

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

246 **73-3-3. Permanent or temporary changes to the use of water.**

247 (1) For purposes of this section:

248 (a) ~~Ĥ→~~ (i) ~~←Ĥ~~ "Change applicant" means any of the following who seek to make a
 248a permanent or
 249 temporary change under Subsection (2)(a):

250 ~~Ĥ→~~ [(i)] (A) ~~←Ĥ~~ the record title owner of a water right;

251 ~~Ĥ→~~ [(ii)] (B) ~~←Ĥ~~ the holder of an approved but unperfected application to appropriate
 251a water;

252 ~~Ĥ→~~ [(iii)] (C) ~~←Ĥ~~ a person, including a shareholder in a water company, who is the
 252a equitable owner

253 and beneficial user of a water right, even if nominal legal title is held by another person; or

254 ~~Ĥ→~~ [(iv)] (D) ~~←Ĥ~~ a person who has written authorization from a person described in
 254a Subsection

255 (1)(a)(i) ~~Ĥ→~~ (A) ~~←Ĥ~~ , ~~Ĥ→~~ [(ii)] (B) ~~←Ĥ~~ , or ~~Ĥ→~~ [(iii)] (C) ~~←Ĥ~~ to file a change application on
 255a that person's behalf.

255b ~~Ĥ→~~ (ii) **"Change applicant" does not include a person who holds only a contract or**
 255c **leasehold interest in a water right.** ~~←Ĥ~~

256 [~~Ĥ→~~] (b) "Permanent change" means a change for an indefinite period of time [with an
 257 intent to relinquish the original point of diversion, place of use, or purpose of use:] to the:

258 (i) point of diversion;

259 (ii) place of use;

260 (iii) period of use;

261 (iv) nature of use for which the water is currently appropriated; or

262 (v) addition or deletion of storage as an authorized use.

263 [~~Ĥ→~~] (c) "Temporary change" means a change for a fixed period of time, not exceeding
 264 one year[-], to the:

265 [~~(2)(a) Subject to Subsection (2)(c), a person entitled to the use of water may make~~
 266 ~~permanent or temporary changes in the:]~~

267 [~~(i) point of diversion;]~~

268 [~~(ii) place of use; or]~~

269 [~~(iii) purpose of use for which the water was originally appropriated.]~~

270 (i) point of diversion;

271 (ii) place of use;

272 (iii) period of use;

273 (iv) nature of use for which the water is currently appropriated; or

274 (v) addition or deletion of storage as an authorized use.

275 (d) "Transitional change" means a temporary or permanent change made:

493 ~~[(vii)]~~ (vi) the cumulative effects that the approval of the change application may have
 494 on other shareholders or water company operations.

495 (4) (a) The state engineer shall evaluate a shareholder's change application in the same
 496 manner used to evaluate a change application submitted under Section 73-3-3, using:

497 (i) the criteria described in Section 73-3-8;

498 (ii) the considerations described in Subsection (3)(c); and

499 (iii) the water company's response to the shareholder's proposed change application,
 500 including, if applicable, the result of a shareholder vote required by Section 73-3-30.

501 (b) Nothing in this section ~~H→~~ ~~[shall limit] limits~~ ~~←H~~ the authority of the state engineer in
 501a evaluating

502 and processing a change application ~~H→~~ ~~[:] , including the authority to allow a shareholder or~~
 502a water company to submit additional relevant information, if the state engineer allows adequate
 502b time and opportunity for the other party to respond. ~~←H~~

503 (c) The state engineer may not withhold approval of a change application under this
 504 section based on potential damage, liability, or impairment to the water company or its
 505 shareholders if the potential damage, liability, or impairment can be reasonably mitigated
 506 without cost to the water company.

507 ~~[(4)]~~ (5) The ~~[water company]~~ state engineer may require ~~[that all]~~ a shareholder to pay
 508 reasonable costs associated with the shareholder's change application~~[-, including costs of~~
 509 ~~submitting proof, be paid by the shareholder].~~

510 ~~[(5) (a) The]~~ (6) For the shares listed in the change application, the state engineer shall
 511 require that the shareholder requesting the change [must]:

512 (a) be current on all water company assessments; and [agree to]

513 (b) (i) continue to pay all applicable future assessments[-, except that the shareholder
 514 may choose to prepay any portion of the water company assessments attributable to an existing
 515 debt of the water company.]; or

516 ~~[(b) Other than prepaid assessments, the water company may require that the~~
 517 ~~shareholder continue to pay all applicable assessments.]~~

518 ~~[(6) If the water company approves the requested change, with or without conditions,~~
 519 ~~the change application may be filed with the state engineer, and must:]~~

520 ~~[(a) be signed on behalf of the water company; or]~~

521 ~~[(b) be accompanied by written authorization from the water company assenting to the~~
 522 ~~change.]~~

523 ~~[(7) (a) The state engineer may evaluate a change application authorized by a water~~

679 title owner and equitable owner to mediation;

680 (ii) require that, before the state engineer makes an order in the adjudicative
 681 proceeding, the nominal title owner and equitable owner mediate the dispute; or

682 (iii) if the state engineer finds that a legal issue exists in the adjudicative proceeding
 683 that is appropriate for the courts to determine, require that the nominal title owner and the
 684 equitable owner obtain a ruling from a district court on the issue before the state engineer
 685 continues with the adjudicative proceeding.

686 (6) Change applications approved under this section are subject to all written
 687 conditions relating to the change application, including conditions:

688 (a) imposed by the state engineer; and

689 (b) agreed upon between the nominal title owner and the equitable owner.

690 (7) If an equitable owner fails to substantially comply with a condition described in
 691 Subsection (6) and neglects to remedy the failure after written notice from the nominal title
 692 owner that allows the equitable owner a reasonable opportunity to remedy the failure, that is
 693 not fewer than 90 days after the day on which the nominal title owner gives notice, the nominal
 694 title owner may:

695 (a) petition the state engineer to order a reversal of the change application approval; or

696 (b) file an action in district court to compel compliance with the condition.

697 (8) Nothing in this section ~~H~~→ [shall limit] limits ←~~H~~ the authority of the state engineer in
 697a evaluating

698 and processing a change application ~~H~~→ [;], including the authority to allow an equitable owner
 698a or nominal title owner to submit additional relevant information, if the state engineer allows
 698b adequate time and opportunity for the other party to respond. ←~~H~~

699 Section 6. Section **73-3-30** is amended to read:

700 **73-3-30. Change application for an instream flow.**

701 (1) As used in this section:

702 (a) "Division" means the Division of Wildlife Resources, created in Section 23-14-1,
 703 or the Division of Parks and Recreation, created in Section 79-4-201.

704 (b) "Fishing group" means an organization that:

705 (i) is exempt from taxation under Section 501(c)(3), Internal Revenue Code; and

706 (ii) promotes fishing opportunities in the state.

707 (c) "Fixed time change" means a change in a water right's point of diversion, place of
 708 use, or purpose of use for a fixed period of time longer than one year but not longer than 10
 709 years.