

1                   **STATE ENGINEER ELECTRONIC COMMUNICATIONS**

2                                   2021 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Joel Ferry**

5                                   Senate Sponsor: David P. Hinkins

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7   **LONG TITLE**

8   **General Description:**

9           This bill addresses actions taken by the state engineer.

10 **Highlighted Provisions:**

11       This bill:

- 12           ▶ permits the state engineer to send electronic communications under certain
- 13 circumstances; and
- 14           ▶ makes technical changes.

15 **Money Appropriated in this Bill:**

16       None

17 **Other Special Clauses:**

18       None

19 **Utah Code Sections Affected:**

20 **AMENDS:**

21       **73-3-5.6**, as last amended by Laws of Utah 2020, Chapter 58

22       **73-3-10**, as last amended by Laws of Utah 2013, Chapter 429

23       **73-3-16**, as last amended by Laws of Utah 2020, Chapters 278 and 421

24       **73-3-18**, as last amended by Laws of Utah 2017, Chapter 75

25       **73-3b-203**, as last amended by Laws of Utah 2010, Chapter 107

26       **73-3b-206**, as last amended by Laws of Utah 2010, Chapter 107

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

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

30           **73-3-5.6. Applications to appropriate or permanently change a small amount of**  
31 **water -- Proof of appropriation or change.**

32           (1) As used in this section:

33           (a) "Application" means an application to:

34           (i) appropriate a small amount of water; or

35           (ii) permanently change a small amount of water.

36           (b) "Livestock water right" means a right for:

37           (i) livestock to consume water:

38           (A) directly from the water source; or

39           (B) from an impoundment into which the water is diverted; and

40           (ii) associated uses of water related to the raising and care of livestock.

41           (c) "Proof" means proof of:

42           (i) appropriation; or

43           (ii) permanent change.

44           (d) "Small amount of water" means the amount of water necessary to meet the

45 requirements of:

46           (i) one residence;

47           (ii) 1/4 acre of irrigable land; and

48           (iii) a livestock watering right for:

49           (A) 10 cattle; or

50           (B) the equivalent amount of water of Subsection (1)(d)(iii)(A) for livestock other than

51 cattle.

52           (2) The state engineer may approve an application if:

53           (a) the state engineer undertakes a thorough investigation of the application;

54           (b) notice is provided in accordance with Subsection (3);

55           (c) the application complies with the state engineer's regional policies and restrictions

56 and Section 73-3-3 or 73-3-8, as applicable; and

57           (d) the application does not conflict with a political subdivision's ordinance:

58 (i) for planning, zoning, or subdivision regulation; or

59 (ii) under Section 10-8-15.

60 (3) (a) Advertising of an application specified in Subsection (2) is at the discretion of  
61 the state engineer.

62 (b) If the state engineer finds that the uses proposed by the application may impair  
63 other rights, before approving the application, the state engineer shall give notice of the  
64 application according to Section 73-3-6.

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

67 (5) Sixty days before the end of the time limit for construction, the state engineer shall  
68 notify the applicant by mail, or send notice electronically if receipt is verifiable, when proof is  
69 due.

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

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

73 (ii) that specifies the amount of:

74 (A) irrigated land; and

75 (B) livestock watered; and

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

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

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

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

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

86 (ii) beneficially uses the water.

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

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

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

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

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

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

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

109 (c) the applicant files:

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

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

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

114 (12) The priority date for an application reinstated under this section is the day on  
115 which the applicant files the request for reinstatement of the application.

116 Section 2. Section **73-3-10** is amended to read:

117 **73-3-10. Approval or rejection of application.**

118 (1) When the state engineer approves or rejects an application, the state engineer shall  
119 record the approval decision or rejection decision in the state engineer's office.

120 (2) On the same day on which the state engineer makes an approval decision or  
121 rejection decision described in Subsection (1), the state engineer shall mail, or send  
122 electronically if receipt is verifiable, the decision to the applicant.

123 (3) If an application is approved, the applicant may, upon receipt of the approval  
124 decision:

125 (a) proceed with the construction of the necessary works;

126 (b) take any steps required to apply the water to the use described in the application;

127 and

128 (c) perfect the proposed application.

129 (4) If the application is rejected, the applicant may not take steps toward the  
130 prosecution of:

131 (a) the work proposed in the application; or

132 (b) the proposed diversion and use of the public water in the application.

133 (5) In a decision approving an application, other than an application for a fixed time  
134 period, the state engineer shall state the time within which:

135 (a) the construction work must be completed; and

136 (b) the water must be applied to beneficial use.

137 Section 3. Section **73-3-16** is amended to read:

138 **73-3-16. Proof of appropriation or permanent change -- Notice -- Manner of**  
139 **proof -- Statements -- Maps, profiles, and drawings -- Verification -- Waiver of filing --**  
140 **Statement in lieu of proof of appropriation or change.**

141 (1) Sixty days before the date set for the proof of appropriation or proof of change to be

142 made, the state engineer shall notify the applicant by mail, or send notice electronically if  
143 receipt is verifiable, when proof of completion of the works and application of the water to a  
144 beneficial use is due.

145 (2) (a) On or before the date set for completing the proof in accordance with the  
146 approved application, the applicant shall file proof with the state engineer on forms furnished  
147 by the state engineer.

148 (b) The filing of a proof in accordance with this section is a request for agency action  
149 under Title 63G, Chapter 4, Administrative Procedures Act, only between the applicant and the  
150 state engineer.

151 (3) Except as provided in Subsection (4), the applicant shall submit the following  
152 information:

- 153 (a) a description of the works constructed;
- 154 (b) the quantity of water in acre-feet or the flow in second-feet diverted, or both;
- 155 (c) the method of applying the water to beneficial use; and
- 156 (d) (i) detailed measurements of water put to beneficial use;
- 157 (ii) the date the measurements were made; and
- 158 (iii) the name of the person making the measurements.

159 (4) (a) (i) On applications filed for appropriation or permanent change of use of water  
160 to provide a water supply for state projects constructed pursuant to Chapter 10, Board of Water  
161 Resources - Division of Water Resources, or for federal projects constructed by the United  
162 States Bureau of Reclamation for the use and benefit of the state, any of its agencies, its  
163 political subdivisions, public and quasi-municipal corporations, or water users' associations of  
164 which the state, its agencies, political subdivisions, or public and quasi-municipal corporations  
165 are stockholders, the proof shall include:

- 166 (A) a statement indicating construction of the project works has been completed;
- 167 (B) a description of the major features with appropriate maps, profiles, drawings, and  
168 reservoir area-capacity curves;
- 169 (C) a description of the point or points of diversion and redirection;

- 170 (D) project operation data;
- 171 (E) a map showing the place of use of water and a statement of the purpose and method  
172 of use;
- 173 (F) the project plan for beneficial use of water under the applications and the quantity  
174 of water required; and
- 175 (G) a statement indicating what type of measuring devices have been installed.
- 176 (ii) The director of the Division of Water Resources shall sign proofs for the state  
177 projects and an authorized official of the Bureau of Reclamation shall sign proofs for the  
178 federal projects specified in Subsection (4)(a)(i).
- 179 (b) Proof on an application for appropriation or permanent change for a surface storage  
180 facility in excess of 1,000 acre-feet constructed by a public water supplier to provide a water  
181 supply for the reasonable requirements of the public shall include:
  - 182 (i) a description of the completed water storage facility;
  - 183 (ii) a description of the major project features and appropriate maps, profiles, drawings,  
184 and reservoir area-capacity curves as required by the state engineer;
  - 185 (iii) the quantity of water stored in acre-feet;
  - 186 (iv) a description of the water distribution facility for the delivery of the water; and
  - 187 (v) the project plan for beneficial use of water including any existing contracts for  
188 water delivery.
- 189 (5) The proof on an application shall be sworn to by the applicant or the applicant's  
190 appointed representative.
- 191 (6) (a) Except as provided in Subsection (6)(b), when filing proof, the applicant shall  
192 submit maps, profiles, and drawings made by a Utah licensed land surveyor or Utah licensed  
193 professional engineer that show:
  - 194 (i) the location of the completed works;
  - 195 (ii) the nature and extent of the completed works;
  - 196 (iii) the natural stream or source from which and the point where the water is diverted  
197 and, in the case of a nonconsumptive use, the point where the water is returned; and

198 (iv) the place of use.

199 (b) The state engineer may waive the filing of maps, profiles, and drawings if in the  
200 state engineer's opinion the written proof adequately describes the works and the nature and  
201 extent of beneficial use.

202 (7) In those areas in which general determination proceedings are pending, or have  
203 been concluded, under Chapter 4, Determination of Water Rights, the state engineer may  
204 petition the district court for permission to:

205 (a) waive the requirements of this section and Section 73-3-17; and

206 (b) permit each owner of an application to file a verified statement to the effect that the  
207 applicant has completed the appropriation or change and elects to file a statement of water  
208 users claim in the proposed determination of water rights or any supplement to it in accordance  
209 with Chapter 4, Determination of Water Rights, in lieu of proof of appropriation or proof of  
210 change.

211 (8) This section does not apply to a fixed time or temporary change application.

212 Section 4. Section 73-3-18 is amended to read:

213 **73-3-18. Lapse of application -- Notice -- Reinstatement -- Priorities --**

214 **Assignment of application -- Filing and recording -- Constructive notice -- Effect of**  
215 **failure to record.**

216 (1) If an application lapses for failure of the applicant to comply with a provision of  
217 this title or an order of the state engineer, the state engineer shall promptly give notice of the  
218 lapse to the applicant by regular mail, or send notice electronically if receipt is verifiable.

219 (2) Within 60 days after notice of a lapse described in Subsection (1), the state engineer  
220 may, upon a showing of reasonable cause, reinstate the application with the date of priority  
221 changed to the date of reinstatement.

222 (3) The original priority date of a lapsed application may not be reinstated, except upon  
223 a showing of fraud or mistake of the state engineer.

224 (4) Except as provided in Section 73-3-5.6, Section 73-3-12, Section 73-3-20, or  
225 Subsection (2), the priority of an application is determined by the day on which the state

226 engineer's office receives the written application.

227 (5) Before the state engineer issues a certificate of appropriation, a right claimed under  
228 an application for the appropriation of water may be assigned by a written instrument,  
229 including by use of a form provided by the state engineer's office.

230 (6) (a) An instrument assigning a right described in Subsection (5) shall be recorded in  
231 the office of the applicable county recorder to provide notice of the instrument's contents.

232 (b) Beginning July 1, 2017, the state engineer shall consider an assignment using the  
233 state engineer's form described in Subsection (5) that is recorded and forwarded to the state  
234 engineer as a submitted report of water right conveyance for purposes of fulfilling Subsection  
235 73-1-10(3)(a).

236 (7) An instrument described in Subsection (5) that is not recorded as described in  
237 Subsection (6) is void against any subsequent assignee in good faith and for valuable  
238 consideration of the same application or any portion of the same application, if the subsequent  
239 assignee's own assignment is recorded as described in Subsection (6) first.

240 Section 5. Section **73-3b-203** is amended to read:

241 **73-3b-203. Proof of completion, certification, or lapse of recharge permit.**

242 (1) Sixty days before the date on which the recharge permit will lapse under Subsection  
243 (3), the state engineer shall notify the applicant by mail, or send notice electronically if receipt  
244 is verifiable, when proof of completion is due.

245 (2) (a) Before the date on which the recharge permit will lapse under Subsection (3),  
246 the applicant shall file proof of completion with the state engineer on a form furnished by the  
247 state engineer, which shall include:

- 248 (i) the location and description of the recharge works constructed;
- 249 (ii) the water source for the water artificially recharged and where the water is  
250 delivered for artificial recharge;
- 251 (iii) the quantity of water, in acre-feet, the flow in second-feet, or both, diverted from  
252 the water source described in Subsection (2)(a)(ii);
- 253 (iv) the method of artificially recharging the water; and

- 254 (v) any other information the state engineer requires.
- 255 (b) The state engineer may waive the filing of a map, a profile, or drawing if in the  
256 state engineer's opinion the written proof of completion adequately describes the construction  
257 and the nature and extent of the recharge project.
- 258 (c) The completed proof shall conform to a rule established by the state engineer.
- 259 (3) A recharge permit will lapse if the proof of completion of the recharge project's  
260 construction is not submitted to the state engineer within five years from the date of the permit  
261 application's approval, unless:
- 262 (a) the applicant requests an extension of time to complete the recharge project's  
263 construction; and
- 264 (b) the state engineer approves the extension of time.
- 265 (4) (a) The state engineer shall issue a recharge certificate if the recharge permittee has  
266 demonstrated to the state engineer's satisfaction that:
- 267 (i) a recharge project is perfected in accordance with the recharge permit; and  
268 (ii) the water is being artificially recharged.
- 269 (b) The recharge certificate shall include:
- 270 (i) the name and post office address of the recharge permittee;  
271 (ii) the maximum quantity of water, in acre-feet or the flow in second-feet, that may be  
272 recharged;
- 273 (iii) the name of the water source from which the water to be artificially recharged is  
274 diverted; and
- 275 (iv) other information that defines the extent and conditions of the recharge permit.
- 276 (c) A recharge certificate issued for a recharge permit need show no more than the facts  
277 shown in the proof of completion.
- 278 (d) (i) The state engineer shall:
- 279 (A) retain and file one copy of the recharge certificate; and  
280 (B) deliver one copy of the recharge certificate to the recharge permittee.
- 281 (ii) A recharge permittee shall file the recharge certificate with the county recorder of

282 the county in which the water is recharged.

283 (e) The recharge certificate issued and filed under this section is prima facie evidence  
284 of the permittee's right to the artificially recharged water for the purpose, at the place, and  
285 during the time specified in the recharge certificate.

286 Section 6. Section **73-3b-206** is amended to read:

287 **73-3b-206. Proof of completion, certification, or lapse of recovery permit.**

288 (1) Sixty days before the date on which the recovery permit will lapse under Subsection  
289 (3), the state engineer shall notify the applicant by mail, or send notice electronically if receipt  
290 is verifiable, when proof of completion is due.

291 (2) (a) Before the date on which the recovery permit will lapse under Subsection (3),  
292 the applicant shall file proof of completion with the state engineer on a form furnished by the  
293 state engineer, which shall include documentation and a map prepared by a Utah licensed land  
294 surveyor or Utah licensed professional engineer that shows:

- 295 (i) the location and description of the recovery works constructed;
- 296 (ii) the method of recovering the artificially recharged water;
- 297 (iii) the facilities in place to recover and deliver the recovered water; and
- 298 (iv) the purpose and place of use of the recovered water.

299 (b) The state engineer may waive the filing of a map, profile, or drawing, if in the state  
300 engineer's opinion the written proof of completion adequately describes the works and the  
301 nature and extent of the recovery project.

302 (c) The completed proof shall conform to a rule established by the state engineer.

303 (3) A recovery permit will lapse if the recovery project is not completed within five  
304 years from the date of the recovery permit application's approval unless:

- 305 (a) the applicant requests an extension of time to complete the recovery project; and
- 306 (b) the state engineer approves the extension of time.

307 (4) (a) The state engineer shall issue a recovery certificate if the recovery permittee has  
308 demonstrated to the state engineer's satisfaction that:

- 309 (i) the recovery project is perfected in accordance with the recovery permit; and

- 310 (ii) water is being recovered.
- 311 (b) The recovery certificate shall include:
  - 312 (i) the name and post office address of the recovery permittee;
  - 313 (ii) the works used to recover and deliver recovered water; and
  - 314 (iii) other information that defines the extent and conditions of the recovery permit.
- 315 (c) A recovery certificate issued for a recovery permit need show no more than the
- 316 facts shown in the proof of completion.
- 317 (d) A recovery certificate issued under this section does not extend the rights described
- 318 in the recovery permit.
- 319 (e) (i) The state engineer shall:
  - 320 (A) retain and file one copy of the recovery certificate; and
  - 321 (B) deliver one copy of the recovery certificate to the recovery permittee.
- 322 (ii) A recovery permittee shall file the recovery certificate with the county recorder of
- 323 the county in which the water is recovered.
- 324 (f) The recovery certificate issued and filed under this section is prima facie evidence
- 325 of the recovery permittee's right to the recovered water for the purpose, at the place, and during
- 326 the time specified in the recovery certificate.