

WATER RIGHTS AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Margaret Dayton

House Sponsor: Keith Grover

LONG TITLE

General Description:

This bill requires that a person who applies for a permanent or temporary change to a water right meet certain qualifications and allows the state engineer, upon receiving a change application, to determine the quantity of water that is being beneficially used and limit approval of the change application based on that determination.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires that a person who applies for a permanent or temporary change to a water right meet certain qualifications;
- ▶ allows the state engineer, upon receiving a change application, to determine the quantity of water that is being beneficially used and limit approval of the change application based on that determination; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 [73-2-27](#), as enacted by Laws of Utah 2005, Chapter 215

29 [73-3-3](#), as last amended by Laws of Utah 2012, Chapter 229

30 [73-3-8](#), as last amended by Laws of Utah 2007, Chapter 136

31

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

33 Section 1. Section [73-2-27](#) is amended to read:

34 **[73-2-27](#). Criminal penalties.**

35 (1) This section applies to offenses committed under:

36 (a) Section [73-1-14](#);

37 (b) Section [73-1-15](#);

38 (c) Section [73-2-20](#);

39 (d) Subsection [~~[73-3-3\(9\)](#)~~] [73-3-3\(8\)](#);

40 (e) Section [73-3-26](#);

41 (f) Section [73-3-29](#);

42 (g) Section [73-5-9](#);

43 (h) Section [76-10-201](#);

44 (i) Section [76-10-202](#); and

45 (j) Section [76-10-203](#).

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

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

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

51 and

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

54 (b) as a class A misdemeanor if:

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

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

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

59 Section 2. Section 73-3-3 is amended to read:

60 **73-3-3. Permanent or temporary changes to a water right.**

61 (1) For purposes of this section:

62 (a) "Change applicant" means:

63 (i) the holder of an approved but unperfected application to appropriate water;

64 (ii) the record owner of a perfected water right;

65 (iii) a person who has written authorization from a person described in Subsection

66 (1)(a)(i) or (ii) to file a change application on that person's behalf; or

67 (iv) a shareholder in a water company who files a change application in accordance
68 with Section 73-3-3.5.

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

72 (i) point of diversion;

73 (ii) place of use;

74 (iii) period of use;

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

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

77 (c) "Quantity of water available for change" means the quantity of water, under a water
78 right, that has been put to beneficial use within the time provided in Section 73-1-4.

79 ~~[(b)]~~ (d) "Temporary change" means a change for a fixed period of time, not exceeding
80 one year[-:], to the:

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

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

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

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

86 (i) point of diversion;

87 (ii) place of use;

88 (iii) period of use;

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

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

91 (2) (a) A person may not make a permanent or temporary change to a water right or an
92 approved application to appropriate water, including a water right or an approved application to
93 appropriate water involved in a general determination of rights or other suit, unless the person:

94 (i) is a change applicant; and

95 (ii) makes the change in accordance with this section.

96 (b) Except as provided by Section 73-3-30, a change may not be made if it impairs a
97 vested water right without just compensation.

98 (c) A change application on a federal reclamation project water right shall be signed
99 by:

100 (i) the local water users organization that is contractually responsible for:

101 (A) the operation and maintenance of the project; or

102 (B) the repayment of project costs; and

103 (ii) the record owner of the water right.

104 ~~[(3) A person entitled to use water shall change a point of diversion, place of use, or~~
105 ~~purpose of water use, including water involved in a general adjudication or other suit, in the~~
106 ~~manner provided in this section.]~~

107 ~~[(4) (a) A person entitled to use water may not make a change unless the state engineer~~
108 ~~approves the change application.]~~

109 (d) (i) Subject to Subsection (2)(d)(ii), in a change application proceeding relating to a
110 water right, to prevent impairing other water rights, the state engineer may review the
111 beneficial use of the water under the water right and determine the quantity of water available
112 for change.

113 (ii) In reviewing the beneficial use of the water under Subsection (2)(d)(i), the state
114 engineer shall, if the water right is exempted or protected under Section 73-1-4 or other law,
115 consider the water reasonably applied to beneficial use.

116 (e) (i) In reviewing the beneficial use of water and determining the quantity of water
117 available for change under Subsection (2)(d)(i), the state engineer shall:

118 (A) presume that the quantity of water available for change is the full amount of water
119 available under the water right, unless the presumption is rebutted by clear and convincing
120 evidence that demonstrates that a smaller quantity of water is available for change;

121 (B) if the state engineer or a protestant to the application questions the quantity of
122 water available for change, conduct an administrative hearing where the change applicant and a
123 protestant may present evidence regarding the quantity of water available for change; and

124 (C) if the state engineer determines that the quantity of water available for change is
125 less than the amount of water required by the change application, state the factual basis for the
126 determination.

127 (ii) If the state engineer determines that the quantity of water available for change is
128 less than the amount of water required by the change application, the state engineer may:

129 (A) reject the change application; or

130 (B) limit approval of the change application to the quantity of water available for
131 change.

132 (iii) The state engineer's determination of the quantity of water available for change
133 does not:

134 (A) constitute a forfeiture or abandonment;

135 (B) affect the use of the unapproved portion of the underlying water right; or

136 (C) constitute an adjudication of the underlying water right.

137 (f) (i) Before the state engineer makes a decision on a change application, the change
138 applicant may:

139 (A) withdraw the change application; or

140 (B) request that the state engineer stay the proceedings on the change application for up
141 to two years after the day on which the applicant requests the stay, or, if the state engineer finds
142 good cause, for more than two years.

143 (ii) (A) A change applicant who desires to resume proceedings stayed under Subsection
144 (2)(f)(i)(B) shall file with the state engineer a written request to resume the proceedings.

145 (B) If the state engineer stays the proceedings of a change application under Subsection
146 (2)(f)(i)(B) and the applicant does not resume the proceedings within the time limit of the stay,
147 the state engineer shall consider the application withdrawn.

148 (3) (a) A change applicant who files a change application with the state engineer may
149 not make the permanent or temporary change requested in the application unless, and to the
150 extent that, the state engineer approves the change application.

151 (b) A [~~person entitled to use water~~] change applicant shall submit a change application

152 upon forms furnished by the state engineer and shall set forth:

- 153 (i) the change applicant's name;
- 154 (ii) the water right description, including the water right number;
- 155 (iii) the water quantity;
- 156 (iv) the stream or water source;
- 157 (v) if applicable, the point on the stream or water source where the water is diverted;
- 158 (vi) if applicable, the point to which it is proposed to change the diversion of the water;
- 159 (vii) the place, [~~purpose;~~] nature, period, and extent of the [present] current use;
- 160 (viii) the place, [~~purpose;~~] nature, period, and extent of the proposed use; and
- 161 (ix) any other information that the state engineer requires.

162 [~~(5) (a) The state engineer shall follow the same procedures, and the rights and duties~~
163 ~~of the applicants with respect to applications for permanent changes of point of diversion, place~~
164 ~~of use, or purpose of use shall be the same, as provided in this title for applications to~~
165 ~~appropriate water.]~~

166 (4) (a) With respect to a change application for a permanent change:

- 167 (i) the state engineer shall follow the same procedures provided in this title for
168 approving an application to appropriate water; and
- 169 (ii) the rights and duties of a change applicant are the same as the rights and duties of a
170 person who applies to appropriate water under this title.

171 (b) The state engineer may waive notice for a permanent change application involving
172 only a change in point of diversion of 660 feet or less.

173 [~~(6)~~ (5) (a) The state engineer shall investigate all temporary change applications.

174 [~~(b) If the state engineer finds that the temporary change will not impair a vested water~~
175 ~~right, the state engineer shall issue an order authorizing the change.]~~

176 [~~(c) If the state engineer finds that the change sought might impair a vested water right,~~
177 ~~before authorizing the change, the state engineer shall give notice of the application to any~~
178 ~~person whose right may be affected by the change.]~~

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

182 (b) The state engineer shall issue an order authorizing a temporary change if the state

183 engineer finds that the temporary change:

184 (i) will not exceed the quantity of water available for the change; and

185 (ii) does not impair a vested water right.

186 (c) The state engineer may deny a temporary change application if the state engineer

187 finds that the temporary change:

188 (i) will exceed the quantity of water available for the change; or

189 (ii) would impair a vested water right.

190 ~~[(7)]~~ (6) (a) Except as provided by Section 73-3-30, the state engineer may not reject a
191 permanent or temporary change application for the sole reason that the change would impair a
192 vested water right.

193 (b) If otherwise proper where interference with another water right has been
194 demonstrated, the state engineer may approve a permanent or temporary change application
195 ~~[for part of the water involved or]~~ upon the condition that the applicant acquire the conflicting
196 water right.

197 ~~[(8) (a) A person holding an approved application for the appropriation of water may~~
198 ~~change the point of diversion, place of use, or purpose of use.]~~

199 ~~[(b)]~~ (7) A change of an approved application to appropriate water does not:

200 ~~[(i)]~~ (a) affect the priority of the original application to appropriate water; or

201 ~~[(ii)]~~ (b) extend the time period within which the construction of work is to begin or be
202 completed.

203 ~~[(9)]~~ (8) Any person who ~~[changes or who attempts to change a point of diversion,~~
204 ~~place of use, or purpose of use, either permanently or temporarily, without first applying to the~~
205 ~~state engineer in the manner provided in this section]~~ makes a permanent or temporary change
206 before obtaining an approved change application under this section:

207 (a) obtains no right;

208 (b) is guilty of a crime punishable under Section 73-2-27 if the change or attempted
209 change is made knowingly or intentionally; and

210 (c) is guilty of a separately punishable offense for each day of the unlawful change.

211 ~~[(10)]~~ (9) (a) This section does not apply to the replacement of an existing well by a
212 new well drilled within a radius of 150 feet from the point of diversion of the existing well.

213 (b) Any replacement well must be drilled in accordance with the requirements of

214 Section [73-3-28](#).

215 Section 3. Section [73-3-8](#) is amended to read:

216 **73-3-8. Approval or rejection of application -- Requirements for approval --**

217 **Application for specified period of time -- Filing of royalty contract for removal of salt or**
218 **minerals.**

219 (1) (a) [~~It shall be the duty of the~~] The state engineer [to] shall approve an application
220 to appropriate water, or a permanent change application, if:

221 (i) there is unappropriated water in the proposed source;

222 (ii) subject to Section [73-1-4](#), for a permanent change application described in Section
223 [73-3-3](#), the proposed use [will not impair existing rights or interfere with the more beneficial
224 use of the water] is based on the quantity of water that has been placed to beneficial use under a
225 water right;

226 (iii) the proposed use will not impair an existing right or interfere with a more
227 beneficial use of the water;

228 [~~(iii)~~] (iv) the proposed plan is physically and economically feasible, unless the
229 application is filed by the United States Bureau of Reclamation, and would not prove
230 detrimental to the public welfare;

231 [~~(iv)~~] (v) the applicant has the financial ability to complete the proposed works; and

232 [~~(v)~~] (vi) the application was filed in good faith and not for purposes of speculation or
233 monopoly.

234 (b) (i) If the state engineer, because of information in the state engineer's possession
235 obtained either by the state engineer's own investigation or otherwise, has reason to believe that
236 a change application or an application to appropriate water will interfere with [its] the water's
237 more beneficial use for irrigation, domestic or culinary, stock watering, power or mining
238 development, or manufacturing, or will unreasonably affect public recreation or the natural
239 stream environment, or will prove detrimental to the public welfare, it is the state engineer's
240 duty to withhold approval or rejection of the application until the state engineer has
241 investigated the matter.

242 (ii) If an application does not meet the requirements of this section, it shall be rejected.

243 (2) (a) An application to appropriate water for industrial, power, mining development,
244 manufacturing purposes, agriculture, or municipal purposes may be approved for a specific and

245 certain period from the time the water is placed to beneficial use under the application, but in
246 no event may an application be granted for a period of time less than that ordinarily needed to
247 satisfy the essential and primary purpose of the application or until the water is no longer
248 available as determined by the state engineer.

249 (b) At the expiration of the period fixed by the state engineer the water shall revert to
250 the public and is subject to appropriation as provided by this title.

251 (c) No later than 60 calendar days before the expiration date of the fixed time period,
252 the state engineer shall send notice by mail or by any form of electronic communication
253 through which receipt is verifiable, to the applicant of record.

254 (d) Except as provided by Subsection (2)(e), the state engineer may extend any limited
255 water right upon a showing that:

- 256 (i) the essential purpose of the original application has not been satisfied;
- 257 (ii) the need for an extension is not the result of any default or neglect by the applicant;
- 258 and

259 (iii) the water is still available.

260 (e) No extension shall exceed the time necessary to satisfy the primary purpose of the
261 original application.

262 (f) A request for extension of the fixed time period must be filed in writing in the
263 office of the state engineer on or before the expiration date of the application.

264 (3) (a) Before the approval of any application for the appropriation of water from
265 navigable lakes or streams of the state that contemplates the recovery of salts and other
266 minerals therefrom by precipitation or otherwise, the applicant shall file with the state engineer
267 a copy of a contract for the payment of royalties to the state.

268 (b) The approval of an application shall be revoked in the event of the failure of the
269 applicant to comply with terms of the royalty contract.

Legislative Review Note
as of 2-19-14 8:18 AM

Office of Legislative Research and General Counsel