

1 **WATER RIGHTS PROOFS ON SMALL AMOUNTS OF WATER**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Scott D. Sandall**

5 House Sponsor: Joel Ferry

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7 **LONG TITLE**

8 **Committee Note:**

9 The Legislative Water Development Commission recommended this bill.

10 Membership: 13 legislators 11 non-legislators

11 Total Vote: 10 voting for 0 voting against 3 absent

12 Legislative Vote: 10 voting for 0 voting against 3 absent

13 **General Description:**

14 This bill modifies the requirements for a proof submitted to the state engineer regarding  
15 a small amount of water.

16 **Highlighted Provisions:**

17 This bill:

18 ▶ permits the state engineer to act under certain circumstances when the proof does  
19 not conform to the underlying approved application; and

20 ▶ makes technical changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **73-3-5.6**, as last amended by Laws of Utah 2021, Chapter 81



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

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

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

33 (1) As used in this section:

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

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

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

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

38 (i) livestock to consume water:

39 (A) directly from the water source; or

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

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

42 (c) "Proof" means proof of:

43 (i) appropriation; or

44 (ii) permanent change.

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

46 requirements of:

47 (i) one residence;

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

49 (iii) a livestock watering right for:

50 (A) 10 cattle; or

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

52 cattle.

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

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

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

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

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

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

59 (i) for planning, zoning, or subdivision regulation; or  
60 (ii) under Section 10-8-15.

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

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

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

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

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

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

74 (ii) that specifies the amount of:

75 (A) irrigated land; and

76 (B) livestock watered; and

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

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

81 (7) For a proof filed under Subsection (6) that does not conform to the underlying  
82 approved application, the state engineer may issue a certificate under Section 73-3-17 if the  
83 discrepancy between the proof and the underlying approved application does not impair  
84 existing rights and:

85 (a) the point of diversion represented in the proof is:

86 (i) located within 660 feet of the corresponding point of diversion described in the  
87 underlying approved application; and

88 (ii) located on the same parcel as described in the underlying approved application;

89 (b) the place of use represented in the proof is located in a quarter-quarter section or lot

90 that is adjacent to the place of use in the underlying approved application; or

91 (c) the purpose of use represented in the proof is adjusted without exceeding the  
92 amount of water defined under Subsection (1)(d).

93 ~~[(7)]~~ (8) If an applicant does not file the proof required by Subsection (6) by the day on  
94 which the time limit for construction ends, the application lapses under Section 73-3-18.

95 ~~[(8)]~~ (9) (a) Except as provided in Subsections ~~[(9)]~~ (10) and ~~[(10)]~~ (11), an applicant  
96 whose application lapses may file a request with the state engineer to reinstate the application,  
97 if the applicant demonstrates that the applicant or the applicant's predecessor in interest:

- 98 (i) constructed and occupied a residence within the time limit for construction; and  
99 (ii) beneficially uses the water.

100 (b) Except as provided in Subsection ~~[(10)]~~ (11), if an applicant meets the requirements  
101 of Subsection ~~[(8)]~~ (9)(a) and submits an affidavit as provided by Subsection (6), the state  
102 engineer shall issue a certificate for the beneficial uses the applicant attests to in an affidavit  
103 described in Subsection (6).

104 ~~[(9)]~~ (10) For an application related to the use of water located within an area where  
105 general determination proceedings under Title 73, Chapter 4, Determination of Water Rights,  
106 are pending or concluded, an applicant whose application lapses may not file a request for  
107 reinstatement with the state engineer 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; and

110 (b) the applicant failed to timely submit a statement of claim as described in  
111 Subsection ~~[(10)]~~ (11)(c)(ii).

112 ~~[(10)]~~ (11) For an application related to the use of water located within an area where  
113 general determination proceedings under Title 73, Chapter 4, Determination of Water Rights,  
114 are pending, the state engineer shall allow a reinstatement request under Subsection ~~[(8)]~~ (9)(a)  
115 and, instead of issuing a certificate, evaluate the reinstatement request and statement of claim  
116 as part of the general adjudication for the area, if:

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

119 (b) the applicant files the request for reinstatement no more than 90 days after the day  
120 on which the state engineer issues the notice of the time to file statements of claim in

121 accordance with Section 73-4-3; and

122 (c) the applicant files:

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

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

125 [~~(11)~~] (12) If an applicant fulfills the requirements in Subsection [~~(10)~~] (11), the state  
126 engineer may issue a certificate before evaluating the claim in the general adjudication.

127 [~~(12)~~] (13) The priority date for an application reinstated under this section is the day  
128 on which the applicant files the request for reinstatement of the application.