



GARY R. HERBERT  
Governor

SPENCER J. COX  
Lieutenant Governor

# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Water Rights

KENT L. JONES  
State Engineer/Division Director

*Internal Correspondence*

*Division of Water Rights*

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**To:** Water Rights Division Staff

**From:** Kent L. Jones, P.E.   
State Engineer  
Director – Utah Division of Water Rights

**Date:** December 28, 2018

**Subject:** **POLICY FOR DEPLETION LIMITATIONS ON CERTIFICATES**

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When a new Certificate is issued, new limitations for the right are set for diversion, depletion, nature of use, place of use, point of diversion, and period of use based on the uses as listed in the Certificate. These attributes of the water right listed in the Certificate will be the basis for future consideration of the water right.

We had a situation where a change application was approved to move an irrigation right to a domestic use with a small amount of irrigation and stockwater. Proof was submitted and a Certificate was issued. The new uses established the same diversion amount but reduced the depletion limitation of the right. After certification the house burned down and the applicant decided to move the certificated right all back to irrigation. Because the right had been certificated for a depletion less than what was originally authorized with the right, when the applicant went back to the original use of irrigation he was limited by the depletion and was not authorized to irrigate as many acres as had been done with the right before it was changed and certificated with the domestic right. This is an appropriate practice and is consistent with the limitations established by certificating new uses.

There are some special considerations to take into account when evaluating certificated water rights that are proposing to change their uses to rights that were recognized under the right as it existed prior to the new certification. Depletion allowed under a certificate issued has to be the key factor to maintain to protect the rights of others in a hydrologic system. In a situation where an applicant moves a water right from irrigation to a totally consumptive water use, we typically restrict the diversion rate to the depletion limitation. If an applicant certifies the right under the change, the Certificate may reflect the reduced diversion rate matching the depletion rate. If the applicant wants to discontinue the totally depletive use and go back to the original right, in this case irrigation, recognizing that depletion is the critical factor, the applicant could be allowed to go back to the originally allowed diversion rate as long as the



allowed depletion is not exceeded and the rights of others are not impaired. This is further supported by new changes in the Code in Section 73-3-8(5)(d) stating,

“A condition described in Subsection (5)(c) may not include a reduction in the currently approved diversion rate of water under the water right identified in the change application solely to account for the difference in depletion under the nature of the proposed use when compared with the nature of the currently approved use.”

The process to follow to return to the original diversion with the set depletion would be to file a Change Application for permanent or temporary change and have that application approved by the State Engineer to be able to do the requested use. It is important to note that someone else with a right may now be relying on that change in flow and quantity impairment may become an element of consideration in a new change.

If a Change Application is approved and the new uses have not been certificated, a new change can be filed to go to other uses using the original diversion and depletion limitations of the right last certificated or perfected regardless of the uses and associated depletions of the change being replaced.