

# SB0018S01 compared with SB0018

~~{deleted text}~~ shows text that was in SB0018 but was deleted in SB0018S01.

inserted text shows text that was not in SB0018 but was inserted into SB0018S01.

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Senator Scott D. Sandall proposes the following substitute bill:

## WATER MODIFICATIONS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: ~~{}~~Scott D. Sandall

House Sponsor: ~~{}~~Casey Snider

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### LONG TITLE

#### ~~{Committee Note:~~

~~— The Legislative Water Development Commission recommended this bill.~~

~~— Membership: — 13 legislators — 11 non-legislators~~

~~— Total Vote: — 6 voting for — 1 voting against — 6 absent~~

~~— Legislative Vote: — 6 voting for — 1 voting against — 6 absent~~

#### ~~{General Description:~~

This bill addresses regulation of water.

#### **Highlighted Provisions:**

This bill:

- ▶ modifies forfeiture provisions in relation to saved water;
- ▶ grants rulemaking authority related to saved water;
- ▶ defines terms;

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- ▶ addresses changes to a water right in relation to saved water;
- ▶ provides for proofs related to saved water;
- ▶ addresses certificates of appropriation in relation to saved water;
- ▶ modifies provisions related to segregation and saved water;
- ▶ clarifies language related to agricultural water optimization and saved water;
- ▶ modifies requirements for grants for agricultural water optimization;
- ▶ repeals certain language related to agricultural water optimization; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

73-1-4, as last amended by Laws of Utah 2023, Chapter 230

73-2-1, as last amended by Laws of Utah 2023, Chapter 16

73-3-3, as last amended by Laws of Utah 2022, Chapter 43

73-3-8, as last amended by Laws of Utah 2023, Chapter 253

73-3-16, as last amended by Laws of Utah 2021, Chapter 81

73-3-17, as last amended by Laws of Utah 2020, Chapter 278

73-3-27, as last amended by Laws of Utah 2009, Chapter 247

73-10g-203.5, as enacted by Laws of Utah 2023, Chapter 261

73-10g-205, as enacted by Laws of Utah 2023, Chapter 261

73-10g-206, as enacted by Laws of Utah 2023, Chapter 261

#### REPEALS:

73-10g-208, as enacted by Laws of Utah 2023, Chapter 261

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

Section 1. Section 73-1-4 is amended to read:

**73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within seven years -- Saved water -- Nonuse application.**

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- (1) As used in this section:
  - (a) "Public entity" means:
    - (i) the United States;
    - (ii) an agency of the United States;
    - (iii) the state;
    - (iv) a state agency;
    - (v) a political subdivision of the state; or
    - (vi) an agency of a political subdivision of the state.
  - (b) "Public water supplier" means an entity that:
    - (i) supplies water, directly or indirectly, to the public for municipal, domestic, or industrial use; and
    - (ii) is:
      - (A) a public entity;
      - (B) a water corporation, as defined in Section 54-2-1, that is regulated by the Public Service Commission;
      - (C) a community water system:
        - (I) that:
          - (Aa) supplies water to at least 100 service connections used by year-round residents; or
          - (Bb) regularly serves at least 200 year-round residents; and
        - (II) whose voting members:
          - (Aa) own a share in the community water system;
          - (Bb) receive water from the community water system in proportion to the member's share in the community water system; and
      - (Cc) pay the rate set by the community water system based on the water the member receives; or
      - (D) a water users association:
        - (I) in which one or more public entities own at least 70% of the outstanding shares; and
        - (II) that is a local sponsor of a water project constructed by the United States Bureau of Reclamation.
  - (c) "Saved water" means the same as that term is defined in Section 73-3-3.
  - ~~(d)~~ (d) "Shareholder" means the same as that term is defined in Section 73-3-3.5.

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~~[(d)]~~ (e) "Water company" means the same as that term is defined in Section 73-3-3.5.

~~[(e)]~~ (f) "Water supply entity" means an entity that supplies water as a utility service or for irrigation purposes and is also:

(i) a municipality, water conservancy district, metropolitan water district, irrigation district, or other public agency;

(ii) a water company regulated by the Public Service Commission; or

(iii) any other owner of a community water system.

(2) (a) Except as provided in Subsection (2)(b) or (e), when an appropriator or the appropriator's successor in interest abandons or ceases to beneficially use all or a portion of a water right for a period of at least seven years, the water right or the unused portion of that water right is subject to forfeiture in accordance with Subsection (2)(c).

(b) (i) An appropriator or the appropriator's successor in interest may file an application for nonuse with the state engineer.

(ii) A nonuse application may be filed on all or a portion of the water right, including water rights held by a water company.

(iii) After giving written notice to the water company, a shareholder may file a nonuse application with the state engineer on the water represented by the stock.

(iv) (A) The approval of a nonuse application excuses the requirement of beneficial use of water from the date of filing.

(B) The time during which an approved nonuse application is in effect does not count toward the seven-year period described in Subsection (2)(a).

(v) The filing or approval of a nonuse application or a series of nonuse applications under Subsection (3) does not:

(A) constitute beneficial use of a water right;

(B) protect a water right that is already subject to forfeiture under this section; or

(C) bar a water right owner from:

(I) using the water under the water right as permitted under the water right; or

(II) claiming the benefit of Subsection (2)(e) or any other forfeiture defense provided by law.

(c) (i) Except as provided in Subsection (2)(c)(ii), a water right or a portion of the water right may not be forfeited unless a judicial action to declare the right forfeited is

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commenced:

(A) within 15 years from the end of the latest period of nonuse of at least seven years;

or

(B) within the combined time of 15 years from the end of the most recent period of nonuse of at least seven years and the time the water right was subject to one or more nonuse applications.

(ii) (A) The state engineer, in a proposed determination of rights filed with the court and prepared in accordance with Section 73-4-11, may not assert that a water right was forfeited unless the most recent period of nonuse of seven years ends or occurs:

(I) during the 15 years immediately preceding the day on which the state engineer files the proposed determination of rights with the court; or

(II) during the combined time immediately preceding the day on which the state engineer files the proposed determination of rights consisting of 15 years and the time the water right was subject to one or more approved nonuse applications.

(B) After the day on which a proposed determination of rights is filed with the court a person may not assert that a water right subject to that determination was forfeited before the issuance of the proposed determination, unless the state engineer asserts forfeiture in the proposed determination, or a person, in accordance with Section 73-4-11, makes an objection to the proposed determination that asserts forfeiture.

(iii) A water right, found to be valid in a decree entered in an action for general determination of rights under Chapter 4, Determination of Water Rights, is subject to a claim of forfeiture based on a seven-year period of nonuse that begins after the day on which the state engineer filed the related proposed determination of rights with the court, unless the decree provides otherwise.

(iv) If in a judicial action a court declares a water right forfeited, on the date on which the water right is forfeited:

(A) the right to beneficially use the water reverts to the public; and

(B) the water made available by the forfeiture:

(I) first, satisfies other water rights in the hydrologic system in order of priority date;

and

(II) second, may be appropriated as provided in this title.

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(d) Except as provided in Subsection (2)(e), this section applies whether the unused or abandoned water or a portion of the water is:

(i) permitted to run to waste; or

(ii) beneficially used by others without right with the knowledge of the water right holder.

(e) This section does not apply to:

(i) the beneficial use of water according to a written, terminable lease or other agreement with the appropriator or the appropriator's successor in interest;

(ii) a water right if its place of use is contracted under an approved state agreement or federal conservation fallowing program;

(iii) those periods of time when a surface water or groundwater source fails to yield sufficient water to satisfy the water right;

(iv) a water right when water is unavailable because of the water right's priority date;

(v) a water right to store water in a surface reservoir, or an aquifer in accordance with [~~Title 73, Chapter 3b, Groundwater Recharge and Recovery Act~~] Chapter 3b, Groundwater Recharge and Recovery Act, if the water is stored for present or future beneficial use;

(vi) a water right if a water user has beneficially used substantially all of the water right within a seven-year period, provided that this exemption does not apply to the adjudication of a water right in a general determination of water rights under Chapter 4, Determination of Water Rights;

(vii) except as provided by Subsection (2)(g), a water right:

(A) (I) owned by a public water supplier;

(II) represented by a public water supplier's ownership interest in a water company; or

(III) to which a public water supplier owns the right of beneficial use; and

(B) conserved or held for the reasonable future water requirement of the public, which is determined according to Subsection (2)(f);

(viii) a supplemental water right during a period of time when another water right available to the appropriator or the appropriator's successor in interest provides sufficient water so as to not require beneficial use of the supplemental water right;

(ix) a period of nonuse of a water right during the time the water right is subject to an approved change application where the applicant is diligently pursuing certification;

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(x) a water right to store water in a surface reservoir if:

(A) storage is limited by a safety, regulatory, or engineering restraint that the appropriator or the appropriator's successor in interest cannot reasonably correct; and

(B) not longer than seven years have elapsed since the limitation described in Subsection (2)(e)(x)(A) is imposed; [or]

(xi) a water right subject to an approved change application for use within a water bank that has been authorized but not dissolved under Chapter 31, Water Banking Act, during the period of time the state engineer authorizes the water right to be used within the water bank[-];

or

(xii) subject to Subsection (2)(h), that portion of a water right that is quantified as saved water in a final order from the state engineer approving a change application, but not to exceed the amount subsequently verified by the state engineer in a certificate issued under Section 73-3-17.

(f) (i) The reasonable future water requirement of the public is the amount of water needed in the next 40 years by:

(A) the persons within the public water supplier's reasonably anticipated service area based on reasonably anticipated population growth; or

(B) other water use demand.

(ii) For purposes of Subsection (2)(f)(i), a community water system's reasonably anticipated service area:

(A) is the area served by the community water system's distribution facilities; and

(B) expands as the community water system expands the distribution facilities in accordance with Title 19, Chapter 4, Safe Drinking Water Act.

(iii) The state engineer shall by rule made in accordance with Subsection 73-2-1(4) establish standards for a written plan that may be presented as evidence in conformance with this Subsection (2)(f), except that before a rule establishing standards for a written plan under this Subsection (2)(f) takes effect, in addition to complying with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the state engineer shall present the rule to:

(A) if the Legislature is not in session, the Natural Resources, Agriculture, and Environment Interim Committee; or

(B) if the Legislature is in session, the House of Representatives and Senate Natural

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Resources, Agriculture, and Environment standing committees.

(g) For a water right acquired by a public water supplier on or after May 5, 2008,

Subsection (2)(e)(vii) applies if:

(i) the public water supplier submits a change application under Section 73-3-3; and

(ii) the state engineer approves the change application.

(h) Saved water does not retain the protection of Subsection (2)(e)(xii) and any period of nonuse for saved water begins to run the day on which:

(i) the underlying water right that serves as the basis for the saved water is declared by court decree to have been lost due to forfeiture under this section; or

(ii) the title of a right to saved water segregated under Section 73-3-27 is conveyed independent of the underlying water right.

(3) (a) The state engineer shall furnish a nonuse application form requiring the following information:

(i) the name and address of the applicant;

(ii) a description of the water right or a portion of the water right, including the point of diversion, place of use, and priority;

(iii) the quantity of water;

(iv) the period of use;

(v) the extension of time applied for;

(vi) a statement of the reason for the nonuse of the water; and

(vii) any other information that the state engineer requires.

(b) (i) Upon receipt of the application, the state engineer shall publish a notice of the application once a week for two successive weeks:

(A) in a newspaper of general circulation in the county in which the source of the water supply is located and where the water is to be beneficially used; and

(B) as required in Section 45-1-101.

(ii) The notice shall:

(A) state that an application has been made; and

(B) specify where the interested party may obtain additional information relating to the application.

(c) An interested person may file a written protest with the state engineer against the



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granting of the application:

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

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

(d) In a proceeding to determine whether the nonuse application should be approved or rejected, the state engineer shall follow Title 63G, Chapter 4, Administrative Procedures Act.

(e) After further investigation, the state engineer may approve or reject the application.

(4) (a) The state engineer shall grant a nonuse application on all or a portion of a water right for a period of time not exceeding seven years if the applicant shows a reasonable cause for nonuse.

(b) A reasonable cause for nonuse includes:

(i) a demonstrable financial hardship or economic depression;

(ii) a physical cause or change that renders use beyond the reasonable control of the water right owner so long as the water right owner acts with reasonable diligence to resume or restore the use;

(iii) the initiation of water conservation or an efficiency practice, or the operation of a groundwater recharge recovery program approved by the state engineer;

(iv) operation of a legal proceeding;

(v) the holding of a water right or stock in a mutual water company without use by a water supply entity to meet the reasonable future requirements of the public;

(vi) situations where, in the opinion of the state engineer, the nonuse would assist in implementing an existing, approved water management plan; or

(vii) the loss of capacity caused by deterioration of the water supply or delivery equipment if the applicant submits, with the application, a specific plan to resume full use of the water right by replacing, restoring, or improving the equipment.

(5) (a) Sixty days before the expiration of a nonuse application, the state engineer shall notify the applicant by mail or by a form of electronic communication through which receipt is verifiable, of the date when the nonuse application will expire.

(b) An applicant may file a subsequent nonuse application in accordance with this section.

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Section 2. Section **73-2-1** is amended to read:

### **73-2-1. State engineer -- Term -- Powers and duties -- Qualification for duties.**

(1) There shall be a state engineer.

(2) The state engineer shall:

(a) be appointed by the governor with the advice and consent of the Senate;

(b) hold office for the term of four years and until a successor is appointed; and

(c) have five years experience as a practical engineer or the theoretical knowledge, practical experience, and skill necessary for the position.

(3) (a) The state engineer shall be responsible for the general administrative supervision of the waters of the state and the measurement, appropriation, apportionment, and distribution of those waters.

(b) The state engineer may secure the equitable apportionment and distribution of the water according to the respective rights of appropriators.

(4) The state engineer shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with the purposes and provisions of this title, regarding:

(a) reports of water right conveyances;

(b) the construction of water wells and the licensing of water well drillers;

(c) dam construction and safety;

(d) the alteration of natural streams;

(e) geothermal resource conservation;

(f) enforcement orders and the imposition of fines and penalties;

(g) the duty of water; and

(h) standards for written plans of a public water supplier that may be presented as evidence of reasonable future water requirements under Subsection 73-1-4(2)(f).

(5) The state engineer may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with the purposes and provisions of this title, governing:

(a) water distribution systems and water commissioners;

(b) water measurement and reporting;

(c) groundwater recharge and recovery;

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- (d) wastewater reuse;
- (e) the form, content, and processing procedure for a claim under Section 73-5-13 to surface or underground water that is not represented by a certificate of appropriation;
- (f) the form and content of a proof submitted to the state engineer under Section 73-3-16;
- (g) the determination of water rights;
- (h) preferences of water rights under Section 73-3-21.5; [or]
- (i) the form and content of applications and related documents, maps, and reports[-]; or
- (j) the administration of saved water, as defined in Section 73-3-3, including:
  - (i) quantifying saved water;
  - (ii) reporting related to saved water;
  - (iii) verifying saved water;
  - (iv) segregating saved water; and
  - (v) the subsequent placement to beneficial use of saved water.
- (6) The state engineer may bring suit in courts of competent jurisdiction to:
  - (a) enjoin the unlawful appropriation, diversion, and use of surface and underground water without first seeking redress through the administrative process;
  - (b) prevent theft, waste, loss, or pollution of surface and underground waters;
  - (c) enable the state engineer to carry out the duties of the state engineer's office; and
  - (d) enforce administrative orders and collect fines and penalties.
- (7) The state engineer may:
  - (a) upon request from the board of trustees of an irrigation district under Title 17B, Chapter 2a, Part 5, Irrigation District Act, or another special district under Title 17B, Limited Purpose Local Government Entities - Special Districts, or a special service district under Title 17D, Chapter 1, Special Service District Act, that operates an irrigation water system, cause a water survey to be made of the lands proposed to be annexed to the district in order to determine and allot the maximum amount of water that could be beneficially used on the land, with a separate survey and allotment being made for each 40-acre or smaller tract in separate ownership; and
  - (b) upon completion of the survey and allotment under Subsection (7)(a), file with the district board a return of the survey and report of the allotment.

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(8) (a) The state engineer may establish water distribution systems and define the water distribution systems' boundaries.

(b) The water distribution systems shall be formed in a manner that:

- (i) secures the best protection to the water claimants; and
- (ii) is the most economical for the state to supervise.

(9) The state engineer may conduct studies of current and novel uses of water in the state.

(10) Notwithstanding Subsection (4)(b), the state engineer may not on the basis of the depth of a water production well exempt the water production well from regulation under this title or rules made under this title related to the:

(a) drilling, constructing, deepening, repairing, renovating, cleaning, developing, testing, disinfecting, or abandonment of a water production well; or

(b) installation or repair of a pump for a water production well.

Section 3. Section **73-3-3** is amended to read:

### **73-3-3. Changes to a water right.**

(1) As used in this section:

(a) "Agricultural water optimization project" means a project that:

(i) accomplishes agricultural water optimization as defined in Section 73-10g-203.5;

and

(ii) generates saved water.

~~[(a)]~~ (b) "Change" means a change to the:

(i) point of diversion;

(ii) place of use;

(iii) period of use;

(iv) nature of use; or

(v) storage of water.

~~[(b)]~~ (c) "Fixed time change" means a change for a fixed period of time exceeding one year and not exceeding 10 years, including a fixed time change described in Section 73-3-30.

(d) "Net decrease in depletion" means a net decrease in water consumed that is accomplished by implementing an agricultural water optimization project under a perfected water right.

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(e) "Net reduction in diversion" means a net decrease in water diverted under a perfected water right that is accomplished by implementing an agricultural water optimization project.

~~(f)~~ (f) "Permanent change" means a change, for an indefinite period of time, including a permanent change described in Section 73-3-30.

~~(d)~~ (g) "Person entitled to the use of water" means:

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

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

(iii) a person who has written authorization from a person described in Subsection ~~(d)(i) or (ii)~~ (1)(g)(i) or (ii) to file a change application on that person's behalf; or

(iv) a shareholder in a water company who is authorized to file a change application in accordance with Section 73-3-3.5.

~~(e)~~ (h) (i) "Quantity impairment" means any reduction in the amount of water a person is able to receive in order to satisfy an existing right to the use of water that would result from an action proposed in a change application, including:

(A) diminishing the quantity of water in the source of supply for the existing right;

(B) a change in the timing of availability of water from the source of supply for the existing right; or

(C) enlarging the quantity of water depleted by the nature of the proposed use when compared with the nature of the currently approved use.

(ii) "Quantity impairment" does not mean a decrease in the static level of water in an underground basin or aquifer that would result from an action proposed to be taken in a change application, if the volume of water necessary to satisfy an existing right otherwise remains reasonably available.

(i) "Saved water" means:

(i) the net decrease in depletion or net reduction in diversion resulting from an agricultural water optimization project as quantified by the state engineer in a final order approving a change application filed under this section:

(A) on a perfected water right;

(B) issued before the commencement of physical construction of the agricultural water optimization project; and

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(C) describing the agricultural water optimization project and, as applicable, the net decrease in depletion and net reduction in diversion; or

(ii) as applicable, the net decrease in depletion and net reduction in diversion recognized in a certificate issued by the state engineer according to Section 73-3-17 after an applicant has filed proof of appropriation on an approved change application described in Subsection (3)(d).

~~[(f)]~~ (j) "Split season change" means a change when the holder of a perfected right grants to a water user the right to make sequential use of a portion of the water right.

~~[(g)]~~ (k) "Temporary change" means a change for a period of time, not exceeding one year, including a temporary change described in Section 73-3-30.

(2) (a) A person who proposes to file a change application may request consultation with the state engineer, or the state engineer's designee, before filing the application to review the requirements of the change application process, discuss potential issues related to the change, and provide the applicant with information.

(b) Statements made and information presented in the consultation are not binding on the applicant or the state engineer.

(c) The consultation described in Subsection (2)(a) may occur in the state engineer's regional office for the region where the proposed change would occur.

(3) (a) A person entitled to the use of water may make a change to an existing right to use water, including a right involved in a general determination of rights or other suit, if:

(i) the person makes the change in accordance with this section;

(ii) except as provided by Section 73-3-30, the change does not impair an existing right without just compensation or adequate mitigation; and

(iii) the state engineer approves the change application, consistent with Section 73-3-8.

(b) A change application on a federal reclamation project water right shall be signed by:

(i) the local water users organization that is contractually responsible for:

(A) the operation and maintenance of the project; or

(B) the repayment of project costs; and

(ii) the record owner of the water right.

(c) A change application on a United States Indian Irrigation Service water right that is

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serving the needs of a township or municipality shall be signed by:

(i) the local public water supplier that is responsible for the operation and maintenance of the public water supply system; and

(ii) the record owner of the water right.

(d) A person entitled to the use of water may file a change application on a perfected water right to request the state engineer to:

(i) quantify saved water; or

(ii) subject to Section 73-3-8, allow beneficial use of saved water separate from the underlying water right that serves as the basis of the saved water.

(4) (a) Before making a change, a person entitled to the use of water shall submit a change application upon forms furnished by the state engineer.

(b) The application described in Subsection (4)(a) shall include:

(i) the applicant's name;

(ii) the water right description, including the water right number;

(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, nature, period, and extent of the currently approved use;

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

(ix) if the change applicant is submitting a change application in accordance with Section 73-3-3.5, the information required by Section 73-3-3.5;

(x) any proposed change to the storage of water; ~~and~~

(xi) if the change application proposes to quantify saved water, the anticipated quantity of saved water; and

~~[(xi)] (xii) any other information that the state engineer requires.~~

(c) A shareholder in a water company who seeks to make a change to a water right to which the water company is the record owner shall file a change application in accordance with Section 73-3-3.5.

(5) In a proceeding before the state engineer, the applicant has the burden of producing evidence sufficient to support a reasonable belief that the change can be made in compliance

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with this section and Section 73-3-8, including evidence:

(a) that the change will not cause a specific existing right to experience quantity impairment; ~~or~~

(b) if applicable, rebutting the presumption of quantity impairment described in Subsection 73-3-8(6)(c)~~[-]~~; and

(c) that, if the change application proposes to quantify saved water:

(i) the net decrease in depletion or net reduction in diversion can be reliably sustained over the life of the agricultural water optimization project; and

(ii) an agricultural water optimization project proposing a net reduction in diversion does not increase depletion allowed by the underlying perfected water right that serves as the basis of the saved water.

(6) A change of an approved application to appropriate water does not:

(a) affect the priority of the original application to appropriate water; or

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

(7) Any person who makes a change without first filing and obtaining approval of a change application providing for the change:

(a) (i) obtains no right by the change;

~~(b)~~ (ii) is guilty of an offense punishable under Section 73-2-27 if the change is made knowingly or intentionally; and

~~(c)~~ (iii) shall comply with the change application process~~[-]~~; and

(b) obtains no right to saved water.

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

Section 4. Section **73-3-8** is amended to read:

**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 -- Request for agency action.**

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



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reason to believe that:

(i) for an application to appropriate, 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:

(A) is physically and economically feasible, unless the application is filed by the United States Bureau of Reclamation; and

(B) would not prove detrimental to the public welfare;

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

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

(vi) if applicable, the application complies with a groundwater management plan adopted under Section 73-5-15.

(b) 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 will interfere with the water's more beneficial use for irrigation, municipal and industrial, 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, the state engineer shall withhold approval or rejection of the application until the state engineer has investigated the matter.

(c) 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,

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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) An extension may not 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 if the applicant fails to comply with terms of the royalty contract.

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

(b) The state engineer shall:

(i) approve the temporary change if the state engineer finds there is reason to believe that the temporary change will not impair an existing right; and

(ii) deny the temporary change if the state engineer finds there is reason to believe the temporary change would impair an existing right.

(5) (a) With respect to a change application for a permanent or fixed time change:

(i) the state engineer shall follow the same procedures provided in this title for approving an application to appropriate water; and

(ii) the rights and duties of a change applicant are the same as the rights and duties of a person who applies to appropriate water under this title.

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

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(c) The state engineer may condition approval of a change application, including to:

(i) prevent an enlargement of the quantity of water depleted by the nature of the proposed use when compared with the nature of the currently approved use of water proposed to be changed[-]; and

(ii) ensure that the recognition and subsequent use of saved water, as defined in Section 73-3-3:

(A) is quantified, reported, and verified;

(B) does not lead to an enlargement of the depletion or diversion amounts in the underlying water right that serves as the basis of the saved water, or an increase in the authorized number of irrigated acres unless depletion is accounted for and regulated in the condition;

(C) is limited to the net decrease in depletion and net reduction in diversion of the underlying water right that serves as the basis of the saved water;

(D) is limited to the volume of water that will be sustained over time from the net decrease in depletion or net reduction in diversion of the underlying water right that serves as the basis of the saved water;

(E) does not violate an existing water agreement; and

(F) when based solely on a net reduction in diversion, the subsequent use is limited to nonconsumptive beneficial uses and does not increase the depletion allowed by the underlying water right that serves as the basis of the saved water or otherwise cause quantity impairment to an existing water right when the saved water is beneficially used separate from the underlying water right.

(d) [A] Except for an application proposing to quantify saved water, 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.

(6) (a) Except as provided in Subsection (6)(b), the state engineer shall reject a permanent or fixed time change application if the person proposing to make the change is unable to meet the burden described in Subsection 73-3-3(5).

(b) If otherwise proper, the state engineer may approve a change application upon one

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or more of the following conditions:

- (i) for part of the water involved;
- (ii) that the applicant acquire a conflicting right; or
- (iii) that the applicant provide and implement a plan approved by the state engineer to mitigate impairment of an existing right.

(c) (i) There is a rebuttable presumption of quantity impairment, as defined in Section 73-3-3, to the extent that, for a period of at least seven consecutive years, a portion of the right identified in a change application has not been:

- (A) diverted from the approved point of diversion; or
- (B) beneficially used at the approved place of use.

(ii) The rebuttable presumption described in Subsection (6)(c)(i) does not apply if the beneficial use requirement is excused by:

- (A) Subsection 73-1-4(2)(e);
- (B) an approved nonuse application under Subsection 73-1-4(2)(b);
- (C) Subsection 73-3-30(7); or
- (D) the passage of time under Subsection 73-1-4(2)(c)(i).

(d) The state engineer may not consider quantity impairment based on the conditions described in Subsection (6)(c) unless the issue is raised in a:

(i) timely protest that identifies which of the protestant's existing rights the protestant reasonably believes will experience quantity impairment; or

(ii) written notice provided by the state engineer to the applicant within 90 days after the change application is filed.

(e) The written notice described in Subsection (6)(d)(ii) shall:

(i) specifically identify an existing right the state engineer reasonably believes may experience quantity impairment; and

(ii) be mailed to the owner of an identified right, as shown by the state engineer's records, if the owner has not protested the change application.

(f) The state engineer is not required to include all rights the state engineer believes may be impaired by the proposed change in the written notice described in Subsection (6)(d)(ii).

(g) The owner of a right who receives the written notice described in Subsection

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(6)(d)(ii) may not become a party to the administrative proceeding if the owner has not filed a timely protest.

(h) If a change applicant, the protestants, and the persons identified by the state engineer under Subsection (6)(d)(ii) come to a written agreement regarding how the issue of quantity impairment shall be mitigated, the state engineer may incorporate the terms of the agreement into a change application approval.

Section 5. Section **73-3-16** is amended to read:

**73-3-16. Proof of appropriation or permanent change -- Notice -- Manner of proof -- Statements -- Maps, profiles, and drawings -- Verification -- Waiver of filing -- Statement in lieu of proof of appropriation or change.**

(1) Sixty days before the date set for the proof of appropriation or proof of change to be made, the state engineer shall notify the applicant by mail, or send notice electronically if receipt is verifiable, when proof of completion of the works and application of the water to a beneficial use is due.

(2) (a) On or before the date set for completing the proof in accordance with the approved application, the applicant shall file proof with the state engineer on forms furnished by the state engineer.

(b) The filing of a proof in accordance with this section is a request for agency action under Title 63G, Chapter 4, Administrative Procedures Act, only between the applicant and the state engineer.

(3) Except as provided in Subsection (4), the applicant shall submit the following information:

(a) a description of the works constructed;

(b) the quantity of water in acre-feet or the flow in second-feet diverted, or both;

(c) the method of:

(i) applying the water to beneficial use; or

(ii) verifying a net decrease in depletion or net reduction in diversion in accordance

with an application to quantify saved water, as defined in Section 73-3-3; and

(d) (i) detailed measurements;

(A) of water put to beneficial use; and

(B) if applicable, demonstrating the quantity of saved water, as defined in Section

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### 73-3-3:

- (ii) the date the measurements were made; and
- (iii) the name of the person making the measurements.

(4) (a) (i) On applications filed for appropriation or permanent change of use of water to provide a water supply for state projects constructed pursuant to Chapter 10, Board of Water Resources - Division of Water Resources, or for federal projects constructed by the United States Bureau of Reclamation for the use and benefit of the state, any of its agencies, its political subdivisions, public and quasi-municipal corporations, or water users' associations of which the state, its agencies, political subdivisions, or public and quasi-municipal corporations are stockholders, the proof shall include:

- (A) a statement indicating construction of the project works has been completed;
- (B) a description of the major features with appropriate maps, profiles, drawings, and reservoir area-capacity curves;
- (C) a description of the point or points of diversion and rediversion;
- (D) project operation data;
- (E) a map showing the place of use of water and a statement of the purpose and method of use;
- (F) the project plan for beneficial use of water under the applications and the quantity of water required; and
- (G) a statement indicating what type of measuring devices have been installed.

(ii) The director of the Division of Water Resources shall sign proofs for the state projects and an authorized official of the Bureau of Reclamation shall sign proofs for the federal projects specified in Subsection (4)(a)(i).

(b) Proof on an application for appropriation or permanent change for a surface storage facility in excess of 1,000 acre-feet constructed by a public water supplier to provide a water supply for the reasonable requirements of the public shall include:

- (i) a description of the completed water storage facility;
- (ii) a description of the major project features and appropriate maps, profiles, drawings, and reservoir area-capacity curves as required by the state engineer;
- (iii) the quantity of water stored in acre-feet;
- (iv) a description of the water distribution facility for the delivery of the water; and

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(v) the project plan for beneficial use of water including any existing contracts for water delivery.

(5) The proof on an application shall be sworn to by the applicant or the applicant's appointed representative.

(6) (a) Except as provided in Subsection (6)(b), when filing proof, the applicant shall submit maps, profiles, and drawings made by a Utah licensed land surveyor or Utah licensed professional engineer that show:

(i) the location of the completed works;

(ii) the nature and extent of the completed works;

(iii) the natural stream or source from which and the point where the water is diverted and, in the case of a nonconsumptive use, the point where the water is returned; and

(iv) the place of use.

(b) The state engineer may waive the filing of maps, profiles, and drawings if in the state engineer's opinion the written proof adequately describes the works and the nature and extent of beneficial use.

(7) In those areas in which general determination proceedings are pending, or have been concluded, under Chapter 4, Determination of Water Rights, the state engineer may petition the district court for permission to:

(a) waive the requirements of this section and Section 73-3-17; and

(b) permit each owner of an application to file a verified statement to the effect that the applicant has completed the appropriation or change and elects to file a statement of water users claim in the proposed determination of water rights or any supplement to it in accordance with Chapter 4, Determination of Water Rights, in lieu of proof of appropriation or proof of change.

(8) This section does not apply to a fixed time or temporary change application.

Section 6. Section **73-3-17** is amended to read:

### **73-3-17. Certificate of appropriation -- Evidence.**

(1) Upon the satisfaction of the state engineer that an appropriation, a permanent change of point of diversion, place or purpose of use, or a fixed time change authorized by Section 73-3-30 has been perfected in accordance with the application, and that the water appropriated or affected by the change has been put to a beneficial use, as required by Section

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73-3-16 or 73-3-30, or demonstrated to be saved water, as defined in Section 73-3-3, the state engineer shall issue a certificate, in duplicate, setting forth:

- (a) the name and post-office address of the person by whom the water is used;
- (b) the quantity of water in acre-feet or the flow in second-feet appropriated and, if applicable, the quantity of saved water, as defined in Section 73-3-3;
- (c) the purpose for which the water is used;
- (d) the time during which the water is to be used each year;
- (e) the name of the stream or water source:
  - (i) from which the water is diverted; or
  - (ii) within which an instream flow is maintained;
- (f) the date of the appropriation or change; and
- (g) other information that defines the extent and conditions of actual application of the water to a beneficial use.

(2) A certificate issued on an application for one of the following types of projects need show no more than the facts shown in the proof submitted under Section 73-3-16:

- (a) a project constructed according to Chapter 10, Board of Water Resources - Division of Water Resources;
- (b) a federal project constructed by the United States Bureau of Reclamation, referred to in Section 73-3-16; and
- (c) a surface water storage facility in excess of 1,000 acre-feet constructed by a public water supplier.

(3) A certificate issued under this section does not:

- (a) extend the rights described in the application; or
- (b) constitute a determination by the state engineer as to whether the perfected appropriation or change has or may result in interference, impairment, injury, or other harm to another water right.

(4) Failure to file proof of appropriation or proof of change of the water on or before the date set for the filing causes the application to lapse.

(5) (a) One copy of a certificate issued under this section shall be filed in the office of the state engineer and the other copy shall be delivered to the appropriator or to the person making the change who may record the certificate in the office of the county recorder of the



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county in which the water is diverted from the natural stream or source.

(b) The state engineer is not required to deliver a copy of a certificate issued under this section to a person other than the appropriator or the person making the change.

(6) The certificate issued under this section is prima facie evidence of the owner's right to use the water in the quantity, for the purpose, at the place, and during the time specified in the certificate, subject to prior rights.

Section 7. Section **73-3-27** is amended to read:

### **73-3-27. Requests for segregation or consolidation.**

(1) (a) Upon written request, the state engineer shall segregate into two or more parts the following in the state engineer's records:

(i) an application to:

(A) under Section 73-3-2, appropriate water;

(B) under Section 73-3-3, permanently change:

(I) the point of diversion;

(II) the place of water use; or

(III) the purpose of water use; and

(ii) a water right for which:

(A) the state engineer has issued a certificate according to Section 73-3-17;

(B) a court has entered a judgment according to Section 73-4-15; and

(C) a person has filed a claim according to Section 73-5-13.

(b) A person shall:

(i) submit the request authorized by Subsection (1)(a) on a form furnished by the state engineer; and

(ii) include:

(A) the water right number to be segregated;

(B) the name and post-office address of the owner of the application or water right;

(C) a statement of the nature of the proposed segregation;

(D) the reasons for the proposed segregation; and

(E) other information the state engineer may require to accomplish the segregation.

(c) Notwithstanding Subsection (1)(a), saved water, as defined in Section 73-3-3, may not be segregated from the underlying water right that serves as the basis of the saved water.

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except in accordance with rules made under Section 73-2-1 and Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) (a) An action taken by the state engineer on an application or water right before segregation is applicable in all respects to the segregated parts of the application or water right.

(b) After the state engineer segregates the application or water right, each segregated part is a separate application or water right in the state engineer's records.

(c) The segregation of an application or a water right in the state engineer's records does not:

(i) confirm the validity or good standing of the segregated parts of the application or water right; or

(ii) extend the time for the construction of works for an application.

(3) Upon written request, the state engineer may consolidate two or more applications or water rights if the applications or water rights:

(a) are from the same source;

(b) have the same priority date; and

(c) are sufficiently consistent in definition that the consolidated application or water right may be described without referring to the characteristics of the individual application or water right that existed before consolidation.

Section 8. Section **73-10g-203.5** is amended to read:

### **73-10g-203.5. Definitions.**

As used in this part:

(1) "Account" means the Agricultural Water Optimization Account created in Section 73-10g-204.

(2) "Agricultural water optimization" means the implementation of agricultural and water management practices that maintain viable agriculture [~~while reducing~~] without increasing water depletion to enhance water availability and minimize impacts on water supply, water quality, and the environment.

(3) "Change application" means an application filed under Section 73-3-3.

(4) "Committee" means the Agricultural Water Optimization Committee created in Section 73-10g-205.

(5) "Conservation commission" means the conservation commission created in Section

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4-18-104.

(6) "Department" means the Department of Agriculture and Food.

~~[(7) "Depletion reduction" means a net decrease in water consumed accomplished by implementing water optimization practices during beneficial use of water under an approved water right.]~~

~~[(8) "Diversion reduction" means a decrease in net diversion amount from that allowed under a water right accomplished by implementation of water optimization practices.]~~

~~[(9)] (7) "Funding application" means an application filed under Section 73-10g-206.~~

~~[(10)] (8) "Saved water" means [the water quantified as depletion reduction or diversion reduction in a final order approving a change application filed in conjunction with an agricultural water optimization project] the same as that term is defined in Section 73-3-3.~~

Section 9. Section 73-10g-205 is amended to read:

### **73-10g-205. Agricultural Water Optimization Committee.**

(1) There is created in the department a committee known as the "Agricultural Water Optimization Committee" that consists of:

(a) the commissioner of the department, or the commissioner's designee;

(b) the director of the division, or the director's designee;

(c) the director of the Division of Water Rights, or the director's designee;

(d) the dean of the College of Agriculture and Applied Science from Utah State University, or the dean's designee;

(e) one individual representing local conservation districts created by Title 17D, Chapter 3, Conservation District Act, appointed by the executive director of the Department of Natural Resources;

(f) one individual representing water conservancy districts, appointed by the executive director of the Department of Natural Resources; and

(g) three Utah residents representing the interests of the agriculture industry appointed by the executive director of the Department of Natural Resources.

(2) (a) An individual appointed under Subsection (1) shall serve for a term of four years.

(b) Notwithstanding the requirements of Subsection (2)(a), the executive director of the Department of Natural Resources shall, at the time of appointment or reappointment, adjust the

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length of terms to ensure that the terms of appointed members are staggered so that approximately half of the appointed members are appointed every two years.

(3) (a) The presence of five members constitutes a quorum.

(b) The vote of five members constitutes the transaction of business by the committee.

(c) The committee shall select one of the committee's members to be chair. The committee may select a member to be vice chair to act in place of the chair:

(i) during the absence or disability of the chair; or

(ii) as requested by the chair.

(d) The committee shall convene at the times and places prescribed by the chair.

(4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(5) The department shall provide administrative support to the committee.

(6) The committee shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing:

(a) eligibility requirements for a grant issued under Section 73-10g-206, except that the eligibility requirements shall:

(i) require at least a match for grant money of 50% of the total costs, except that for a grant application filed on or after January 1, 2024, the eligibility requirements shall require at least a match of 25% of the total costs for a drip or automated surge irrigation project;

(ii) consider the statewide need to distribute grant money;

(iii) require a grant recipient to construct or install and maintain one or more measuring devices as necessary to comply with Section 73-5-4 and rules adopted by the Division of Water Rights regarding installation, use, and maintenance of devices to measure water use and to demonstrate water use in accordance with a project funded by a grant; and

(iv) require a grant recipient to report water diversion and use measurements to the state engineer pursuant to Section 73-5-4 and rules made by the state engineer, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for water measurement and

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reporting;

(b) the process for applying for a grant issued under Section 73-10g-206; and

(c) preliminary screening criteria to be used by the department under Subsection 73-10g-206(2)(d).

(7) The committee shall, in coordination with the division:

(a) as of July 1, 2023, assume oversight of all remaining research and contracts of the previous Agricultural Water Optimization Task Force activities;

(b) post research to address and account for farm economics at the enterprise and community level that affects agricultural water optimization and encourage market behavior that financially rewards agricultural water optimization practices;

(c) oversee research to identify obstacles to and constraints upon optimization of agricultural water use, and to recommend management tools, technologies, and other opportunities to optimize agricultural water use as measured at the basin level; and

(d) facilitate benefits for farmers who optimize water use and protect water quality.

(8) The committee shall comply with Section 73-10g-206 related to grants issued under this part.

Section ~~9~~10. Section **73-10g-206** is amended to read:

**73-10g-206. Agricultural water optimization grants -- Demonstration of water savings.**

(1) The conservation commission may issue a grant described in Subsection 73-10g-204(3) in accordance with the procedures in this section.

(2) (a) The committee shall establish funding application periods during which a person may apply for a grant under this part.

(b) During a funding application period, a person may file a funding application with the department for preliminary screening of eligibility to receive a grant under this part, including requisite water savings.

(c) The department shall screen the funding applications for eligibility.

(d) If the department determines that an applicant meets eligibility requirements and proposes water savings, the department shall provide the applicant preliminary approval.

(e) After receiving preliminary approval under Subsection (2)(d), the applicant shall engage in a pre-filing consultation with the Division of Water Rights under Subsection

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73-3-3(2) to determine whether a change application is required to accomplish the project proposed in the funding application or to quantify saved water [~~that may be made available for beneficial use as part of the project~~].

(f) Once the Division of Water Rights determines whether the person is required to file a change application, the person may complete the funding application process and file the completed funding application with the committee.

(g) The committee shall review completed funding applications to rank the funding applications and recommend to the conservation commission which applicants should receive a grant under this part for the relevant funding application period.

(h) The conservation commission may issue a grant under this section only after receipt of the recommendations of the committee.

(3) If the conservation commission issues a grant under this part, before the grant recipient may receive the grant money, the grant recipient shall:

(a) enter into a contract with the department that includes:

- (i) the expectations for the grant recipient;
- (ii) the life expectancy of a project;
- (iii) the process of certifying completion; and
- (iv) design requirements;

(b) file any needed change application and obtain a final order from the state engineer approving the change application, including any judicial review of the state engineer's order; and

(c) demonstrate how the grant recipient shall comply with the requirements of the final order approving the related change application.

(4) A grant recipient shall comply with the monitoring and reporting requirements under the contract described in Subsection (3).

(5) The department shall:

(a) monitor the grant related activities of a grant recipient;

(b) certify a project funded by a grant once the project is complete;

(c) determine whether there are funding sources other than the account to fund the grant; and

(d) provide information needed by the division or the Division of Water Rights to

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fulfill the division's or the Division of Water Rights' statutory duties, including those designated in this chapter.

(6) The department may:

(a) conduct outreach campaigns related to the grant program, including the program's purpose and expectations for grant recipients;

(b) solicit funding applications and assist persons in applying for a grant under this part;

(c) assist grant recipients in developing a project; and

(d) coordinate with federal agencies and the division for evaluation of funding applications and for assistance with implementing projects for which funding has been provided under this part.

(7) Grant money may be used by the department or a grant recipient for the hiring of third-party consultants as appropriate to complete a project funded by grant money.

(8) The division, upon request from the committee, may assist with evaluation of funding applications and implementation of projects funded under this part.

Section ~~{10}~~11. **Repealer.**

This bill repeals:

Section **73-10g-208, Water use pursuant to a water optimization change application.**

Section ~~{11}~~12. **Effective date.**

This bill takes effect on May 1, 2024.