

PUBLIC TRUST AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Timothy D. Hawkes

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies Title 73, Chapter 3, Appropriation.

Highlighted Provisions:

This bill:

▶ states that when the state engineer approves an application to appropriate or an application for a permanent change, there is a presumption that the approval is made with due regard to and in full compliance with the state's public trust obligations; and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-3-8, as last amended by Laws of Utah 2015, Chapter 245 and last amended by Coordination Clause, Laws of Utah 2015, Chapter 249

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

Section 1. Section **73-3-8** is amended to read:



28 **73-3-8. Approval or rejection of application -- Requirements for approval --**
29 **Application for specified period of time -- Filing of royalty contract for removal of salt or**
30 **minerals.**

31 (1) (a) It shall be the duty of the state engineer to approve an application if there is
32 reason to believe that:

33 (i) for an application to appropriate, there is unappropriated water in the proposed
34 source;

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

37 (iii) the proposed plan:

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

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

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

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

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

46 (b) (i) If the state engineer, because of information in the state engineer's possession
47 obtained either by the state engineer's own investigation or otherwise, has reason to believe that
48 an application will interfere with the water's more beneficial use for irrigation, municipal and
49 industrial, domestic or culinary, stock watering, power or mining development, or
50 manufacturing, or will unreasonably affect public recreation or the natural stream environment,
51 or will prove detrimental to the public welfare, the state engineer shall withhold approval or
52 rejection of the application until the state engineer has investigated the matter.

53 (ii) When the state engineer approves an application to appropriate or an application
54 for a permanent change, in accordance with this section, there is a presumption that the
55 approval is made with due regard to and in full compliance with the state's public trust
56 obligations.

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

58 (2) (a) An application to appropriate water for industrial, power, mining development,

59 manufacturing purposes, agriculture, or municipal purposes may be approved for a specific and
60 certain period from the time the water is placed to beneficial use under the application, but in
61 no event may an application be granted for a period of time less than that ordinarily needed to
62 satisfy the essential and primary purpose of the application or until the water is no longer
63 available as determined by the state engineer.

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

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

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

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

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

74 (iii) the water is still available.

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

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

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

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

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

86 (b) The state engineer shall:

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

89 (ii) deny the temporary change if the state engineer finds there is reason to believe it

90 would impair an existing right.

91 (5) (a) With respect to a change application for a permanent change:

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

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

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

98 (c) The state engineer may condition approval of a change application to prevent an
99 enlargement of the quantity of water depleted by the nature of the proposed use when compared
100 with the nature of the currently approved use of water proposed to be changed.

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

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

108 (b) If otherwise proper, the state engineer may approve a permanent or temporary
109 change application upon one or more of the following conditions:

110 (i) for part of the water involved;

111 (ii) that the applicant acquire a conflicting right; or

112 (iii) that the applicant provide and implement a plan approved by the state engineer to
113 mitigate impairment of an existing right.

114 (c) (i) There is a rebuttable presumption of quantity impairment, as defined in
115 Subsection 73-3-3(1), to the extent that, for a period of at least seven consecutive years, a
116 portion of the right identified in a change application has not been:

117 (A) diverted from the approved point of diversion; and

118 (B) beneficially used at the approved place of use.

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

- 121 (A) Subsection 73-1-4(2)(e);
- 122 (B) an approved nonuse application under Subsection 73-1-4(2)(b);
- 123 (C) Subsection 73-3-30(7); or
- 124 (D) the passage of time under Subsection 73-1-4(2)(c)(i).
- 125 (d) The state engineer may not consider quantity impairment based on the conditions
- 126 described in Subsection (6)(c) unless the issue is raised in a:
- 127 (i) timely protest that identifies which of the protestant's existing rights the protestant
- 128 reasonably believes will experience quantity impairment; or
- 129 (ii) written notice provided by the state engineer to the applicant within 90 days after
- 130 the change application is filed.
- 131 (e) The written notice described in Subsection (6)(d)(ii) shall:
- 132 (i) specifically identify an existing right the state engineer reasonably believes may
- 133 experience quantity impairment; and
- 134 (ii) be mailed to the owner of an identified right, as shown by the state engineer's
- 135 records, if the owner has not protested the change application.
- 136 (f) The state engineer is not required to include all rights the state engineer believes
- 137 may be impaired by the proposed change in the written notice described in Subsection
- 138 (6)(d)(ii).
- 139 (g) The owner of a right who receives the written notice described in Subsection
- 140 (6)(d)(ii) may not become a party to the administrative proceeding if the owner has not filed a
- 141 timely protest.
- 142 (h) If a change applicant, all protestants, and all persons identified by the state engineer
- 143 under Subsection (6)(d)(ii) come to a written agreement regarding how the issue of quantity
- 144 impairment shall be mitigated, the state engineer may incorporate the terms of the agreement
- 145 into a change application approval.