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**WATER AMENDMENTS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Margaret Dayton**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the duties of the state engineer in regard to evaluating an application to appropriate water or an application to change the use of water.

**Highlighted Provisions:**

This bill:

- ▶ clarifies the duties of the state engineer when evaluating an application to appropriate water or an application to change the use of water;
- ▶ requires the state engineer to consider whether an application is detrimental to public welfare;
- ▶ describes factors the state engineer shall consider when evaluating the public welfare; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**73-3-8**, as last amended by Laws of Utah 2007, Chapter 136



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

29 Section 1. Section 73-3-8 is amended to read:

30 **73-3-8. Approval or rejection of application -- Requirements for approval --**  
 31 **Application for specified period of time -- Filing of royalty contract for removal of salt or**  
 32 **minerals.**

33 (1) As used in this section, "application" means an application:

34 (a) to appropriate water, as described in Section 73-3-2; or

35 (b) to change the use of water, as described in Sections 73-3-3 and 73-3-3.5.

36 ~~[(1)]~~ (2) (a) [It shall be the duty of the] The state engineer [to] shall approve an  
 37 application if, after evaluation of the criteria in Subsections (2)(a) and (2)(b), the state engineer  
 38 finds there is reason to believe that:

39 (i) (A) there is unappropriated water in the proposed source; or

40 ~~[(ii)]~~ (B) the proposed use will not impair existing rights or interfere with the more  
 41 beneficial use of the water;

42 ~~[(iii)]~~ (ii) the proposed [plan] use is physically and economically feasible, unless the  
 43 application is filed by the United States Bureau of Reclamation[, and would not prove  
 44 detrimental to the public welfare];

45 (iii) the proposed use is not detrimental to the public welfare;

46 (iv) the applicant has the financial ability to complete the proposed works; and

47 (v) the application was filed in good faith and not for purposes of speculation or  
 48 monopoly.

49 (b) [(i) If] The state engineer shall withhold approval of an application if the state  
 50 engineer finds there is reason to believe, because of information in the state engineer's  
 51 possession obtained either by the state engineer's own investigation or otherwise, [has reason to  
 52 believe] that an application [to appropriate water will] may:

53 (i) interfere with [its] the more beneficial use of water for irrigation, domestic or  
 54 culinary, stock watering, power or mining development, or manufacturing[, or will

55 unreasonably affect public recreation or the natural stream environment, or will prove  
 56 detrimental to the public welfare, it is the state engineer's duty to withhold approval or rejection  
 57 of the application until the state engineer has investigated the matter.];

58 (ii) unreasonably affect public recreation;

59 (iii) unreasonably affect the natural stream environment; or

60 (iv) be detrimental to the public welfare.

61 (c) In evaluating whether an application may be detrimental to the public welfare, the  
62 state engineer shall consider and balance the following factors:

63 (i) the relative benefit and the relative detriment to the public resulting from the  
64 proposed use in the application;

65 (ii) the economic effect of the activity resulting from the proposed use;

66 (iii) the potential loss of alternate uses of water that might be made within a reasonable  
67 time if not precluded or hindered by the proposed use; and

68 (iv) where the proposed use in the application will result in a transbasin diversion of  
69 either surface or ground water, the state engineer shall consider and balance:

70 (A) the economic, environmental, and other benefits or detriments of leaving the water  
71 in the basin of origin for current or future beneficial uses against the economic, environmental,  
72 and other benefits or detriments that may accrue in the receiving basin;

73 (B) alternative sources of water supply available to the applicant in the receiving basin;  
74 and

75 (C) alternative sources of water available to the basin of origin for future beneficial  
76 uses.

77 (d) The state engineer shall include findings concerning the effect of the proposed use  
78 on the public welfare in the order approving or rejecting an application.

79 (e) (i) It is presumed that the approval of an application in accordance with this section  
80 is made by the state engineer with due regard to and in full compliance with the state's public  
81 trust obligations.

82 (ii) The quantity of water approved for use may not be reduced solely by reason of the  
83 state's public trust obligations.

84 ~~[(ii)]~~ (f) If an application does not meet the requirements of this section, it shall be  
85 rejected.

86 ~~[(2)]~~ (3) (a) (i) An application to appropriate water for industrial, power, mining  
87 development, manufacturing purposes, agriculture, or municipal purposes may be approved for  
88 a specific and certain period from the time the water is placed to beneficial use under the  
89 application[~~, but in no event may an~~].

90           (ii) An application may not be granted for a period of time less than that ordinarily  
91 needed to satisfy the essential and primary purpose of the application or until the water is no  
92 longer available as determined by the state engineer.

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

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

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

- 100           (i) the essential purpose of the original application has not been satisfied;
- 101           (ii) the need for an extension is not the result of any default or neglect by the applicant;
- 102           and
- 103           (iii) the water is still available.

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

106           (f) A request for extension of the fixed time period [~~must~~] shall be filed in writing in  
107 the office of the state engineer on or before the expiration date of the application.

108           ~~[(3)]~~ (4) (a) Before the approval of any application for the appropriation of water from  
109 navigable lakes or streams of the state that contemplates the recovery of salts and other  
110 minerals therefrom by precipitation or otherwise, the applicant shall file with the state engineer  
111 a copy of a contract for the payment of royalties to the state.

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

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**Legislative Review Note**  
**as of 1-29-15 12:54 PM**

**Office of Legislative Research and General Counsel**