

S.B. 29

INSTREAM FLOW TO PROTECT TROUT HABITAT

Representative _____ proposes the following amendments:

1. *Page 1, Lines 26 through 27:*

26 Other Special Clauses:

27 {None} **This bill coordinates with H.B. 48, Department of Natural Resources Amendments by merging substantive and technical amendments.**

2. *Page 16, Line 490:*

After line 490 insert:

Section 8. Coordinating S.B. 29 with H.B. 48 -- Merging substantive and technical amendments.

If this S.B. 29 and H.B. 48, Department of Natural Resources Amendments, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel in preparing the Utah Code database for publication modify Section 73-5-4 to read:

"73-5-4. Controlling works and measuring devices.

~~Every~~ (1) To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, each person using water in this state , except as provided by Subsection (4), shall construct or install and maintain ~~[a substantial head gate, cap, valve or other]~~ controlling works ~~[- weir flume]~~ and a measuring device at :

~~(a) each [point] location where water is diverted [or turned out, for the purpose of regulating and measuring the quantity of water that may be used. Such controlling works or measuring device shall be of such design as the state engineer may approve and so that the same can be locked and kept set by him or his assistants; and such owner shall construct and maintain, when required by the state engineer, flumes or other measuring devices at such points along his ditch as may be necessary for the purpose of assisting the state engineer or his assistants in determining the amount of water that is to be diverted into his ditch from the stream or water source, or taken from it by the various users. Every]~~ from a source; and

(b) any other location required by the state engineer.

(2) Each person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.

(3) The state engineer shall approve the design of:

(a) the measuring device; and

(b) controlling works so that the state engineer or a water commissioner may regulate and lock the works.

(4) Each person using water as an instream flow:

(a) shall install and maintain a measuring device or stream gauging station in the section of the stream within which the instream flow is maintained; and

(b) is not required to install controlling works unless the state engineer's order approving the application

requires the installation because controlling works are necessary to achieve the purpose of the application.

(5) (a) Each owner or manager of a reservoir [~~located across or upon the bed of a natural stream~~] shall construct and maintain [~~when required~~] a measuring device as directed by the state engineer [~~a flume or other measuring device of a plan to be approved by the state engineer, below such reservoir at a point approved by him, and a flume or measuring device above such reservoir on each stream or source of supply discharging into such reservoir, for the purpose of assisting the state engineer in determining the amount of water to which prior appropriators are entitled, and thereafter diverting it for such prior appropriators' use. If the owner of irrigation works, canals, reservoirs, wells, pumps or tunnels shall refuse or neglect~~] to measure the inflow, storage content, and outflow from the reservoir.

(b) The state engineer shall approve the design and location of a measuring device.

(c) The owner or manager of a reservoir shall make the measuring device accessible to the state engineer or water commissioner.

(6) If a water user refuses or neglects to construct or install [~~such head-gates, caps, valves, flumes~~] the controlling works or measuring [~~devices~~] device after [~~thirty~~] 30 days' notice to do so by the state engineer, the state engineer may :

(a) forbid the use of water until the user [~~thereof shall comply with his~~] complies with the state engineer's requirement [~~or the state engineer may proceed to construct or install or cause to be constructed or installed such controlling works or measuring devices, and the cost of the same shall be a lien against the lands and water rights served thereby, and the state engineer is authorized to bring action in the name of the state to foreclose such lien.~~] ; and

(b) commence enforcement proceedings authorized by Section 73-2-25."