

H.B. 48

DEPARTMENT OF NATURAL RESOURCES AMENDMENTS

HOUSE FLOOR AMENDMENTS

AMENDMENT 2

JANUARY 17, 2007

6:41 PM

Representative **Richard W. Wheeler** proposes the following amendments:

1. *Page 1, Line 21:*

21 { ~~→ authorizes the Division of Forestry, Fire, and State Lands to purchase property;~~ }

2. *Page 2, Lines 49 through 51:*

49 73-2-4, Utah Code Annotated 1953

= **73-2-25, as enacted by Chapter 33, Laws of Utah 2005**

50 73-3-8, as last amended by Chapter 139, Laws of Utah 1985

51 73-3-12, as last amended by Chapter 58, Laws of Utah 2006

= **73-3b-206, as enacted by Chapter 146, Laws of Utah 1991**

3. *Page 19, Lines 569 through 570:*

569 { ~~(c) The division may purchase land if the purchase is approved by the Legislature in an~~
570 ~~appropriations act.~~ }

4. *Page 40, Line 1218:*

1218 (3) purchase all necessary equipment and supplies.

Section 39. Section 73-2-25 is amended to read:

73-2-25. State engineer enforcement powers.

(1) For purposes of this section, "initial order" means one of the following issued by the state engineer:

(a) a notice of violation; or

(b) a cease and desist order.

(2) (a) The state engineer may commence an enforcement action under this section if the state engineer finds that a person:

(i) is diverting **, impounding, or using** water for which no water right has been established;

(ii) is diverting **, impounding, or using** water in violation of an existing water right;

(iii) violates Section 73-5-4;

(iv) violates Section 73-5-9;

(v) violates a written distribution order from the state engineer;

(vi) violates an order issued under Section 73-3-29 regarding the alteration of the bed or bank of a natural stream channel; or

(vii) violates a notice or order regarding dam safety issued under Chapter 5a, Dam Safety.

(b) To commence an enforcement action under this section, the state engineer shall issue an initial order, which shall include:

- (i) a description of the violation;
- (ii) notice of any penalties to which a person may be subject under Section 73-2-26; and
- (iii) notice that the state engineer may treat each day's violation of the provisions listed in Subsection (2)(a) as a separate violation under Subsection 73-2-26(1)(d).

(c) The state engineer's issuance and enforcement of an initial order is exempt from Title 63, Chapter 46b, Administrative Procedures Act.

(3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the state engineer shall make rules necessary to enforce an initial order, which shall include:

(a) provisions consistent with this section and Section 73-2-26 for enforcement of the initial order if a person to whom an initial order is issued fails to respond to the order or abate the violation;

(b) the right to a hearing, upon request by a person against whom an initial order is issued; and

(c) provisions for timely issuance of a final order after:

(i) the person to whom the initial order is issued fails to respond to the order or abate the violation; or

(ii) a hearing held under Subsection (3)(b).

(4) A person may not intervene in an enforcement action commenced under this section.

(5) After issuance of a final order under rules made pursuant to Subsection (3)(c), the state engineer shall serve a copy of the final order on the person against whom the order is issued by:

(a) personal service under Utah Rules of Civil Procedure 5; or

(b) certified mail.

(6) (a) The state engineer's final order may be reviewed by trial de novo by the district court in:

(i) Salt Lake County; or

(ii) the county where the violation occurred.

(b) A person shall file a petition for judicial review of the state engineer's final order issued under this section within 20 days from the day on which the final order was served on that person.

(7) The state engineer may bring suit in a court of competent jurisdiction to enforce a final order issued under this section.

(8) If the state engineer prevails in an action brought under Subsection (6)(b) or (7), the state may recover all court costs and a reasonable attorney fee.

5. Page 44, Line 1330:

1330 extended as provided in Subsection (2)(j).

Section 43. Section 73-3B-206 is amended to read:

73-3b-206. Lapse of recovery permit.

A recovery permit will lapse if the recovery project is not completed within ~~{two}~~ five years from the date of approval **unless the applicant requests an extension of time to complete the project and the state engineer approves the request** .

Renumber remaining sections accordingly.