

1
2 **WATER USE TASK FORCE**
3 **PROPOSED AMENDMENTS TO SECTION 73-3-3**
4
5

6 **LONG TITLE**

7 This bill amends provisions related to the Water and Irrigation Appropriation. This bill:

- 8 ➤ Permanent or temporary changes in point of diversion, place of use, or purpose of
9 use of water in the State of Utah;

10 **Monies Appropriated in this Bill:**

11 None

12 **Other Special Clauses:** _____

13 None

14 **Utah Code Sections Affected:**

15 AMENDS:

16 **73-3-3**, as last amended by Laws of Utah 2008,

17
18 *Be it enacted by the Legislature of the state of Utah:*
19

20 73-3-3. **Permanent or temporary changes in point of diversion, place of use, or purpose**
21 **of use.**

22 (1) For purposes of this section:

23 _____ (a) "Permanent change" means a change for an indefinite period of time to change the
24 original point of diversion, place of use, period of use, or nature of use.

25 _____ (b) "Temporary change" means a change for a fixed period of time not exceeding one
26 year.

27 _____ (c) "Person" means:

28 (i) the holder of an approved but unperfected application to appropriate;

29 (ii) the owner of record of a perfected water right;

30 (iii) one authorized in writing by the holder of an approved but unperfected
31 application to appropriate or owner of record;

32 (iv) a shareholder in a water company with the written consent of the water

Formatted: Tab stops: 4.13", Left

33 company in accordance with 73-3-3.5.
34 (d) “Quantity of Water Available for Change” shall mean the quantity of water that has
35 been placed to beneficial use under a water right within the time provided in Section 73-1-4.
36 (2) (a) A person may make permanent or temporary changes to a water right in the:
37 (i) point of diversion;
38 (ii) place of use;
39 (iii) nature of use for which the water was originally appropriated;
40 (iv) period of use; or
41 (v) the addition or deletion of storage as an authorized use.
42 (b) Except as provided by Section 73-3-30, a change may not be made if it impairs a
43 vested water right without just compensation.
44 (c) In a change application proceeding, the state engineer to prevent impairment of
45 other water rights:
46 (i) shall have authority to review the beneficial use of water under the water
47 right and limit the approval to that quantity of water available for change; and
48 (ii) shall consider water to have been reasonably applied to beneficial use where
49 lack of beneficial use is exempted or protected as provided in section 73-1-4 or is otherwise
50 excused by law.
51 (iii) In making the determination under Subsection 2(c)(i), the state engineer
52 shall:
53 (A) presume the water right to have been used to its full extent, which
54 presumption may be rebutted by clear and convincing evidence demonstrating a lesser quantity
55 of water available for change;
56 (B) If the state engineer or a protestant questions the quantity of water available
57 for change, the state engineer must:
58 (1) Conduct an administrative hearing to afford a person and any
59 protestant notice and opportunity to present evidence regarding the quantity of water available
60 for change;
61 (2) If based upon clear and convincing evidence, the state engineer finds
62 and concludes that the quantity of water available for change is less than that quantity of water
63 applied for by a person, the state engineer may:
64 (A) Reject the change application; or
65 (B) Limit the approval to that quantity of water determined by the state

66 engineer to be available for change.
67 (d) At any time prior to the date of a decision on a change application, a person may:
68 (i) withdraw the change application; or
69 (ii) request the state engineer to stay proceedings on the change application for a
70 period not to exceed two years, unless extended by the State Engineer upon good cause; and
71 (iii) if proceedings on the change application are not resumed within two years
72 of the date of the stay or any extension thereof, the change application will be deemed
73 withdrawn.
74 (e) Any such determination of the quantity of water available for change by the state
75 engineer shall:
76 (1) State the factual basis for the determination of the quantity of water
77 available for change;
78 (2) Not constitute a forfeiture, abandonment or affect the use of the unapproved
79 portion of the underlying water right; nor
80 (3) Constitute an adjudication of the underlying water right.
81 (3) A person shall change a point of diversion, place of use, nature of use, period of use or add
82 or delete storage as an authorized use, including water involved in a general adjudication or
83 other suit, only in the manner provided in this section.
84 (4) (a) No change of use of water may be made unless the state engineer approves the change
85 application.
86 (b) A person shall submit a change application upon forms furnished by the state engineer and
87 shall set forth:
88 (i) the applicant's name;
89 (ii) the water right description;
90 (iii) the water quantity;
91 (iv) the stream or water source;
92 (v) if applicable, the point on the stream or water source where the water is presently diverted;
93 (vi) if applicable, the point to which it is proposed to change the diversion of the water;
94 (vii) the place, nature, and period, and extent of the present use;
95 (viii) the place, nature, period and extent of the proposed use; and
96 (ix) any other information that the state engineer requires.
97 (5) (a) The state engineer shall follow the same procedures, and the rights and duties of the
98 applicants with respect to applications for permanent changes of point of diversion, place of

99 | use, nature of use, period of use, or storage shall be the same, as provided in this title for
100 | applications to appropriate water.

101 | (b) The state engineer may waive notice for a permanent change application involving only a
102 | change in point of diversion of 660 feet or less.

103 | (6) (a) The state engineer shall investigate all temporary change applications.

104 | (b) If the state engineer finds that the temporary change will not exceed the quantity of water
105 | available for change, nor impair a vested water right, the state engineer shall issue an order
106 | authorizing the change.

Deleted: t

107 | (c) If the state engineer finds that the **temporary** change sought will exceed the quantity of
108 | water available for change or impair a vested water right **the state engineer may deny the**
109 | **temporary change application**.

Deleted: might

110 | **_____**
111 | (7) (a) Except as provided by Section 73-3-30, the state engineer may not reject a permanent or
112 | temporary change application for the sole reason that the change would impair a vested water
113 | right.

Deleted: , before authorizing the change, the state engineer shall give notice of the application to any person whose may be affected by the change.

Deleted: (d) Before making an investigation or giving notice, the state engineer may require the applicant to deposit a sum of money sufficient to pay the expenses of the investigation and publication of notice.

114 | (b) If otherwise proper, the state engineer may approve a permanent or temporary change
115 | application for that quantity of water available for change or upon the condition that the person
116 | acquires the conflicting water right where interference with another water right is
117 | demonstrated.

118 | (8) (a) A person holding an approved application for the appropriation of water may change the
119 | point of diversion, place of use, nature of use, period of use or add or delete storage as an
120 | authorized use.

121 | (b) A change of an approved application does not:

122 | (i) affect the priority of the original application; or

123 | (ii) extend the time period within which the construction of work is to begin or be completed.

124 | (9) Any **individual or entity** who changes or who attempts to change a point of diversion, place
125 | of use, period of use, nature of use or to add or delete storage as an authorized use, either
126 | permanently or temporarily, without first applying to the state engineer in the manner provided
127 | in this section:

Deleted: person

128 | (a) obtains no right;

129 | (b) is guilty of a crime punishable under Section 73-2-27 if the change or attempted change is
130 | made knowingly or intentionally; and

131 | (c) is guilty of a separately punishable offense for each day of the unlawful change.

Draft Revised December 2, 2011

143 (10) (a) This section does not apply to the replacement of an existing well by a new well drilled
144 within a radius of 150 feet from the point of diversion of the existing well.

145 (b) Any replacement well must be drilled in accordance with the requirements of Section 73-3-
146 28.

147

148