

336 **73-3-3.5. Application for a change of point of diversion, place of use, or purpose**  
 337 **of use of water in a water company made by a shareholder.**

338 (1) As used in this section:

339 (a) "Shareholder" means the owner of a share of stock, or other evidence of stock  
 340 ownership, that entitles the person to a proportionate share of water in a water company.

341 (b) "Water company" means, except as described in Subsection (1)(c), any company,  
 342 operating for profit or not for profit, ~~[in which]~~ where a shareholder has the right to receive a  
 343 proportionate share, based on that shareholder's ownership interest, of water ~~Ĥ→~~ rights ~~←Ĥ~~  
 343a delivered by the  
 344 company.

345 (c) "Water company" does not include a public water supplier, as defined in Section  
 346 73-1-4.

347 ~~[(2) A shareholder who seeks to change the point of diversion, place of use, or purpose~~  
 348 ~~of use of the shareholder's proportionate share of water in the water company shall submit a~~  
 349 ~~request for the change, in writing, to the water company. This request shall include the~~  
 350 ~~following information:]~~

351 ~~[(a) the details of the requested change, which may include the point of diversion,~~  
 352 ~~period of use, place, or nature of use;]~~

353 ~~[(b) the quantity of water sought to be changed;]~~

354 (2) (a) A shareholder who seeks to file a change application under Section 73-3-3 to  
 355 make a change to some or all of the water ~~Ĥ→~~ rights ~~←Ĥ~~ represented by the shareholder's  
 355a shares in a water  
 356 company shall:

357 (i) prepare a proposed change application on forms furnished by the state engineer; and

358 (ii) provide the proposed change application to the water company by personal delivery  
 359 with a signed receipt, certified mail, or electronic mail with confirmation of receipt.

360 (b) The water company and the shareholder shall cooperate in supplying information  
 361 relevant to preparation or correction of the shareholder's change application.

362 (c) In addition to the information required under Section 73-3-3, the proposed change  
 363 application shall include:

364 ~~[(c)]~~ (i) the certificate number of the stock affected by the change;

365 ~~[(d)]~~ (ii) a description of the land proposed to be retired from irrigation ~~[pursuant to]~~ in  
 366 accordance with Section 73-3-3, if the proposed change in place or nature of use of the water

429 (5) (a) If the water company declines to consent to the proposed change application,  
 430 stating its reasons, ~~H→ [or the water company consents to the proposed change subject to conditions~~  
 431 ~~to which the shareholder does not agree, the shareholder may:~~  
 432 ———(i) the shareholder may ~~←H~~ file an action in district court, seeking court review of the  
 432a reasonableness of the  
 433 conditions imposed for giving consent or the reasons stated for declining consent and a final  
 434 order allowing the shareholder to file the proposed change application with the state engineer ~~H→ [;~~  
 435 or] .

436 [(ii) (b) If the water company consents to the proposed change subject to conditions to  
 436a which the shareholder does not agree, the shareholder may ~~←H~~ file the change application with  
 436b the state engineer as provided in Subsection (6),  
 437 without waiving the shareholder's right to contest conditions ~~H→ [imposed by the water~~  
 437a company] ~~←H~~  
 438 before the state engineer ~~H→ that are within the state engineer's jurisdiction ←H or~~  
 438a ~~H→ contest intracorporate issues before ←H~~ the district court on de novo judicial review.

439 (b) The court:  
 440 (i) shall refer the parties to mediation under Title 78B, Chapter 6, Part 2, Alternative  
 441 Dispute Resolution Act, unless one or both parties decline mediation; and  
 442 (ii) may award costs and reasonable attorney fees to the prevailing party if mediation  
 443 does not occur because the other party declined to participate in mediation.

444 (6) If the water company consents to the proposed change, the water company fails to  
 445 respond as required by Subsection (3)(a), or the court has entered an order described in  
 446 Subsection (5)(a), the shareholder may commence an administrative proceeding by filing the  
 447 change application with the state engineer in accordance with Section 73-3-3 and this section.

448 (7) The shareholder shall include as part of the change application filed with the state  
 449 engineer under Subsections (5)(a)(ii) or (6):

450 (a) the water company's response to the shareholder's proposed change application;

451 (b) if applicable, an affidavit signed by the shareholder documenting the water  
 452 company's failure to respond in the time period described in Subsection (3)(a); or

453 (c) if applicable, the court order described in Subsection (5)(a)(i).

454 (8) (a) The state engineer shall evaluate a shareholder's change application in the same  
 455 manner used to evaluate a change application submitted under Section 73-3-3, using the criteria  
 456 described in Section 73-3-8.

457 (b) Nothing in this section limits the authority of the state engineer in evaluating and  
 458 processing a change application, including the authority to require or allow a shareholder or  
 459 water company to submit additional relevant information, if the state engineer finds an absence

491 (10) By mutual agreement only, and when the shares will rely upon a different  
 492 diversion and delivery system, the ~~H~~→ [state engineer] water company and the shareholder ←~~H~~  
 492a may negotiate a buyout from the water  
 493 company that may include a pro rata share of the water company's existing indebtedness  
 494 assignable to the shares.

495 (11) After an application has been approved by the state engineer, the shareholder may  
 496 file requests for extensions of time to submit proof of beneficial use under the change  
 497 application without further involvement of the water company.

498 (12) If, after a proposed change has been approved and gone into effect, a shareholder  
 499 fails to substantially comply with a condition described in Subsection (9) or (10) and neglects  
 500 to remedy the failure after written notice from the water company that allows the shareholder a  
 501 reasonable opportunity to remedy the failure, no less than 90 days after the day on which the  
 502 water company gives notice, the water company may petition the state engineer to order a  
 503 reversal of the change application approval.

504 ~~[(10)]~~ (13) (a) The shareholder requesting the change shall have a cause of action,  
 505 including an award of actual damages incurred, against the water company if the water  
 506 company:

- 507 (i) unreasonably withholds approval of a requested change;
- 508 (ii) imposes unreasonable conditions in its approval; or
- 509 (iii) withdraws approval of a change application in a manner other than as provided in
- 510 Subsection (9).

511 ~~[(b) The action referred to in Subsection (10)(a) shall be referred to mediation by the~~  
 512 ~~court under Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act, unless both~~  
 513 ~~parties decline mediation.]~~

514 (b) The court may award costs and reasonable attorney fees:

515 (i) to the shareholder if the court finds that the water company acted in bad faith when  
 516 it declined to consent to the proposed change or conditioned its consent on excessive exactions  
 517 or unreasonable conditions; or

518 (ii) to the water company if it finds that the shareholder acted in bad faith in refusing to  
 519 accept conditions reasonably necessary to protect other shareholders if the shareholder's change  
 520 application is approved.

521 ~~[(c) If mediation is declined, the prevailing party to the action shall be entitled to costs~~