

WATER APPLICATIONS AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Timothy D. Hawkes

Senate Sponsor: Ralph Okerlund

LONG TITLE

General Description:

This bill addresses applications for small amounts of water.

Highlighted Provisions:

This bill:

▶ allows the state engineer to issue a certificate meeting certain requirements before evaluating a claim in a general adjudication; and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-3-5.6, as last amended by Laws of Utah 2019, Chapter 158

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

Section 1. Section **73-3-5.6** is amended to read:

73-3-5.6. Applications to appropriate or permanently change a small amount of water -- Proof of appropriation or change.

(1) As used in this section:



- 28 (a) "Application" means an application to:
- 29 (i) appropriate a small amount of water; or
- 30 (ii) permanently change a small amount of water.
- 31 (b) "Livestock water right" means a right for:
- 32 (i) livestock to consume water:
- 33 (A) directly from the water source; or
- 34 (B) from an impoundment into which the water is diverted; and
- 35 (ii) associated uses of water related to the raising and care of livestock.
- 36 (c) "Proof" means proof of:
- 37 (i) appropriation; or
- 38 (ii) permanent change.
- 39 (d) "Small amount of water" means the amount of water necessary to meet the
- 40 requirements of:
- 41 (i) one residence;
- 42 (ii) 1/4 acre of irrigable land; and
- 43 (iii) a livestock watering right for:
- 44 (A) 10 cattle; or
- 45 (B) the equivalent amount of water of Subsection (1)(d)(iii)(A) for livestock other than
- 46 cattle.
- 47 (2) The state engineer may approve an application if:
- 48 (a) the state engineer undertakes a thorough investigation of the application;
- 49 (b) notice is provided in accordance with Subsection (3);
- 50 (c) the application complies with the state engineer's regional policies and restrictions
- 51 and Section 73-3-3 or 73-3-8, as applicable; and
- 52 (d) the application does not conflict with a political subdivision's ordinance:
- 53 (i) for planning, zoning, or subdivision regulation; or
- 54 (ii) under Section 10-8-15.
- 55 (3) (a) Advertising of an application specified in Subsection (2) is at the discretion of
- 56 the state engineer.
- 57 (b) If the state engineer finds that the uses proposed by the application may impair
- 58 other rights, before approving the application, the state engineer shall give notice of the

59 application according to Section 73-3-6.

60 (4) An applicant receiving approval under this section is responsible for the time limit
61 for construction and submitting proof as required by Subsection (6).

62 (5) Sixty days before the end of the time limit for construction, the state engineer shall
63 notify the applicant by mail when proof is due.

64 (6) (a) Notwithstanding Section 73-3-16, the state engineer shall issue a certificate
65 under Section 73-3-17 if, as proof, the applicant files an affidavit:

66 (i) on a form provided by the state engineer;

67 (ii) that specifies the amount of:

68 (A) irrigated land; and

69 (B) livestock watered; and

70 (iii) that declares the residence is constructed and occupied.

71 (b) The form provided by the state engineer under Subsection (6)(a) may require the
72 information the state engineer determines is necessary to maintain accurate records regarding
73 the point of diversion and place of use.

74 (7) If an applicant does not file the proof required by Subsection (6) by the day on
75 which the time limit for construction ends, the application lapses under Section 73-3-18.

76 (8) (a) Except as provided in Subsections (9) and (10), an applicant whose application
77 lapses may file a request with the state engineer to reinstate the application, if the applicant
78 demonstrates that the applicant or the applicant's predecessor in interest:

79 (i) constructed and occupied a residence within the time limit for construction; and

80 (ii) beneficially uses the water.

81 (b) Except as provided in Subsection (10), if an applicant meets the requirements of
82 Subsection (8)(a) and submits an affidavit as provided by Subsection (6), the state engineer
83 shall issue a certificate for the beneficial uses the applicant attests to in an affidavit described in
84 Subsection (6).

85 (9) For an application related to the use of water located within an area where general
86 determination proceedings under Title 73, Chapter 4, Determination of Water Rights, are
87 pending or concluded, an applicant whose application lapses may not file a request for
88 reinstatement with the state engineer if:

89 (a) the application lapsed before the state engineer issued notice of the time to file a

90 statement of water users claim under Section 73-4-3; and

91 (b) the applicant failed to timely submit a statement of claim as described in
92 Subsection (10)(c)(ii).

93 (10) For an application related to the use of water located within an area where general
94 determination proceedings under Title 73, Chapter 4, Determination of Water Rights, are
95 pending, the state engineer shall allow a reinstatement request under Subsection (8)(a) and,
96 instead of issuing a certificate, evaluate the reinstatement request and statement of claim as part
97 of the general adjudication for the area, if:

98 (a) the application lapsed before the state engineer issued notice of the time to file a
99 statement of water users claim under Section 73-4-3;

100 (b) the applicant files the request for reinstatement no more than 90 days after the day
101 on which the state engineer issues the notice of the time to file statements of claim in
102 accordance with Section 73-4-3; and

103 (c) the applicant files:

104 (i) an affidavit described in Subsection (6); and

105 (ii) a timely statement of claim under Section 73-4-5.

106 (11) If an applicant fulfills the requirements in Subsection (10), the state engineer may
107 issue a certificate before evaluating the claim in the general adjudication.

108 ~~[(11)]~~ (12) The priority date for an application reinstated under this section is the day
109 on which the applicant files the request for reinstatement of the application.