

1 **STATE ENGINEER ELECTRONIC COMMUNICATIONS**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Joel Ferry**

5 Senate Sponsor: David P. Hinkins

6

7 **LONG TITLE**

8 **Committee Note:**

9 The Natural Resources, Agriculture, and Environment Interim Committee
10 recommended this bill.

11 Legislative Vote: 16 voting for 0 voting against 3 absent

12 **General Description:**

13 This bill addresses actions taken by the state engineer.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ permits the state engineer to send electronic communications under certain
- 17 circumstances; and
- 18 ▶ makes technical changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **73-3-5.6**, as last amended by Laws of Utah 2020, Chapter 58

26 **73-3-10**, as last amended by Laws of Utah 2013, Chapter 429

27 **73-3-16**, as last amended by Laws of Utah 2020, Chapters 278 and 421



28 73-3-18, as last amended by Laws of Utah 2017, Chapter 75

29 73-3b-203, as last amended by Laws of Utah 2010, Chapter 107

30 73-3b-206, as last amended by Laws of Utah 2010, Chapter 107

31

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

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

34 **73-3-5.6. Applications to appropriate or permanently change a small amount of**
35 **water -- Proof of appropriation or change.**

36 (1) As used in this section:

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

- 38 (i) appropriate a small amount of water; or
- 39 (ii) permanently change a small amount of water.

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

- 41 (i) livestock to consume water:
- 42 (A) directly from the water source; or
- 43 (B) from an impoundment into which the water is diverted; and
- 44 (ii) associated uses of water related to the raising and care of livestock.

45 (c) "Proof" means proof of:

- 46 (i) appropriation; or
- 47 (ii) permanent change.

48 (d) "Small amount of water" means the amount of water necessary to meet the
49 requirements of:

- 50 (i) one residence;
- 51 (ii) 1/4 acre of irrigable land; and
- 52 (iii) a livestock watering right for:
- 53 (A) 10 cattle; or
- 54 (B) the equivalent amount of water of Subsection (1)(d)(iii)(A) for livestock other than
55 cattle.

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

- 57 (a) the state engineer undertakes a thorough investigation of the application;
- 58 (b) notice is provided in accordance with Subsection (3);

59 (c) the application complies with the state engineer's regional policies and restrictions
60 and Section 73-3-3 or 73-3-8, as applicable; and

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

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

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

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

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

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

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

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

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

77 (ii) that specifies the amount of:

78 (A) irrigated land; and

79 (B) livestock watered; and

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

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

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

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

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

90 (ii) beneficially uses the water.

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

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

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

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

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

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

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

113 (c) the applicant files:

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

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

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

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

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

121 **73-3-10. Approval or rejection of application.**

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

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

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

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

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

131 and

132 (c) perfect the proposed application.

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

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

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

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

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

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

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

142 **73-3-16. Proof of appropriation or permanent change -- Notice -- Manner of**
143 **proof -- Statements -- Maps, profiles, and drawings -- Verification -- Waiver of filing --**
144 **Statement in lieu of proof of appropriation or change.**

145 (1) Sixty days before the date set for the proof of appropriation or proof of change to be
146 made, the state engineer shall notify the applicant by mail, or send notice electronically if
147 receipt is verifiable, when proof of completion of the works and application of the water to a
148 beneficial use is due.

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

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

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

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

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

- 170 (A) a statement indicating construction of the project works has been completed;
 - 171 (B) a description of the major features with appropriate maps, profiles, drawings, and
172 reservoir area-capacity curves;
 - 173 (C) a description of the point or points of diversion and rediversion;
 - 174 (D) project operation data;
 - 175 (E) a map showing the place of use of water and a statement of the purpose and method
176 of use;
 - 177 (F) the project plan for beneficial use of water under the applications and the quantity
178 of water required; and
 - 179 (G) a statement indicating what type of measuring devices have been installed.
- 180 (ii) The director of the Division of Water Resources shall sign proofs for the state
181 projects and an authorized official of the Bureau of Reclamation shall sign proofs for the
182 federal projects specified in Subsection (4)(a)(i).

183 (b) Proof on an application for appropriation or permanent change for a surface storage
184 facility in excess of 1,000 acre-feet constructed by a public water supplier to provide a water
185 supply for the reasonable requirements of the public shall include:

- 186 (i) a description of the completed water storage facility;
187 (ii) a description of the major project features and appropriate maps, profiles, drawings,
188 and reservoir area-capacity curves as required by the state engineer;
189 (iii) the quantity of water stored in acre-feet;
190 (iv) a description of the water distribution facility for the delivery of the water; and
191 (v) the project plan for beneficial use of water including any existing contracts for
192 water delivery.

193 (5) The proof on an application shall be sworn to by the applicant or the applicant's
194 appointed representative.

195 (6) (a) Except as provided in Subsection (6)(b), when filing proof, the applicant shall
196 submit maps, profiles, and drawings made by a Utah licensed land surveyor or Utah licensed
197 professional engineer that show:

- 198 (i) the location of the completed works;
199 (ii) the nature and extent of the completed works;
200 (iii) the natural stream or source from which and the point where the water is diverted
201 and, in the case of a nonconsumptive use, the point where the water is returned; and
202 (iv) the place of use.

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

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

- 209 (a) waive the requirements of this section and Section 73-3-17; and
210 (b) permit each owner of an application to file a verified statement to the effect that the
211 applicant has completed the appropriation or change and elects to file a statement of water
212 users claim in the proposed determination of water rights or any supplement to it in accordance
213 with Chapter 4, Determination of Water Rights, in lieu of proof of appropriation or proof of

214 change.

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

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

217 **73-3-18. Lapse of application -- Notice -- Reinstatement -- Priorities --**
218 **Assignment of application -- Filing and recording -- Constructive notice -- Effect of**
219 **failure to record.**

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

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

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

228 (4) Except as provided in Section 73-3-5.6, Section 73-3-12, Section 73-3-20, or
229 Subsection (2), the priority of an application is determined by the day on which the state
230 engineer's office receives the written application.

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

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

236 (b) Beginning July 1, 2017, the state engineer shall consider an assignment using the
237 state engineer's form described in Subsection (5) that is recorded and forwarded to the state
238 engineer as a submitted report of water right conveyance for purposes of fulfilling Subsection
239 73-1-10(3)(a).

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

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

245 **73-3b-203. Proof of completion, certification, or lapse of recharge permit.**

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

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

252 (i) the location and description of the recharge works constructed;

253 (ii) the water source for the water artificially recharged and where the water is
254 delivered for artificial recharge;

255 (iii) the quantity of water, in acre-feet, the flow in second-feet, or both, diverted from
256 the water source described in Subsection (2)(a)(ii);

257 (iv) the method of artificially recharging the water; and

258 (v) any other information the state engineer requires.

259 (b) The state engineer may waive the filing of a map, a profile, or drawing if in the
260 state engineer's opinion the written proof of completion adequately describes the construction
261 and the nature and extent of the recharge project.

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

263 (3) A recharge permit will lapse if the proof of completion of the recharge project's
264 construction is not submitted to the state engineer within five years from the date of the permit
265 application's approval, unless:

266 (a) the applicant requests an extension of time to complete the recharge project's
267 construction; and

268 (b) the state engineer approves the extension of time.

269 (4) (a) The state engineer shall issue a recharge certificate if the recharge permittee has
270 demonstrated to the state engineer's satisfaction that:

271 (i) a recharge project is perfected in accordance with the recharge permit; and

272 (ii) the water is being artificially recharged.

273 (b) The recharge certificate shall include:

274 (i) the name and post office address of the recharge permittee;

275 (ii) the maximum quantity of water, in acre-feet or the flow in second-feet, that may be

- 276 recharged;
- 277 (iii) the name of the water source from which the water to be artificially recharged is
- 278 diverted; and
- 279 (iv) other information that defines the extent and conditions of the recharge permit.
- 280 (c) A recharge certificate issued for a recharge permit need show no more than the facts
- 281 shown in the proof of completion.
- 282 (d) (i) The state engineer shall:
- 283 (A) retain and file one copy of the recharge certificate; and
- 284 (B) deliver one copy of the recharge certificate to the recharge permittee.
- 285 (ii) A recharge permittee shall file the recharge certificate with the county recorder of
- 286 the county in which the water is recharged.
- 287 (e) The recharge certificate issued and filed under this section is prima facie evidence
- 288 of the permittee's right to the artificially recharged water for the purpose, at the place, and
- 289 during the time specified in the recharge certificate.

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

291 **73-3b-206. Proof of completion, certification, or lapse of recovery permit.**

292 (1) Sixty days before the date on which the recovery permit will lapse under Subsection

293 (3), the state engineer shall notify the applicant by mail, or send notice electronically if receipt

294 is verifiable, when proof of completion is due.

295 (2) (a) Before the date on which the recovery permit will lapse under Subsection (3),

296 the applicant shall file proof of completion with the state engineer on a form furnished by the

297 state engineer, which shall include documentation and a map prepared by a Utah licensed land

298 surveyor or Utah licensed professional engineer that shows:

- 299 (i) the location and description of the recovery works constructed;
- 300 (ii) the method of recovering the artificially recharged water;
- 301 (iii) the facilities in place to recover and deliver the recovered water; and
- 302 (iv) the purpose and place of use of the recovered water.

303 (b) The state engineer may waive the filing of a map, profile, or drawing, if in the state

304 engineer's opinion the written proof of completion adequately describes the works and the

305 nature and extent of the recovery project.

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

307 (3) A recovery permit will lapse if the recovery project is not completed within five
308 years from the date of the recovery permit application's approval unless:
309 (a) the applicant requests an extension of time to complete the recovery project; and
310 (b) the state engineer approves the extension of time.
311 (4) (a) The state engineer shall issue a recovery certificate if the recovery permittee has
312 demonstrated to the state engineer's satisfaction that:
313 (i) the recovery project is perfected in accordance with the recovery permit; and
314 (ii) water is being recovered.
315 (b) The recovery certificate shall include:
316 (i) the name and post office address of the recovery permittee;
317 (ii) the works used to recover and deliver recovered water; and
318 (iii) other information that defines the extent and conditions of the recovery permit.
319 (c) A recovery certificate issued for a recovery permit need show no more than the
320 facts shown in the proof of completion.
321 (d) A recovery certificate issued under this section does not extend the rights described
322 in the recovery permit.
323 (e) (i) The state engineer shall:
324 (A) retain and file one copy of the recovery certificate; and
325 (B) deliver one copy of the recovery certificate to the recovery permittee.
326 (ii) A recovery permittee shall file the recovery certificate with the county recorder of
327 the county in which the water is recovered.
328 (f) The recovery certificate issued and filed under this section is prima facie evidence
329 of the recovery permittee's right to the recovered water for the purpose, at the place, and during
330 the time specified in the recovery certificate.