

WHO MAY FILE A CHANGE APPLICATION  
[Streamlined Plus Clarifications]

Prepared by John Mabey using Steve Clyde's draft of December 2, 2011

Only addresses who may file a change application, plus  
clarifications to the change application statute  
approved by Executive Water Task Force;  
Does not address Jensen case

**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~~change the original point of diversion, place of use, nature of use, or purpose~~period~~ 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~~ (c) "Person" means:  
(i) the holder of an approved but unperfected application to appropriate;  
(ii) the owner of record of a perfected water right;  
(iii) one authorized in writing by the holder of an approved but unperfected application to appropriate or owner of record;  
(iv) a shareholder in a water company with the written consent of the water company in accordance with Section 73-3-3.5.

~~(2) (a) A person~~ may make permanent or temporary changes to a water right in the:

- (i) point of diversion;
- (ii) place of use; or
- (iii) ~~purpose~~nature of use for which the water was originally appropriated;
- (iv) period of use; or
- (v) addition or deletion of storage as an authorized use.

(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~~nature of ~~water~~use, period of use, or add or delete storage as an authorized use, including water involved in a general adjudication or other suit, only 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;

2-15-12 draft

- (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 presently authorized to be diverted;
  - (vi) if applicable, the point to which it is proposed to change the diversion of the water;
  - (vii) the place, purpose, nature, period, and extent of the present use;
  - (viii) the place, purpose, period, 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~~nature of use, period of use, or storage 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 temporary change sought ~~might~~will 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.~~ deny the temporary change application.
- (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 acquires the conflicting water right where interference with another water right is demonstrated.
- (8) (a) A ~~person holding~~holder of an approved application for the appropriation of water may change the point of diversion, place of use, ~~or purpose~~nature of use, period of use, or add or delete storage as an authorized 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~~individual or entity who changes or who attempts to change a point of diversion, place of use, ~~or purpose~~nature of use, period 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:
- (a) obtains no right;
  - (b) is guilty of a crime punishable under Section 73-2-27 if the change or attempted

2-15-12 draft

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.