

Representative Kay L. McIff proposes the following substitute bill:

WATER RIGHTS - CHANGE APPLICATION AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kay L. McIff

Senate Sponsor: Jerry W. Stevenson

LONG TITLE

General Description:

This bill modifies Title 73, Water and Irrigation, by amending the requirements for a change application.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ modifies the procedure for filing a change application;
- ▶ provides an option for court resolution of legal issues not within the purview of the state engineer;
- ▶ allows recovery of attorney fees under certain circumstances; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-1-4, as last amended by Laws of Utah 2013, Chapters 221 and 380



26 [73-2-27](#), as enacted by Laws of Utah 2005, Chapter 215

27 [73-3-3](#), as last amended by Laws of Utah 2012, Chapter 229

28 [73-3-3.5](#), as last amended by Laws of Utah 2008, Chapter 3

29

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

31 Section 1. Section [73-1-4](#) is amended to read:

32 **73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within**
33 **seven years -- Nonuse application.**

34 (1) As used in this section:

35 (a) "Public entity" means:

36 (i) the United States;

37 (ii) an agency of the United States;

38 (iii) the state;

39 (iv) a state agency;

40 (v) a political subdivision of the state; or

41 (vi) an agency of a political subdivision of the state.

42 (b) "Public water supplier" means an entity that:

43 (i) supplies water, directly or indirectly, to the public for municipal, domestic, or
44 industrial use; and

45 (ii) is:

46 (A) a public entity;

47 (B) a water corporation, as defined in Section [54-2-1](#), that is regulated by the Public
48 Service Commission;

49 (C) a community water system:

50 (I) that:

51 (Aa) supplies water to at least 100 service connections used by year-round residents; or

52 (Bb) regularly serves at least 200 year-round residents; and

53 (II) whose voting members:

54 (Aa) own a share in the community water system;

55 (Bb) receive water from the community water system in proportion to the member's
56 share in the community water system; and

57 (Cc) pay the rate set by the community water system based on the water the member
58 receives; or

59 (D) a water users association:

60 (I) in which one or more public entities own at least 70% of the outstanding shares; and

61 (II) that is a local sponsor of a water project constructed by the United States Bureau of
62 Reclamation.

63 (c) "Shareholder" [~~is as~~] means the same as that term is defined in Section 73-3-3.5.

64 (d) "Water company" [~~is as~~] means the same as that term is defined in Section
65 73-3-3.5.

66 (e) "Water supply entity" means an entity that supplies water as a utility service or for
67 irrigation purposes and is also:

68 (i) a municipality, water conservancy district, metropolitan water district, irrigation
69 district, or other public agency;

70 (ii) a water company regulated by the Public Service Commission; or

71 (iii) any other owner of a community water system.

72 (2) (a) Except as provided in Subsection (2)(b) or (e), when an appropriator or the
73 appropriator's successor in interest abandons or ceases to use all or a portion of a water right for
74 a period of seven years, the water right or the unused portion of that water right is subject to
75 forfeiture in accordance with Subsection (2)(c).

76 (b) (i) An appropriator or the appropriator's successor in interest may file an
77 application for nonuse with the state engineer.

78 (ii) If a person described in Subsection (2)(b)(i) files and receives approval on a nonuse
79 application, nonuse of the water right subject to the application is not counted toward a
80 seven-year period described in Subsection (2)(a) during the period of time beginning on the day
81 on which the person files the application and ending on the day on which the application
82 expires without being renewed.

83 (iii) If a person described in Subsection (2)(b)(i) files and receives approval on
84 successive, overlapping nonuse applications, nonuse of the water right subject to the
85 applications is not counted toward a seven-year period described in Subsection (2)(a) during
86 the period of time beginning on the day on which the person files the first application and
87 ending on the day on which the last application expires without being renewed.

88 (iv) Approval of a nonuse application does not protect a water right that is already
89 subject to forfeiture under Subsection (2)(a) for full or partial nonuse of the water right.

90 (v) A nonuse application may be filed on all or a portion of the water right, including
91 water rights held by a water company.

92 (vi) After giving written notice to the water company, a shareholder may file a nonuse
93 application with the state engineer on the water represented by the stock.

94 (c) (i) Except as provided in Subsection (2)(c)(ii), a water right or a portion of the water
95 right may not be forfeited unless a judicial action to declare the right forfeited is commenced
96 within 15 years from the end of the latest period of nonuse of at least seven years.

97 (ii) (A) The state engineer, in a proposed determination of rights prepared in
98 accordance with Section 73-4-11, may not assert that a water right was forfeited unless a period
99 of nonuse of seven years ends or occurs during the 15 years immediately preceding the day on
100 which the state engineer files the proposed determination of rights with the court.

101 (B) After the day on which a proposed determination of rights is filed with the court a
102 person may not assert that a water right subject to that determination was forfeited during the
103 15-year period described in Subsection (2)(c)(ii)(A), unless the state engineer asserts forfeiture
104 in the proposed determination, or a person makes, in accordance with Section 73-4-11, an
105 objection to the proposed determination that asserts forfeiture.

106 (iii) A water right, found to be valid in a decree entered in an action for general
107 determination of rights under Chapter 4, Determination of Water Rights, is subject to a claim
108 of forfeiture based on a seven-year period of nonuse that begins after the day on which the state
109 engineer filed the related proposed determination of rights with the court, unless the decree
110 provides otherwise.

111 (iv) If in a judicial action a court declares a water right forfeited, on the date on which
112 the water right is forfeited:

113 (A) the right to use the water reverts to the public; and

114 (B) the water made available by the forfeiture:

115 (I) first, satisfies other water rights in the hydrologic system in order of priority date;

116 and

117 (II) second, may be appropriated as provided in this title.

118 (d) [~~This~~] Except as provided in Subsection (2)(e), this section applies whether the

119 unused or abandoned water or a portion of the water is:

120 (i) permitted to run to waste; or

121 (ii) used by others without right with the knowledge of the water right holder.

122 (e) This section does not apply to:

123 (i) the use of water according to a lease or other agreement with the appropriator or the
124 appropriator's successor in interest;

125 (ii) a water right if its place of use is contracted under an approved state agreement or
126 federal conservation fallowing program;

127 (iii) those periods of time when a surface water or groundwater source fails to yield
128 sufficient water to satisfy the water right;

129 (iv) a water right when water is unavailable because of the water right's priority date;

130 (v) a water right to store water in a surface reservoir or an aquifer, in accordance with
131 Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, if:

132 (A) the water is stored for present or future use; or

133 (B) storage is limited by a safety, regulatory, or engineering restraint that the
134 appropriator or the appropriator's successor in interest cannot reasonably correct;

135 (vi) a water right if a water user has beneficially used substantially all of the water right
136 within a seven-year period, provided that this exemption does not apply to the adjudication of a
137 water right in a general determination of water rights under Chapter 4, Determination of Water
138 Rights;

139 (vii) except as provided by Subsection (2)(g), a water right:

140 (A) (I) owned by a public water supplier;

141 (II) represented by a public water supplier's ownership interest in a water company; or

142 (III) to which a public water supplier owns the right of use; and

143 (B) conserved or held for the reasonable future water requirement of the public, which
144 is determined according to Subsection (2)(f);

145 (viii) a supplemental water right during a period of time when another water right
146 available to the appropriator or the appropriator's successor in interest provides sufficient water
147 so as to not require use of the supplemental water right; or

148 (ix) a water right subject to an approved change application where the applicant is
149 diligently pursuing certification.

150 (f) (i) The reasonable future water requirement of the public is the amount of water
151 needed in the next 40 years by:

152 (A) the persons within the public water supplier's [~~projected~~] reasonably anticipated
153 service area based on [~~projected~~] reasonably anticipated population growth; or

154 (B) other water use demand.

155 (ii) For purposes of Subsection (2)(f)(i), a community water system's [~~projected~~]
156 reasonably anticipated service area:

157 (A) is the area served by the community water system's distribution facilities; and

158 (B) expands as the community water system expands the distribution facilities in
159 accordance with Title 19, Chapter 4, Safe Drinking Water Act.

160 (g) For a water right acquired by a public water supplier on or after May 5, 2008,
161 Subsection (2)(e)(vii) applies if:

162 (i) the public water supplier submits a change application under Section 73-3-3; and

163 (ii) the state engineer approves the change application.

164 (3) (a) The state engineer shall furnish a nonuse application form requiring the
165 following information:

166 (i) the name and address of the applicant;

167 (ii) a description of the water right or a portion of the water right, including the point of
168 diversion, place of use, and priority;

169 (iii) the quantity of water;

170 (iv) the period of use;

171 (v) the extension of time applied for;

172 (vi) a statement of the reason for the nonuse of the water; and

173 (vii) any other information that the state engineer requires.

174 (b) (i) Upon receipt of the application, the state engineer shall publish a notice of the
175 application once a week for two successive weeks:

176 (A) in a newspaper of general circulation in the county in which the source of the water
177 supply is located and where the water is to be used; and

178 (B) as required in Section 45-1-101.

179 (ii) The notice shall:

180 (A) state that an application has been made; and

181 (B) specify where the interested party may obtain additional information relating to the
182 application.

183 (c) Any interested person may file a written protest with the state engineer against the
184 granting of the application:

185 (i) within 20 days after the notice is published, if the adjudicative proceeding is
186 informal; and

187 (ii) within 30 days after the notice is published, if the adjudicative proceeding is
188 formal.

189 (d) In any proceedings to determine whether the nonuse application should be
190 approved or rejected, the state engineer shall follow the procedures and requirements of Title
191 63G, Chapter 4, Administrative Procedures Act.

192 (e) After further investigation, the state engineer may approve or reject the application.

193 (4) (a) The state engineer shall grant a nonuse application on all or a portion of a water
194 right for a period of time not exceeding seven years if the applicant shows a reasonable cause
195 for nonuse.

196 (b) A reasonable cause for nonuse includes:

197 (i) a demonstrable financial hardship or economic depression;

198 (ii) physical causes or changes that render use beyond the reasonable control of the
199 water right owner so long as the water right owner acts with reasonable diligence to resume or
200 restore the use;

201 [~~(ii)~~] (iii) the initiation of water conservation or efficiency practices, or the operation of
202 a groundwater recharge recovery program approved by the state engineer;

203 [~~(iii)~~] (iv) operation of legal proceedings;

204 [~~(iv)~~] (v) the holding of a water right or stock in a mutual water company without use
205 by any water supply entity to meet the reasonable future requirements of the public;

206 [~~(v)~~] (vi) situations where, in the opinion of the state engineer, the nonuse would assist
207 in implementing an existing, approved water management plan; or

208 [~~(vi)~~] (vii) the loss of capacity caused by deterioration of the water supply or delivery
209 equipment if the applicant submits, with the application, a specific plan to resume full use of
210 the water right by replacing, restoring, or improving the equipment.

211 (5) (a) Sixty days before the expiration of a nonuse application, the state engineer shall

212 notify the applicant by mail or by any form of electronic communication through which receipt
213 is verifiable, of the date when the nonuse application will expire.

214 (b) An applicant may file a subsequent nonuse application in accordance with this
215 section.

216 Section 2. Section 73-2-27 is amended to read:

217 **73-2-27. Criminal penalties.**

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

219 (a) Section 73-1-14;

220 (b) Section 73-1-15;

221 (c) Section 73-2-20;

222 (d) [Subsection] Section 73-3-3~~(9)~~;

223 (e) Section 73-3-26;

224 (f) Section 73-3-29;

225 (g) Section 73-5-9;

226 (h) Section 76-10-201;

227 (i) Section 76-10-202; and

228 (j) Section 76-10-203.

229 (2) Under circumstances not amounting to an offense with a greater penalty under
230 Subsection 76-6-106(2)(b)(ii) or Section 76-6-404, violation of a provision listed in Subsection
231 (1) is punishable:

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

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

234 and

235 (ii) the person violating the provision has previously been convicted of violating the
236 same provision;

237 (b) as a class A misdemeanor if:

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

239 (ii) the person violating the provision has previously been convicted of violating the
240 same provision; or

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

242 Section 3. Section 73-3-3 is amended to read:

243 **73-3-3. Permanent or temporary changes in point of diversion, place of use, or**
244 **purpose of use.**

245 (1) For purposes of this section:

246 (a) "Permanent change" means a change for an indefinite period of time with an intent
247 to relinquish the original point of diversion, place of use, or purpose of use.

248 (b) "Temporary change" means a change for a fixed period of time not₂ exceeding one
249 year.

250 (2) (a) Subject to Subsection (2)(c), a person entitled to the use of water may make
251 permanent or temporary changes in the:

252 (i) point of diversion;

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

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

255 (iii) period of use;

256 (iv) nature of use; or

257 (v) storage.

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

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

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

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

264 (B) the repayment of project costs; and

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

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

269 (4) (a) A person entitled to use water may not make a change unless the state engineer
270 approves the change application.

271 (b) A shareholder in a water company who seeks to make a permanent or temporary
272 change to a water right to which the water company is the record owner shall file a change
273 application in accordance with Section [73-3-3.5](#).

274 ~~[(b)]~~ (5) A person entitled to use water shall submit a change application, upon forms
275 furnished by the state engineer ~~[and shall set forth]~~, that includes:

276 ~~[(i)]~~ (a) the change applicant's name;

277 ~~[(ii)]~~ (b) the water right description, including the water right number;

278 ~~[(iii)]~~ (c) the water quantity;

279 ~~[(iv)]~~ (d) the stream or water source;

280 ~~[(v)]~~ (e) if applicable, the point on the stream or water source where the water is
281 diverted;

282 ~~[(vi)]~~ (f) if applicable, the point to which it is proposed to change the diversion of the
283 water;

284 ~~[(vii)]~~ (g) the place, ~~[purpose]~~ nature, period, and extent of the [present] approved use;

285 ~~[(viii)]~~ (h) the place, ~~[purpose]~~ nature, period, and extent of the proposed use; [and]

286 (i) if the change applicant is submitting a change application in accordance with
287 Section 73-3-3.5, the information required by Section 73-3-3.5;

288 (j) any proposed change to the storage of water; and

289 ~~[(ix)]~~ (k) any other information that the state engineer requires.

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

294 (6) (a) With respect to a change application for a permanent change:

295 (i) the state engineer shall follow the same procedures provided in this title for
296 approving an application to appropriate water; and

297 (ii) the rights and duties of a change applicant are the same as the rights and duties of a
298 person who applies to appropriate water under this title.

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

301 ~~[(6)]~~ (7) (a) The state engineer shall investigate all temporary change applications.

302 (b) If the state engineer finds that the temporary change will not impair a vested water
303 right, the state engineer shall issue an order authorizing the change.

304 (c) If the state engineer finds that the change sought might impair a vested water right,

305 before authorizing the change, the state engineer shall give notice of the application to any
306 person whose right may be affected by the change.

307 (d) Before making an investigation or giving notice, the state engineer may require the
308 applicant to deposit a sum of money sufficient to pay the expenses of the investigation and
309 publication of notice.

310 ~~[(7)]~~ (8) (a) Except as provided by Section 73-3-30, the state engineer may not reject a
311 permanent or temporary change application for the sole reason that the change would impair a
312 vested water right.

313 (b) If otherwise proper, the state engineer may approve a permanent or temporary
314 change application for part of the water involved or upon the condition that the applicant
315 acquire the conflicting water right or otherwise mitigate the impairment.

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

318 ~~[(b)]~~ (9) A change of an approved application to appropriate water does not:

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

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

322 ~~[(9)]~~ (10) Any person who changes ~~[or who attempts to change]~~ a point of diversion,
323 place of use, or purpose of use, either permanently or temporarily, without first applying to the
324 state engineer in the manner provided in this section~~[: (a) obtains no right; (b)]~~, is guilty of ~~[a
325 crime]~~ an offense punishable under Section 73-2-27 if the change ~~[or attempted change]~~ is
326 made knowingly or intentionally~~[: and]~~.

327 ~~[(c) is guilty of a separately punishable offense for each day of the unlawful change.]~~

328 (11) A person who makes a permanent or temporary change before obtaining an
329 approved change application under this section obtains no additional water right by the change
330 and shall comply with the change application process.

331 ~~[(10)]~~ (12) (a) This section does not apply to the replacement of an existing well by a
332 new well drilled within a radius of 150 feet from the point of diversion of the existing well.

333 (b) Any replacement well must be drilled in accordance with the requirements of
334 Section 73-3-28.

335 Section 4. Section 73-3-3.5 is amended to read:

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 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 rights represented by the shareholder's shares in a
356 water 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 ~~[(e)]~~ (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

367 involves a situation where the water was previously used for irrigation;

368 ~~[(e)]~~ (iii) an agreement by the shareholder to continue to pay all applicable corporate
369 assessments on the share affected by the change; and

370 ~~[(f)]~~ (iv) any other information that the water company may reasonably need to
371 evaluate the ~~[requested]~~ proposed change application.

372 ~~[(3)(a) A water company shall make a decision and provide written notice of that
373 decision on a shareholder's request for a change application within 120 days from receipt of the
374 request.]~~

375 ~~[(b) Based on the facts and circumstances of each proposed change, a water company
376 may take the following action:]~~

377 ~~[(i) approve the change request;]~~

378 ~~[(ii) approve the change request with conditions; or]~~

379 ~~[(iii) deny the change request.]~~

380 ~~[(c) If the water company fails to respond to a shareholder's request for a change
381 application, pursuant to Subsection (3)(a), the failure to respond shall be considered to be a
382 denial of the request.]~~

383 ~~[(d) The water company may not withhold approval if any potential damage, liability,
384 or impairment to the water company, or its shareholders, can be reasonably mitigated without
385 cost to the water company.]~~

386 ~~[(e) A water company may consider the following factors in evaluating change
387 applications:]~~

388 (3) (a) The water company shall respond to the proposed change application described
389 in Subsection (2) within 120 days after the day on which the water company receives the
390 proposed change application.

391 (b) The water company's response to the proposed change application shall be in
392 writing and shall:

393 (i) consent to the proposed change;

394 (ii) consent to the proposed change, subject to certain conditions described by the water
395 company; or

396 (iii) decline to consent to the proposed change, describing the reasons for declining to
397 consent.

398 (c) If the water company fails to timely respond, as described in Subsection (3)(a), the
399 failure to respond shall be considered the water company's consent to the proposed change
400 application and the shareholder may file the change application with the state engineer.

401 (4) (a) In reviewing a shareholder's proposed change application, a water company may
402 consider:

403 (i) ~~[any]~~ whether an increased cost to the water company or its shareholders results
404 from the proposed change;

405 (ii) ~~[interference]~~ whether the proposed change will interfere with the water company's
406 ability to manage and distribute water for the benefit of all shareholders;

407 (iii) whether the proposed change represents more water than the shareholder's [pro
408 rata] proportionate share of the water company's right;

409 ~~[(iv) impairment of either]~~

410 (iv) whether the proposed change would create preferential access to use of particular
411 company water rights to the detriment of other shareholders;

412 (v) whether the proposed change will impair the quantity or quality of water delivered
413 to other shareholders under the existing water rights of the water company, including rights to
414 carrier water;

415 ~~[(v)]~~ (vi) whether the proposed change [would cause a violation of any] violates a
416 statute, ordinance, regulation, or order of a court or [governmental] government agency;

417 ~~[(vi)]~~ (vii) if applicable, whether the shareholder has or can arrange for the beneficial
418 use of water to be retired from irrigation within the water company's service area under the
419 proposed change; [or] and

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

422 ~~[(4) The water company may require that all costs associated with the change~~
423 ~~application, including costs of submitting proof, be paid by the shareholder. (5) (a) The]~~

424 (b) The water company may not withhold consent if any potential damage, liability, or
425 impairment to the water company, or its shareholders, can be reasonably mitigated without cost
426 to the water company.

427 (c) The water company may require the shareholder to pay all reasonable and necessary
428 costs associated with the change application, but may not impose unreasonable exactions.

429 (5) (a) If the water company declines to consent to the proposed change application,
430 stating its reasons, the shareholder may file an action in district court, seeking court review of
431 the reasonableness of the conditions imposed for giving consent or the reasons stated for
432 declining consent and a final order allowing the shareholder to file the proposed change
433 application with the state engineer.

434 (b) If the water company consents to the proposed change application subject to
435 conditions to which the shareholder does not agree, the shareholder may file the change
436 application with the state engineer as provided in Subsection (6), without waiving the
437 shareholder's right to contest conditions set by the water company under Subsection (3)(b)(ii).

438 (c) During or after the completion of the proceeding before the state engineer
439 commenced under Subsection (6), the shareholder may file an action in district court seeking
440 court review of the reasonableness of the conditions imposed by the water company for giving
441 consent.

442 (d) In an action brought under Subsection (5)(a), (b), or (c), the court:

443 (i) shall refer the parties to mediation under Title 78B, Chapter 6, Part 2, Alternative
444 Dispute Resolution Act, unless one or both parties decline mediation; and

445 (ii) may award costs and reasonable attorney fees to the prevailing party if mediation
446 does not occur because the other party declined to participate in mediation.

447 (6) If the water company consents to the proposed change, the water company fails to
448 respond as required by Subsection (3)(a), the court has entered an order described in
449 Subsection (5)(a), or the water company consents to the proposed change subject to conditions
450 to which the shareholder does not agree, as described in Subsection (5)(b), the shareholder may
451 commence an administrative proceeding by filing the change application with the state
452 engineer in accordance with Section [73-3-3](#) and this section.

453 (7) The shareholder shall include as part of the change application filed with the state
454 engineer under Subsection (5)(b) or (6):

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

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

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

459 (8) (a) The state engineer shall evaluate a shareholder's change application in the same

460 manner used to evaluate a change application submitted under Section 73-3-3, using the criteria
461 described in Section 73-3-8.

462 (b) Nothing in this section limits the authority of the state engineer in evaluating and
463 processing a change application, including the authority to require or allow a shareholder or
464 water company to submit additional relevant information, if the state engineer finds an absence
465 of prejudice and allows adequate time and opportunity for the other party to respond.

466 (9) If the state engineer approves a shareholder's change application, the state engineer
467 may, for shares included in the approval, require that the shareholder requesting the change
468 [must] be current on all water company assessments and [agree to] continue to pay all
469 reasonably applicable future assessments[; except that the shareholder may choose to prepay
470 any portion of the water company assessments attributable to an existing debt of the water
471 company-], with credit given to the shareholder for any cost savings to the company resulting
472 from the change.

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

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

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

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

480 ~~[(7) (a) The state engineer may evaluate a change application authorized by a water~~
481 ~~company under this section in the same manner and using the same criteria that he or she uses~~
482 ~~to evaluate any other change application.]~~

483 ~~[(b) Nothing in this section shall limit the authority of the state engineer in evaluating~~
484 ~~and processing any change application.]~~

485 ~~[(8) If an application authorized by a water company under this section is approved by~~
486 ~~the state engineer, the shareholder may file requests for extensions of time to submit proof of~~
487 ~~beneficial use under the change application without further permission of the water company.]~~

488 ~~[(9) (a) Change applications approved under this section are subject to all conditions~~
489 ~~imposed by the water company and the state engineer.]~~

490 ~~[(b) If a shareholder fails to comply with all of the conditions imposed by the water~~

491 company, the water company may, after written notice to the shareholder and after allowing
492 reasonable time to remedy the failure, withdraw its approval of the application, and petition the
493 state engineer for an order canceling the change application.]

494 [~~(c) The water company may not revoke its approval of the change application or seek
495 an order canceling the application if the conditions are substantially satisfied.~~]

496 (10) By mutual agreement only, and when the shares will rely upon a different
497 diversion and delivery system, the water company and the shareholder may negotiate a buyout
498 from the water company that may include a pro rata share of the water company's existing
499 indebtedness assignable to the shares.

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

503 (12) If, after a proposed change has been approved and gone into effect, a shareholder
504 fails to substantially comply with a condition described in Subsection (9), or any condition
505 reasonably imposed by the company and agreed to by the shareholder, and neglects to remedy
506 the failure after written notice from the water company that allows the shareholder a reasonable
507 opportunity to remedy the failure, no less than 90 days after the day on which the water
508 company gives notice, the water company may petition the state engineer to order a reversal of
509 the change application approval.

510 [~~(10)~~] (13) (a) The shareholder requesting the change shall have a cause of action,
511 including an award of actual damages incurred, against the water company if the water
512 company:

513 (i) unreasonably withholds approval of a requested change;
514 (ii) imposes unreasonable conditions in its approval; or
515 (iii) withdraws approval of a change application in a manner other than as provided in
516 Subsection [~~(9)~~] (12).

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

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

521 (i) to the shareholder if the court finds that the water company acted in bad faith when

522 it declined to consent to the proposed change or conditioned its consent on excessive exactions
523 or unreasonable conditions; or

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

527 [~~e) If mediation is declined, the prevailing party to the action shall be entitled to costs~~
528 ~~and reasonable attorney fees.]~~