shall be in writing and shall contain the following:

- (a) the name and address of the applicant;
- (b) a complete and detailed statement of the location, nature, and type of relocation or alteration;
- (c) the methods to be employed;
- (d) the purposes of the application; and

(e) any additional information that the state engineer considers necessary, including, but not limited to, plans and specifications of the proposed construction of works.

(4) (a) The state engineer shall, without undue delay, conduct investigations that may be reasonably necessary to determine whether the proposed relocation or alteration will:

(i) impair vested water rights;

(ii) unreasonably or unnecessarily affect any recreational use or the natural stream environment;

(iii) unreasonably or unnecessarily endanger aquatic wildlife; or

(iv) unreasonably or unnecessarily diminish the natural channel's ability to conduct high flows.

(b) The application shall be approved unless the proposed relocation or alteration will:

(i) impair vested water rights;

(ii) unreasonably or unnecessarily adversely affect any public recreational use or the natural stream environment;

(iii) unreasonably or unnecessarily endanger aquatic wildlife; or

(iv) unreasonably or unnecessarily diminish the natural channel's ability to conduct high flows.

(c) The state engineer may approve the application, in whole or in part, with any reasonable terms to protect vested water rights, any public recreational use, the natural stream environment, or aquatic wildlife.

(5) No cost incurred by the applicant, including any cost incurred to comply with the terms imposed by the state engineer, is reimbursable by the Division of Water Rights.

~~[(6) Any officer or employee of any state agency, county, city, or corporation, or any other person who violates the provisions of this section is guilty of a class B misdemeanor.]~~

(6) Except as provided in Subsection (2), a person who knowingly or intentionally relocates any natural stream channel, or alters the bed or bank of any natural stream channel without first obtaining the written approval of the state engineer is guilty of a crime punishable under Section 73-2-27.

Section 9. Section **73-5-8** is amended to read:

**73-5-8. Reports by users to engineer.**

Every person using water from any river system or water source, when requested by the state engineer [~~for any season~~], shall within [~~thirty~~] 30 days after such request report to the state engineer in writing:

(1) the nature of the use of any such water[;];

(2) the area on which used [~~and~~];

(3) the kind of crops to be grown; and [~~he shall likewise, upon such request, furnish statements of~~]

(4) water elevations on wells or tunnels and quantity of underground water used.

[~~Failure to comply with the provisions of this section shall constitute a misdemeanor.~~]

Section 10. Section **73-5-9** is amended to read:

**73-5-9. Powers of state engineer as to waste, pollution, or contamination of waters.**

(1) To prevent waste, loss, pollution, or contamination of any waters whether above or below the ground, the state engineer may require the repair or construction of head gates or other devices on ditches or canals, and the repair or installation of caps, valves, or casings on any well or tunnel or the plugging or filling thereof to accomplish the purposes of this section.

(2) Any requirement made by the state engineer in accordance with this section shall be executed by and at the cost and expense of the owner, lessee or person having control of such diverting works affected.

(3) If within ten days after notice of such requirement as provided in this section, the owner, lessee or person having control of the water affected, has not commenced to carry out such requirement, or if he has commenced to comply therewith but shall not thereafter proceed diligently to complete the work, the state engineer may forbid the use of water from such source until the user thereof shall comply with such requirement.

(4) Failure to comply with any requirement made by the state engineer [~~in accordance with the provisions of~~] under this section [~~shall constitute a misdemeanor~~] is a crime punishable under Section 73-2-27 if the failure to comply is knowing or intentional.

(5) Each day that such violation is permitted to continue shall constitute a separate offense.

Section 11. Section **76-10-201** is amended to read:

**76-10-201. Interference with water flow.**

Every person who ~~[in any way]~~ knowingly or intentionally interferes with or alters the flow of water in any stream, ditch, or lateral while under the control or management of any water commissioner is guilty of a ~~[class B misdemeanor]~~ crime punishable under Section 73-2-27.

Section 12. Section **76-10-202** is amended to read:

**76-10-202. Taking water out of turn or excess amount -- Damaging facilities.**

(1) ~~[Every person who]~~ No person may, in violation of any right of any other person~~;~~ willfully turns or uses knowingly or intentionally:

(a) turn or use the water, or any part thereof, of any canal, ditch, pipeline, or reservoir, except at a time when the use of the water has been duly distributed to the person~~;~~ or willfully uses;

(b) use any greater quantity of the water than has been duly distributed to him~~;~~ or;

(c) in any way ~~[changes]~~ change the flow of water when lawfully distributed for irrigation or other useful purposes, except when duly authorized to make the change~~;~~ or ~~[willfully and maliciously breaks or injures]~~

(d) break or injure any dam, canal, pipeline, watergate, ditch, or other means of diverting or conveying water for irrigation or other useful purposes~~;~~ ;

(2) Subsection (1) applies to violations of any right to the use of water, including:

(a) a water right; or

(b) authorization of a person's use of water by:

(i) a water company, as defined in Subsection 73-3-3.5(1)(b); or

(ii) an entity having a valid water right under Utah law.

(3) Any person who violates this section is guilty of a ~~[class B misdemeanor]~~ crime punishable under Section 73-2-27.

Section 13. Section **76-10-203** is amended to read:

**76-10-203. Obstruction of watergates.**

Every person who rafts or floats logs, timber, or wood down any river or stream and allows the logs, timber, or wood to accumulate at or obstruct the watergates owned by any person or irrigation company taking or diverting the water of the river or stream for irrigation or manufacturing purposes is guilty of a [~~class-B misdemeanor~~] crime punishable under Section 73-2-27.