

PREFERENCES OF WATER RIGHTS AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl R. Albrecht

Senate Sponsor: Michael K. McKell

LONG TITLE**General Description:**

This bill addresses preferences of water rights during a temporary water shortage emergency.

Highlighted Provisions:

This bill:

- ▶ repeals language related to a temporary water shortage emergency;
- ▶ enacts a provision related to a temporary water shortage emergency with a delayed effective date;
- ▶ requires a study;
- ▶ addresses rulemaking authority; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

73-2-1, as last amended by Laws of Utah 2020, Chapters 60 and 352

73-3-21.1, as last amended by Laws of Utah 2011, Chapter 201

ENACTS:



28 **73-3-21.3**, Utah Code Annotated 1953

29 **73-3-21.5**, Utah Code Annotated 1953

30

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

32 Section 1. Section **73-2-1** is amended to read:

33 **73-2-1. State engineer -- Term -- Powers and duties -- Qualification for duties.**

34 (1) There shall be a state engineer.

35 (2) The state engineer shall:

36 (a) be appointed by the governor with the advice and consent of the Senate;

37 (b) hold office for the term of four years and until a successor is appointed; and

38 (c) have five years experience as a practical engineer or the theoretical knowledge,
39 practical experience, and skill necessary for the position.

40 (3) (a) The state engineer shall be responsible for the general administrative
41 supervision of the waters of the state and the measurement, appropriation, apportionment, and
42 distribution of those waters.

43 (b) The state engineer may secure the equitable apportionment and distribution of the
44 water according to the respective rights of appropriators.

45 (4) The state engineer shall make rules, in accordance with Title 63G, Chapter 3, Utah
46 Administrative Rulemaking Act, consistent with the purposes and provisions of this title,
47 regarding:

48 (a) reports of water right conveyances;

49 (b) the construction of water wells and the licensing of water well drillers;

50 (c) dam construction and safety;

51 (d) the alteration of natural streams;

52 (e) geothermal resource conservation;

53 (f) enforcement orders and the imposition of fines and penalties;

54 (g) the duty of water; and

55 (h) standards for written plans of a public water supplier that may be presented as
56 evidence of reasonable future water requirements under Subsection **73-1-4(2)(f)**.

57 (5) The state engineer may make rules, in accordance with Title 63G, Chapter 3, Utah
58 Administrative Rulemaking Act, consistent with the purposes and provisions of this title,

governing:

- (a) water distribution systems and water commissioners;
 - (b) water measurement and reporting;
 - (c) groundwater recharge and recovery;
 - (d) wastewater reuse;
 - (e) the form, content, and processing procedure for a claim under Section 73-5-13 to surface or underground water that is not represented by a certificate of appropriation;
 - (f) the form and content of a proof submitted to the state engineer under Section 73-3-16;
 - (g) the determination of water rights; ~~[or]~~
 - (h) preferences of water rights under Section 73-3-21.5; or
 - ~~[(h)]~~ (i) the form and content of applications and related documents, maps, and reports.
- (6) The state engineer may bring suit in courts of competent jurisdiction to:
- (a) enjoin the unlawful appropriation, diversion, and use of surface and underground water without first seeking redress through the administrative process;
 - (b) prevent theft, waste, loss, or pollution of surface and underground waters;
 - (c) enable the state engineer to carry out the duties of the state engineer's office; and
 - (d) enforce administrative orders and collect fines and penalties.
- (7) The state engineer may:
- (a) upon request from the board of trustees of an irrigation district under Title 17B, Chapter 2a, Part 5, Irrigation District Act, or another local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a special service district under Title 17D, Chapter 1, Special Service District Act, that operates an irrigation water system, cause a water survey to be made of the lands proposed to be annexed to the district in order to determine and allot the maximum amount of water that could be beneficially used on the land, with a separate survey and allotment being made for each 40-acre or smaller tract in separate ownership; and
 - (b) upon completion of the survey and allotment under Subsection (7)(a), file with the district board a return of the survey and report of the allotment.
- (8) (a) The state engineer may establish water distribution systems and define the water distribution systems' boundaries.

(b) The water distribution systems shall be formed in a manner that:

(i) secures the best protection to the water claimants; and

(ii) is the most economical for the state to supervise.

Section 2. Section **73-3-21.1** is amended to read:

73-3-21.1. Priorities between appropriators.

~~[(1) As used in this section:]~~

~~[(a) "Military facility" means an installation, base, air field, camp, post, station, yard, center, or other facility owned, leased, or operated by, or under the jurisdiction of, the United States Department of Defense or the National Guard.]~~

~~[(b) "Temporary water shortage emergency" means a shortage of water:]~~

~~[(i) whether caused by drought, manmade, or naturally caused;]~~

~~[(ii) for which the governor has declared an emergency; and]~~

~~[(iii) that may not exceed in duration more than two consecutive calendar years.]~~

~~[(2)(a)]~~ Appropriators shall have priority among themselves according to the dates of their respective appropriations, so that each appropriator is entitled to receive the appropriator's whole supply before any subsequent appropriator has any right.

~~[(b) Notwithstanding Subsection (2)(a), if there is a temporary water shortage emergency, the use of water for drinking, sanitation, and fire suppression has a preferential right over any other water right for the duration of the temporary water shortage emergency if:]~~

~~[(i) the water is used by:]~~

~~[(A) an individual water user;]~~

~~[(B) a county or municipality;]~~

~~[(C) a public water supplier, as defined in Section [73-1-4](#); or]~~

~~[(D) a military facility that was in operation on March 10, 2011; and]~~

~~[(ii) the water is used without unnecessary waste.]~~

~~[(c) Notwithstanding Subsection (2)(a), if there is a temporary water shortage emergency, the use of water for agricultural purposes, including irrigation and livestock water, has a preferential right over any other right, except as provided in Subsection (2)(b).]~~

~~[(3) A person using water preferentially during a temporary water shortage emergency shall pay annually to the appropriator whose water use is interrupted the reasonable value of the water use interrupted, crop losses, and other consequential damages incurred as a result of the~~

interruption.]

Section 3. Section **73-3-21.3** is enacted to read:

73-3-21.3. Study of preferences during temporary water shortage emergency.

(1) The state engineer shall study how the state should address preferred uses of water during a temporary water shortage emergency including issues such as:

(a) the process for determining whether and how a water use may be given preference;
and

(b) compensation for holders of water rights that are affected by preferences being given to certain water uses.

(2) The state engineer may work with stakeholders in conducting the study under this section.

(3) The state engineer shall report the state engineer's findings, including any recommended legislation, to the Natural Resources, Agriculture, and Environment Interim Committee by no later than the 2022 November interim meeting of the Natural Resources, Agriculture, and Environment Interim Committee.

Section 4. Section **73-3-21.5** is enacted to read:

73-3-21.5. Preferences between appropriators.

(1) As used in this section:

(a) "Electric utility" means:

(i) a municipal electric utility, as defined in Section [10-19-102](#);

(ii) an electric interlocal entity, as defined in Section [11-13-103](#);

(iii) an energy services interlocal entity, as defined in Section [11-13-103](#);

(iv) a project entity, as defined in Section [11-13-103](#);

(v) an electric improvement district, as defined in Section [17B-2a-406](#); or

(vi) an electrical corporation, as defined in Section [54-2-1](#).

(b) "Military facility" means an installation, base, air field, camp, post, station, yard, center, or other facility owned, leased, or operated by, or under the jurisdiction of, the United States Department of Defense or the National Guard.

(c) (i) "Temporary water shortage emergency" means a shortage of water:

(A) whether caused by drought, manmade causes, or natural causes;

(B) for which the governor has declared temporary water shortage emergency in a

152 designated geographic area by executive order; and

153 (C) that may not exceed in duration more than one calendar year.

154 (ii) An executive order of the governor declaring a temporary water shortage
155 emergency under this section is not a declaration of a state of emergency under Section
156 53-2a-206 and is not subject to Title 53, Chapter 2a, Part 2, Disaster Response and Recovery
157 Act. To exercise an authority granted under Title 53, Chapter 2a, Part 2, Disaster Response and
158 Recovery Act, related to a declaration of a state of emergency, the governor shall issue an
159 executive order that is separate from an executive order declaring a temporary water shortage
160 emergency.

161 (2) (a) Notwithstanding Section 73-3-21.1, if there is a temporary water shortage
162 emergency, the use of water for drinking, sanitation, generation of electricity, and fire
163 suppression has a preferential right over any other water right for the duration of the temporary
164 water shortage emergency if:

165 (i) the water is used by:

166 (A) an individual water user;

167 (B) a county or municipality;

168 (C) a public water supplier, as defined in Section 73-1-4;

169 (D) a military facility that was in operation on March 10, 2011; or

170 (E) an electric utility; and

171 (ii) the water is used without unnecessary waste.

172 (b) Notwithstanding Section 73-3-21.1, if there is a temporary water shortage
173 emergency, the use of water for agricultural purposes, including irrigation and livestock water,
174 has a preferential right over any other right, except as provided in Subsection (2)(a).

175 (3) A person using water preferentially during a temporary water shortage emergency
176 shall pay the appropriator whose water use is interrupted the reasonable value of the water use
177 interrupted, crop losses, and other consequential damages incurred as a result of the
178 interruption.

179 (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
180 state engineer may make rules establishing the process to:

181 (a) determine the preferential right under Subsection (2) over other water rights for the
182 duration of a temporary water shortage emergency; and

(b) provide for payments under Subsection (3).

Section 5. **Effective date.**

(1) If approved by two-thirds of all the members elected to each house, the amendments to Section [73-3-21.1](#) take effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

(2) The enactment of Section [73-3-21.3](#) takes effect May 4, 2022.

(3) The following take effect on May 3, 2023:

(a) the amendments to Section [73-2-1](#); and

(b) the enactment of Section [73-3-21.5](#).