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WATER USE TASK FORCE
PROPOSED AMENDMENTS TO SECTION 73-3-3

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LONG TITLE

This bill amends provisions related to the Water and Irrigation Appropriation. This bill:
➤ Permanent or temporary changes in point of diversion, place of use, or purpose of use of water in the State of Utah;

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

(1) For purposes of this section:

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

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

(c) "Person" means the appropriator, the owner of record, a person authorized by the appropriator or owner of record, or a shareholder in a water company as defined in 16-4-102(5), with the written consent of the water company in accordance with 73-3-3.5.

(d) "Quantity of Water Available for Change" shall mean the quantity of water that has been placed to beneficial use under a water right within the seven years immediately preceding the filing of the change application seeking to modify a water right.

Comment [SEC1]: Alternatively, we might simply cross reference to 73-1-4 which would pick up the Lazarus clause concept.

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September 1, 2011

- 33 (2) (a) A person may make permanent or temporary changes to a water right in the:
- 34 (i) point of diversion;
- 35 (ii) place of use;
- 36 (iii) nature of use for which the water was originally appropriated;
- 37 (iv) period of use; or
- 38 (v) to add or delete storage as an authorized use.
- 39 (b) Except as provided by Section 73-3-30, a change may not be made if it impairs a vested
- 40 water right without just compensation.
- 41 (c) In a change application proceeding, the state engineer to prevent impairment of other water
- 42 rights:
- 43 (i) shall have authority to review the beneficial use of water under the water right and limit the
- 44 approval to that quantity of water available for change; and
- 45 (ii) shall consider water to have been reasonably applied to beneficial use where lack of
- 46 beneficial use is exempted or protected as provided in section 73-1-4 or is otherwise excused
- 47 by law.
- 48 (iii) In making the determination under Subsection 2(c)(i), the state engineer shall:
- 49 _____ (A) presume the water right to have been used to its full extent, which presumption may
- 50 be rebutted by clear and convincing evidence demonstrating a lesser quantity of water available
- 51 for change:
- 52 _____ (B) If based on clear and convincing evidence, the state engineer finds that the use
- 53 proposed exceeds the quantity of water available for change, the state engineer must:
- 54 _____ (1) conduct an administrative hearing to afford the applicant notice and
- 55 opportunity to rebut the state engineer's findings, and based upon the evidence presented at
- 56 such hearing, the state engineer may:
- 57 _____ (2) reject the change application; or
- 58 _____ (3) limit the approval to that quantity of water available for change.
- 59 (C) Any such determination of the quantity of water available for change by the state
- 60 engineer shall:
- 61 _____ (1) in any decision of the state engineer state the factual basis for the
- 62 determination of the quantity of water available for change;
- 63 _____ (2) not constitute a forfeiture or abandonment of the unapproved portion of the

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65 underlying water right; nor

66 (3) constitute an adjudication of the underlying water right.

67

68 (3) A person shall change a point of diversion, place of use, nature of use; period of use or add
69 or delete storage as an authorized use, including water involved in a general adjudication or

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70 other suit, only in the manner provided in this section.

71 (4) (a) No change of use of water may be made unless the state engineer approves the change
72 application.

73 (b) A person shall submit a change application upon forms furnished by the state engineer and
74 shall set forth:

75 (i) the applicant's name;

76 (ii) the water right description;

77 (iii) the water quantity;

78 (iv) the stream or water source;

79 (v) if applicable, the point on the stream or water source where the water is presently diverted;

80 (vi) if applicable, the point to which it is proposed to change the diversion of the water;

81 (vii) the place, nature, and period, and extent of the present use;

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82 (viii) the place, nature, period and extent of the proposed use; and

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83 (ix) any other information that the state engineer requires.

84 (5) (a) The state engineer shall follow the same procedures, and the rights and duties of the
85 applicants with respect to applications for permanent changes of point of diversion, place of
86 use, nature, of use, period of use, or storage, shall be the same, as provided in this title for

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87 applications to appropriate water.

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

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

91 (b) If the state engineer finds that the temporary change will not impair a vested water right,
92 the state engineer shall issue an order authorizing the change.

(c) If the state engineer finds that the change sought might impair a vested water right, before
authorizing the change, the state engineer shall give notice of the application to any person
whose water right may be affected by the change.

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(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.

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

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

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

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

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

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

(9) Any person who changes or who attempts to change a point of diversion, place of use,

period of use, nature of use or to add or delete storage as an authorized use, either permanently or temporarily, without first applying to the state engineer in the manner provided in this section:

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(a) obtains no right;

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

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

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

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

1 **73-3-8. Approval or rejection of an application to appropriate or for temporary or**
2 **permanent change of use-- Requirements for approval -- Application for specified period of**
3 **time -- Filing of royalty contract for removal of salt or minerals.**

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4 (1) (a) It shall be the duty of the state engineer to approve an application to appropriate or for
5 a temporary or permanent change of use if:

6 _____ (i) there is unappropriated water in the proposed source;

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7 _____ (ii) in the case of a change application, that the proposed use is based on the quantity of
8 water placed to beneficial use within the seven years immediately preceding the filing of the
9 change application;

Comment [SEC1]: Alternatively might cross reference to 73-1-4.

10 _____ (iii) the proposed use will not impair existing rights or interfere with the more beneficial
11 use of the water;

12 _____ (iv) the proposed plan is physically and economically feasible, unless the application is
13 filed by the United States Bureau of Reclamation, and would not prove detrimental to the public
14 welfare;

15 _____ (v) the applicant has the financial ability to complete the proposed works; and

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16 _____ (vi) the application was filed in good faith and not for purposes of speculation or
17 monopoly.

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18 (b) (i) If the state engineer, because of information in the state engineer's possession obtained
19 either by the state engineer's own investigation or otherwise, has reason to believe that an
20 application to appropriate water or to make a temporary or permanent change of use will
21 interfere with its more beneficial use for irrigation, domestic or culinary, stock watering, power
22 or mining development, or manufacturing, or will unreasonably affect public recreation or the
23 natural stream environment, or will prove detrimental to the public welfare, it is the state
24 engineer's duty to withhold approval or rejection of the application until the state engineer has
25 investigated the matter.

26 (ii) If an application does not meet the requirements of this section, it shall be rejected.

27 (2) (a) An application to appropriate water for industrial, power, mining development,
28 manufacturing purposes, agriculture, or municipal purposes may be approved for a specific and
29 certain period from the time the water is placed to beneficial use under the application, but in no
30 event may an application be granted for a period of time less than that ordinarily needed to

33 satisfy the essential and primary purpose of the application or until the water is no longer
34 available as determined by the state engineer.

35 (b) At the expiration of the period fixed by the state engineer the water shall revert to the
36 public and is subject to appropriation as provided by this title.

37 (c) No later than 60 calendar days before the expiration date of the fixed time period, the state
38 engineer shall send notice by mail or by any form of electronic communication through which
39 receipt is verifiable, to the applicant of record.

40 (d) Except as provided by Subsection (2)(e), the state engineer may extend any limited water
41 right upon a showing that:

42 (i) the essential purpose of the original application has not been satisfied;

43 (ii) the need for an extension is not the result of any default or neglect by the applicant; and

44 (iii) the water is still available.

45 (e) No extension shall exceed the time necessary to satisfy the primary purpose of the original
46 application.

47 (f) A request for extension of the fixed time period must be filed in writing in the office of the
48 state engineer on or before the expiration date of the application.

49 (3) (a) Before the approval of any application for the appropriation of water from navigable
50 lakes or streams of the state that contemplates the recovery of salts and other minerals there from
51 by precipitation or otherwise, the applicant shall file with the state engineer a copy of a contract
52 for the payment of royalties to the state.

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53 (b) The approval of an application shall be revoked in the event of the failure of the applicant
54 to comply with terms of the royalty contract.

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56 Amended by Chapter 136, 2007 General Session
57 Download Code Section [Zipped](#) WordPerfect [73_03_000800.ZIP](#) 4,123 Bytes

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CHANGES TO ADDRESS JENSEN v. JONES (Sep 6, 2011)

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

(1) For purposes of this section:

(a) "Permanent change" means a change for an indefinite period of time with an intent to relinquish the original point of diversion, place of use, or purpose of use.

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

(2) (a) Any person entitled to the use of water may make permanent or temporary changes in the:

(i) point of diversion;

(ii) place of use; or

(iii) purpose of use for which the water was originally appropriated.

(b) Except as provided by Section 73-3-30, a change may not be made if it impairs a vested water right without just compensation.

(3) A person entitled to use water shall change a point of diversion, place of use, or purpose of water use, including water involved in a general adjudication or other suit, in the manner provided in this section.

(4) (a) A person entitled to use water may not make a change unless the state engineer approves the change application.

(b) A person entitled to use water shall submit a change application upon forms furnished by the state engineer and shall set forth:

(i) the applicant's name;

(ii) the water right description;

(iii) the water quantity;

(iv) the stream or water source;

(v) if applicable, the point on the stream or water source where the water is diverted;

(vi) if applicable, the point to which it is proposed to change the diversion of the water;

(vii) the place, purpose, and extent of the present use;

- (viii) the place, purpose, and extent of the proposed use; and
- (ix) any other information that the state engineer requires.

(5) (a) The state engineer shall follow the same procedures, and the rights and duties of the applicants with respect to applications for permanent changes of point of diversion, place of use, or purpose of use shall be the same, as provided in this title for applications to appropriate water.

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

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

(b) If the state engineer finds that the temporary change will not impair a vested water right, the state engineer shall issue an order authorizing the change.

(c) If the state engineer finds that the change sought might impair a vested water right, before authorizing the change, the state engineer shall give notice of the application to any person whose right may be affected by the change.

(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.

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

(b) If otherwise proper, the state engineer may approve a permanent or temporary change application for part of the water involved or upon the condition that the applicant acquire the conflicting water right.

(c) (i) The state engineer may not limit the amount of water proposed to be changed based on a review of beneficial use, unless:

(A) another water right will be impaired by the change;

(B) a timely protest has raised the issue of the amount of beneficial use or the state engineer has provided the notice described in section 73-3-7(3); and

(C) the applicant agrees to allow the state engineer to limit approval of the proposed change to the quantity of water determined to have been

reasonably applied to beneficial use over time under the water right proposed to be changed.

(ii) If a protest is filed raising the issue of beneficial use over time, or if the state engineer has provided a notice to the applicant pursuant to section 73-3-7(3), the applicant may direct the state engineer to hold the application without action until the issue of the extent of beneficial use over time has been resolved in a judicial action. In such case:

(A) the applicant shall bring the action;

(B) the state engineer may participate in the action, but only as a party; except that no judgment for costs or expenses of the litigation may be rendered against the state engineer; and

(C) any party with standing may participate in the action regardless of whether the party filed a protest to the change application.

(iii) The state engineer may decline to approve a change application where a protest is filed raising the issue of beneficial use over time, or where the state engineer has provided a notice to the applicant pursuant to section 73-3-7(3), if the applicant does not allow the state engineer to limit the approval as provided in Subsection (7)(c)(i), or commence a judicial action to resolve the issue of the extent of beneficial use.

(iv) In making a determination under Subsection (7)(c)(i), the state engineer:

(A) shall consider water to have been reasonably applied to beneficial where a lack of use is exempted or protected as provided in section 73-1-4, or otherwise excused by law;

(B) shall not limit the approval for the sole reason that there is inadequate or unreliable information of beneficial use; and

(C) shall not limit the approval if all protests raising the issue of beneficial use over time are withdrawn and the state engineer did not provide the notice described in Subsection 73-3-7(3).

(v) A decision limiting the change application under Subsection (7)(c)(i) shall not affect the ability of any water not approved in connection with the change application to continue to be beneficially used in accordance with the previously approved water right or placed into non-use.

(8) (a) A person holding an approved application for the appropriation of water may change the point of diversion, place of use, or purpose of use.

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

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

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

(9) Any person who changes or who attempts to change a point of diversion, place of use, or purpose of use, either permanently or temporarily, without first applying to the state engineer in the manner provided in this section:

(a) obtains no right;

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

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

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

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

73-3-7. Protests.

(1) Any person interested may file a protest with the state engineer:

(a) within 20 days after the notice is published, if the adjudicative proceeding is informal; and

(b) within 30 days after the notice is published, if the adjudicative proceeding is formal.

(2) The state engineer shall consider the protest and shall approve or reject the application.

(3) If, in the state engineer's opinion, a review of beneficial use over time is likely to result in a limitation of the change application to a quantity less than that purported to be the heretofore use in the change application, the state engineer shall notify the applicant

by mail, or other method for which receipt is verifiable, within the time allowed for filing a protest.

73-3-8. Approval or rejection of application -- Requirements for approval -- Application for specified period of time -- Filing of royalty contract for removal of salt or minerals.

(1) (a) It shall be the duty of the state engineer to approve an application if:

(i) there is unappropriated water in the proposed source;

(ii) the proposed use will not impair existing rights or interfere with the more beneficial use of the water;

(iii) the proposed plan is physically and economically feasible, unless the application is filed by the United States Bureau of Reclamation, and would not prove detrimental to the public welfare;

(iv) the applicant has the financial ability to complete the proposed works; and

(v) the application was filed in good faith and not for purposes of speculation or monopoly.

(b) (i) If the state engineer, because of information in the state engineer's possession obtained either by the state engineer's own investigation or otherwise, has reason to believe that an application to appropriate water will interfere with its more beneficial use for irrigation, domestic or culinary, stock watering, power or mining development, or manufacturing, or will unreasonably affect public recreation or the natural stream environment, or will prove detrimental to the public welfare, or will impair another right by allowing an increase in the amount of water beneficially used under a water right proposed to be changed, it is the state engineer's duty to withhold approval or rejection of the application until the state engineer has investigated the matter.

(ii) If an application does not meet the requirements of this section, it shall be rejected.

(2) (a) An application to appropriate water for industrial, power, mining development, manufacturing purposes, agriculture, or municipal purposes may be approved for a specific and certain period from the time the water is placed to beneficial use under the application, but in no event may an application be granted for a period of time less than that ordinarily needed to satisfy the essential and primary purpose of the application or

until the water is no longer available as determined by the state engineer.

(b) At the expiration of the period fixed by the state engineer the water shall revert to the public and is subject to appropriation as provided by this title.

(c) No later than 60 calendar days before the expiration date of the fixed time period, the state engineer shall send notice by mail or by any form of electronic communication through which receipt is verifiable, to the applicant of record.

(d) Except as provided by Subsection (2)(e), the state engineer may extend any limited water right upon a showing that:

(i) the essential purpose of the original application has not been satisfied;

(ii) the need for an extension is not the result of any default or neglect by the applicant; and

(iii) the water is still available.

(e) No extension shall exceed the time necessary to satisfy the primary purpose of the original application.

(f) A request for extension of the fixed time period must be filed in writing in the office of the state engineer on or before the expiration date of the application.

(3) (a) Before the approval of any application for the appropriation of water from navigable lakes or streams of the state that contemplates the recovery of salts and other minerals therefrom by precipitation or otherwise, the applicant shall file with the state engineer a copy of a contract for the payment of royalties to the state.

(b) The approval of an application shall be revoked in the event of the failure of the applicant to comply with terms of the royalty contract.