

1 **WATER COMPANY AMENDMENTS**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: David Ure**

5 Senate Sponsor: Thomas V. Hatch

7 **LONG TITLE**

8 **General Description:**

9 This bill allows a shareholder who is requesting a change to a water right to recover
10 damages in an action against the water company.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ allows a water company shareholder who is requesting a change to a water right
14 held by the company to recover actual damages in an action against the water
15 company under certain conditions.

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **73-3-3.5**, as enacted by Chapter 289, Laws of Utah 2002

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

25 Section 1. Section **73-3-3.5** is amended to read:

26 **73-3-3.5. Application for a change of point of diversion, place of use, or purpose**
27 **of use of water in a water company made by a shareholder.**

28 (1) As used in this section:

29 (a) "Shareholder" means the owner of a share of stock, or other evidence of stock

30 ownership, that entitles the person to a proportionate share of water in a water company.

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

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

38 (a) the details of the requested change, which may include the point of diversion,
39 period of use, place, or nature of use;

40 (b) the quantity of water sought to be changed;

41 (c) the certificate number of the stock affected by the change;

42 (d) a description of the land proposed to be retired from irrigation pursuant to Section
43 73-3-3, if the proposed change in place or nature of use of the water involves a situation where
44 the water was previously used for irrigation;

45 (e) an agreement by the shareholder to continue to pay all applicable corporate
46 assessments on the share affected by the change; and

47 (f) any other information that the water company may reasonably need to evaluate the
48 requested change application.

49 (3) (a) A water company shall make a decision and provide written notice of that
50 decision on a shareholder's request for a change application within 120 days from receipt of the
51 request.

52 (b) Based on the facts and circumstances of each proposed change, a water company
53 may take the following action:

54 (i) approve the change request;

55 (ii) approve the change request with conditions; or

56 (iii) deny the change request.

57 (c) If the water company fails to respond to a shareholder's request for a change

58 application, pursuant to Subsection (3)(a), the failure to respond shall be considered to be a
59 denial of the request.

60 (d) The water company may not withhold approval if any potential damage, liability, or
61 impairment to the water company, or its shareholders, can be reasonably mitigated without cost
62 to the water company.

63 (e) A water company may consider the following factors in evaluating change
64 applications:

65 (i) any increased cost to the water company or its shareholders;

66 (ii) interference with the water company's ability to manage and distribute water for the
67 benefit of all shareholders;

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

70 (iv) impairment of either the quantity or quality of water delivered to other
71 shareholders under the existing water rights of the water company, including rights to carrier
72 water;

73 (v) whether the proposed change would cause a violation of any statute, ordinance,
74 regulation, or order of a court or governmental agency;

75 (vi) whether the shareholder has or can arrange for the beneficial use of water to be
76 retired from irrigation within the water company's service under the proposed change; or

77 (vii) the cumulative effects that the approval of the change application may have on
78 other shareholders or water company operations.

79 (4) The water company may require that all costs associated with the change
80 application, including costs of submitting proof, be paid by the shareholder.

81 (5) (a) The shareholder requesting the change must be current on all water company
82 assessments and agree to continue to pay all applicable future assessments, except that the
83 shareholder may choose to prepay any portion of the water company assessments attributable to
84 an existing debt of the water company.

85 (b) Other than prepaid assessments, the water company may require that the

86 shareholder continue to pay all applicable assessments.

87 (6) If the water company approves the requested change, with or without conditions,
88 the change application may be filed with the state engineer, and must:

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

90 (b) be accompanied by written authorization from the water company assenting to the
91 change.

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

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

97 (8) If an application authorized by a water company under this section is approved by
98 the state engineer, the shareholder may file requests for extensions of time to submit proof of
99 beneficial use under the change application without further permission of the water company.

100 (9) (a) Change applications approved under this section are subject to all conditions
101 imposed by the water company and the state engineer.

102 (b) If a shareholder fails to comply with all of the conditions imposed by the water
103 company, the water company may, after written notice to the shareholder and after allowing
104 reasonable time to remedy the failure, withdraw its approval of the application, and petition the
105 state engineer for an order canceling the change application.

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

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

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

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

112 (iii) withdraws approval of a change application in a manner other than as provided in
113 Subsection (9).

114 (b) The action referred to in Subsection (10)(a) shall be referred to mediation by the
115 court under Title 78, Chapter 31b, Alternative Dispute Resolution Act, unless both parties
116 decline mediation.

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