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**WATER USE AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Timothy D. Hawkes**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill addresses regulation of the uses of water.

**Highlighted Provisions:**

This bill:

- ▶ addresses fees;
- ▶ modifies definition provisions;
- ▶ addresses references to changes;
- ▶ addresses the state engineer's actions related to split season or other potentially complicated changes;
- ▶ amends the exemption related to proof of appropriation or change;
- ▶ addresses change application for instream flow; and
- ▶ makes technical and conforming amendments.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**73-2-14**, as last amended by Laws of Utah 2017, Chapter 76

**73-3-3**, as last amended by Laws of Utah 2015, Chapters 245, 249, 251, 298 and last



28 amended by Coordination Clause, Laws of Utah 2015, Chapter 249  
29 [73-3-5](#), as last amended by Laws of Utah 2001, Chapter 136  
30 [73-3-8](#), as last amended by Laws of Utah 2019, Chapter 366  
31 [73-3-16](#), as last amended by Laws of Utah 2013, Chapter 221  
32 [73-3-30](#), as last amended by Laws of Utah 2013, Chapter 379

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

35 Section 1. Section **73-2-14** is amended to read:

36 **73-2-14. Fees of state engineer -- Deposited as a dedicated credit.**

37 (1) The state engineer shall charge fees pursuant to Section [63J-1-504](#) for the  
38 following:

- 39 (a) applications to appropriate water;
- 40 (b) applications to temporarily appropriate water;
- 41 (c) applications for [~~permanent or temporary~~] a change;
- 42 (d) applications for exchange;
- 43 (e) applications for nonuse of water;
- 44 (f) applications to appropriate water, or make a [~~permanent or temporary~~] change, for  
45 use outside the state filed pursuant to Title 73, Chapter 3a, Water Exports;
- 46 (g) groundwater recovery permits;
- 47 (h) diligence claims for surface or underground water filed pursuant to Section  
48 [73-5-13](#);
- 49 (i) republication of notice to water users after amendment of application where  
50 required by this title;
- 51 (j) applications to segregate;
- 52 (k) requests for an extension of time in which to submit proof of appropriation not to  
53 exceed 14 years after the date of approval of the application;
- 54 (l) requests for an extension of time in which to submit proof of appropriation 14 years  
55 or more after the date of approval of the application;
- 56 (m) groundwater recharge permits;
- 57 (n) applications for a well driller's license, annual renewal of a well driller's license,  
58 and late annual renewal of a well driller's license;

- 59 (o) certification of copies;
- 60 (p) preparing copies of documents;
- 61 (q) reports of water right conveyance; and
- 62 (r) requests for a livestock water use certificate under Section 73-3-31.

63 (2) Fees for the services specified in Subsections (1)(a) through (i) shall be based upon  
 64 the rate of flow or volume of water. If it is proposed to appropriate by both direct flow and  
 65 storage, the fee shall be based upon either the rate of flow or annual volume of water stored,  
 66 whichever fee is greater.

67 (3) Fees collected under this section:

68 (a) shall be deposited in the General Fund as a dedicated credit to be used by the  
 69 Division of Water Rights; and

70 (b) may only be used by the Division of Water Rights to:

- 71 (i) meet the publication of notice requirements under this title;
- 72 (ii) process reports of water right conveyance;
- 73 (iii) process a request for a livestock water use certificate; and
- 74 (iv) hire an employee to assist with processing an application.

75 Section 2. Section 73-3-3 is amended to read:

76 **73-3-3. Changes to a water right.**

77 (1) For purposes of this section:

78 (a) "Change" means a change to the:

79 (i) point of diversion;

80 (ii) place of use;

81 (iii) period of use;

82 (iv) nature of use; or

83 (v) storage of water.

84 (b) "Fixed time change" means a change for a fixed period of time exceeding one year  
 85 and not exceeding 10 years.

86 [~~(a)~~] (c) "Permanent change" means a change, for an indefinite period of time [~~, to the:~~]

87 [~~(i) point of diversion;~~]

88 [~~(ii) place of use;~~]

89 [~~(iii) period of use;~~]

90 ~~[(iv) nature of use; or]~~

91 ~~[(v) storage of water].~~

92 ~~[(b)]~~ (d) "Person entitled to the use of water" means:

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

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

95 (iii) a person who has written authorization from a person described in Subsection

96 (1)~~[(b)]~~(d)(i) or (ii) to file a change application on that person's behalf; or

97 (iv) a shareholder in a water company who is authorized to file a change application in

98 accordance with Section [73-3-3.5](#).

99 ~~[(c)]~~ (e) (i) "Quantity impairment" means any reduction in the amount of water a

100 person is able to receive in order to satisfy an existing right to the use of water that would result

101 from an action proposed in a change application, including:

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

103 (B) a change in the timing of availability of water from the source of supply for the

104 existing right; or

105 (C) enlarging the quantity of water depleted by the nature of the proposed use when

106 compared with the nature of the currently approved use.

107 (ii) "Quantity impairment" does not mean a decrease in the static level of water in an

108 underground basin or aquifer that would result from an action proposed to be taken in a change

109 application, if the volume of water necessary to satisfy an existing right otherwise remains

110 reasonably available.

111 (f) "Split season change" means a change when the holder of a perfected right grants to

112 a water user the right to make sequential use of a portion of the water right.

113 ~~[(d)]~~ (g) "Temporary change" means a change for a ~~[fixed]~~ period of time, not

114 exceeding one year~~[, to the:]~~

115 ~~[(i) point of diversion;]~~

116 ~~[(ii) place of use;]~~

117 ~~[(iii) period of use;]~~

118 ~~[(iv) nature of use; or]~~

119 ~~[(v) storage of water].~~

120 (2) (a) A person who proposes to file a ~~[permanent or temporary]~~ change application

121 may request consultation with the state engineer, or the state engineer's designee, before filing  
122 the application [~~in order~~] to review the requirements of the change application process, discuss  
123 potential issues related to the change, and provide the applicant with information.

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

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

128 (3) (a) A person entitled to the use of water may make a [~~permanent or temporary~~]  
129 change to an existing right to use water, including a right involved in a general determination  
130 of rights or other suit, if:

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

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

134 (iii) the state engineer approves the change application, consistent with [~~the~~  
135 ~~requirements of~~] Section 73-3-8.

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

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

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

140 (B) the repayment of project costs; and

141 (ii) the record owner of the water right.

142 (c) A change application on a United States Indian Irrigation Service water right that is  
143 serving the needs of a township or municipality shall be signed by:

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

146 (ii) the record owner of the water right.

147 (4) (a) Before making a [~~permanent or temporary~~] change, a person entitled to the use  
148 of water shall submit a change application upon forms furnished by the state engineer.

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

150 (i) the applicant's name;

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

- 152 (iii) the water quantity;
- 153 (iv) the stream or water source;
- 154 (v) if applicable, the point on the stream or water source where the water is diverted;
- 155 (vi) if applicable, the point to which it is proposed to change the diversion of the water;
- 156 (vii) the place, nature, period, and extent of the currently approved use;
- 157 (viii) the place, nature, period, and extent of the proposed use;
- 158 (ix) if the change applicant is submitting a change application in accordance with

159 Section 73-3-3.5, the information required by Section 73-3-3.5;

- 160 (x) any proposed change to the storage of water; and
- 161 (xi) any other information that the state engineer requires.

162 (c) A shareholder in a water company who seeks to make a [~~permanent or temporary~~]  
163 change to a water right to which the water company is the record owner shall file a change  
164 application in accordance with Section 73-3-3.5.

165 (5) In a proceeding before the state engineer, the applicant has the burden of producing  
166 evidence sufficient to support a reasonable belief that the change can be made in compliance  
167 with this section and Section 73-3-8, including evidence:

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

170 (b) if applicable, rebutting the presumption of quantity impairment described in  
171 Subsection 73-3-8(6)(c).

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

- 173 (a) affect the priority of the original application to appropriate water; or
- 174 (b) extend the time period within which the construction of work is to begin or be  
175 completed.

176 (7) Any person who makes a [~~permanent or temporary~~] change without first filing and  
177 obtaining approval of a change application providing for [~~such~~] the change:

- 178 (a) obtains no right by the change;
- 179 (b) is guilty of an offense punishable under Section 73-2-27 if the change is made  
180 knowingly or intentionally; and
- 181 (c) shall comply with the change application process.

182 (8) (a) This section does not apply to the replacement of an existing well by a new well

183 drilled within a radius of 150 feet from the point of diversion of the existing well.

184 (b) ~~[Any]~~ A replacement well must be drilled in accordance with the requirements of  
185 Section 73-3-28.

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

187 **73-3-5. Action by engineer on applications.**

188 (1) On receipt of ~~[each]~~ an application containing the information required by Section  
189 73-3-2, and payment of the filing fee, ~~[it shall be the duty of]~~ the state engineer ~~[to make an~~  
190 ~~endorsement thereon of]~~ shall endorse the application with the date of its receipt~~[, and]~~ to make  
191 a record of ~~[such]~~ the receipt for that purpose.

192 (2) ~~[It shall be the duty of the]~~ The state engineer ~~[to]~~ shall examine the application and  
193 determine whether any corrections, amendments or changes are required for clarity and if so,  
194 see that such changes are made before further processing. The state engineer may not construe  
195 an application for a split season change or other potentially complicated change as incomplete  
196 or unacceptable if the application satisfies the filing requirements under Section 73-3-3 and  
197 payment of the respective filing fee is made.

198 (3) ~~[All applications which shall comply]~~ An application that complies with ~~[the~~  
199 ~~provisions of]~~ this chapter and with the regulations of the state engineer shall be filed and  
200 recorded.

201 (4) The state engineer may issue a temporary receipt to drill a well at any time after the  
202 filing of an application to appropriate water ~~[therefrom]~~ from the well, as provided by this  
203 section if ~~[all]~~ the fees be advanced and if in ~~[his]~~ the state engineer's judgment there is  
204 unappropriated water available in the proposed source and there is no likelihood of impairment  
205 of existing rights~~[; provided, however,],~~ except that the issuance of ~~[such]~~ a temporary ~~[permits~~  
206 ~~shall]~~ receipt does not dispense with the publishing of notice and the final approval or rejection  
207 of ~~[such]~~ the application by the state engineer, as provided by this chapter.

208 (5) The state engineer may send the necessary notices and address ~~[all]~~ correspondence  
209 relating to ~~[each]~~ an application to the owner thereof as shown by the state engineer's records,  
210 or to ~~[his]~~ the owner's attorney in fact provided a written power of attorney is filed in the state  
211 engineer's office.

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

213 **73-3-8. Approval or rejection of application -- Requirements for approval --**

214 **Application for specified period of time -- Filing of royalty contract for removal of salt or**  
215 **minerals -- Request for agency action.**

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

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

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

222 (iii) the proposed plan:

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

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

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

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

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

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

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

239 (2) (a) An application to appropriate water for industrial, power, mining development,  
240 manufacturing purposes, agriculture, or municipal purposes may be approved for a specific and  
241 certain period from the time the water is placed to beneficial use under the application, but in  
242 no event may an application be granted for a period of time less than that ordinarily needed to  
243 satisfy the essential and primary purpose of the application or until the water is no longer  
244 available as determined by the state engineer.



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

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

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

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

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

255 (iii) the water is still available.

256 (e) ~~[No extension shall]~~ An extension may not exceed the time necessary to satisfy the  
257 primary purpose of the original application.

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

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

264 (b) The approval of an application shall be revoked ~~[in the event of the failure of the]~~ if  
265 the applicant fails to comply with terms of the royalty contract.

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

267 (b) The state engineer shall:

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

270 (ii) deny the temporary change if the state engineer finds there is reason to believe ~~[it]~~  
271 the temporary change would impair an existing right.

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

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

275 (ii) the rights and duties of a change applicant are the same as the rights and duties of a

276 person who applies to appropriate water under this title.

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

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

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

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

289 (b) If otherwise proper, the state engineer may approve a [~~permanent or temporary~~]  
290 change application upon one or more of the following conditions:

291 (i) for part of the water involved;

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

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

295 (c) (i) There is a rebuttable presumption of quantity impairment, as defined in  
296 [~~Subsection 73-3-3(1)~~] [Section 73-3-3](#), to the extent that, for a period of at least seven  
297 consecutive years, a portion of the right identified in a change application has not been:

298 (A) diverted from the approved point of diversion; or

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

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

302 (A) Subsection [73-1-4\(2\)\(e\)](#);

303 (B) an approved nonuse application under Subsection [73-1-4\(2\)\(b\)](#);

304 (C) Subsection [73-3-30\(7\)](#); or

305 (D) the passage of time under Subsection [73-1-4\(2\)\(c\)\(i\)](#).

306 (d) The state engineer may not consider quantity impairment based on the conditions

307 described in Subsection (6)(c) unless the issue is raised in a:

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

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

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

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

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

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

320 (g) The owner of a right who receives the written notice described in Subsection  
321 (6)(d)(ii) may not become a party to the administrative proceeding if the owner has not filed a  
322 timely protest.

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

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

328 **73-3-16. Proof of appropriation or change -- Notice -- Manner of proof --**  
329 **Statements -- Maps, profiles, and drawings -- Verification -- Waiver of filing -- Statement**  
330 **in lieu of proof of appropriation or change.**

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

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

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

338 information:

- 339 (a) a description of the works constructed;
- 340 (b) the quantity of water in acre-feet or the flow in second-feet diverted, or both;
- 341 (c) the method of applying the water to beneficial use; and
- 342 (d) (i) detailed measurements of water put to beneficial use;
- 343 (ii) the date the measurements were made; and
- 344 (iii) the name of the person making the measurements.

345 (4) (a) (i) On applications filed for appropriation or permanent change of use of water  
346 to provide a water supply for state projects constructed pursuant to Title 73, Chapter 10, Board  
347 of Water Resources - Division of Water Resources, or for federal projects constructed by the  
348 United States Bureau of Reclamation for the use and benefit of the state, any of its agencies, its  
349 political subdivisions, public and quasi-municipal corporations, or water users' associations of  
350 which the state, its agencies, political subdivisions, or public and quasi-municipal corporations  
351 are stockholders, the proof shall include:

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

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

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

- 368 (i) a description of the completed water storage facility;

369 (ii) a description of the major project features and appropriate maps, profiles, drawings,  
370 and reservoir area-capacity curves as required by the state engineer;

371 (iii) the quantity of water stored in acre-feet;

372 (iv) a description of the water distribution facility for the delivery of the water; and

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

375 (5) The proof on all applications shall be sworn to by the applicant or the applicant's  
376 appointed representative.

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

380 (i) the location of the completed works;

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

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

384 (iv) the place of use.

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

388 (7) In those areas in which general determination proceedings are pending, or have  
389 been concluded, under Title 73, Chapter 4, Determination of Water Rights, the state engineer  
390 may petition the district court for permission to:

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

392 (b) permit each owner of an application to file a verified statement to the effect that the  
393 applicant has completed the appropriation or change and elects to file a statement of water  
394 users claim in the proposed determination of water rights or any supplement to it in accordance  
395 with Title 73, Chapter 4, Determination of Water Rights, in lieu of proof of appropriation or  
396 proof of change.

397 (8) This section does not apply to [~~an instream flow water right authorized by Section~~  
398 ~~73-3-30~~] a fixed time or temporary change application.

399 Section 6. Section 73-3-30 is amended to read:

400 **73-3-30. Change application for an instream flow.**

401 (1) As used in this section:

402 (a) "Division" means the Division of Wildlife Resources, created in Section 23-14-1,  
403 or the Division of Parks and Recreation, created in Section 79-4-201.

404 (b) "Fishing group" means an organization that:

405 (i) is exempt from taxation under Section 501(c)(3), Internal Revenue Code; and

406 (ii) promotes fishing opportunities in the state.

407 ~~[(c) "Fixed time change" means a change in a water right's point of diversion, place of~~  
408 ~~use, or purpose of use for a fixed period of time longer than one year but not longer than 10~~  
409 ~~years.]~~410 (2) (a) A division may file a [~~permanent or temporary~~] change application, as provided  
411 by Section 73-3-3, for the purpose of providing water for an instream flow, within a specified  
412 section of a natural or altered stream channel, necessary within the state for:

413 (i) the propagation of fish;

414 (ii) public recreation; or

415 (iii) the reasonable preservation or enhancement of the natural stream environment.

416 (b) A division may file a change application on:

417 (i) a perfected water right:

418 (A) presently owned by the division;

419 (B) purchased by the division for the purpose of providing water for an instream flow,  
420 through funding provided for that purpose by legislative appropriation; or

421 (C) acquired by lease, agreement, gift, exchange, or contribution; or

422 (ii) an appurtenant water right acquired with the acquisition of real property by the  
423 division.

424 (c) A division may:

425 (i) purchase a water right for the purposes provided in Subsection (2)(a) only with  
426 funds specifically appropriated by the Legislature for water rights purchases; or

427 (ii) accept a donated water right without legislative approval.

428 (d) A division may not acquire water rights by eminent domain for an instream flow or  
429 for any other purpose.

430 (3) (a) A fishing group may file a fixed time change application on a perfected,

431 consumptive water right for the purpose of providing water for an instream flow, within a  
432 specified section of a natural or altered stream channel, to protect or restore habitat for three  
433 native trout:

- 434 (i) the Bonneville cutthroat;
- 435 (ii) the Colorado River cutthroat; or
- 436 (iii) the Yellowstone cutthroat.

437 (b) Before filing an application authorized by Subsection (3)(a) to change a  
438 shareholder's proportionate share of water, the water company shall submit the decision to  
439 approve or deny the change request required by Subsection 73-3-3.5(3) to a vote of the  
440 shareholders:

- 441 (i) in a manner outlined in the water company's articles of incorporation or bylaws;
- 442 (ii) at an annual or regular meeting described in Section 16-6a-701; or
- 443 (iii) at a special meeting convened under Section 16-6a-702.

444 (c) The specified section of the natural or altered stream channel for the instream flow  
445 may not be further upstream than the water right's original point of diversion nor extend further  
446 downstream than the next physical point of diversion made by another person.

447 (d) The fishing group shall receive the Division of Wildlife Resources' director's  
448 approval of the proposed change before filing the fixed time change application with the state  
449 engineer.

450 (e) The director of the Division of Wildlife Resources may approve a proposed change  
451 if:

452 (i) the specified section of the stream channel is historic or current habitat for a species  
453 listed in Subsections (3)(a)(i) through (iii);

454 (ii) the proposed purpose of use is consistent with an existing state management or  
455 recovery plan for that species; and

456 (iii) the fishing group has:

457 (A) entered into a programmatic Candidate Conservation Agreement with Assurances  
458 with the United States Fish and Wildlife Service, as authorized by 16 U.S.C. Secs. 1531(a)(5)  
459 and 1536(a)(1), that gives the water right holder the option to receive an enhancement of  
460 survival permit, as authorized by 16 U.S.C. Sec. 1539(a)(1)(A), or a certificate of inclusion, for  
461 a fixed time change application that benefits a candidate species of trout; or

462 (B) until a programmatic Candidate Conservation Agreement with Assurances  
463 described in Subsection (3)(e)(iii)(A) becomes valid and enforceable, entered into a contract  
464 with the water right holder agreeing to defend and indemnify the water right holder for liability  
465 under Section 1538(a) of the Endangered Species Act, 16 U.S.C. Secs. 1531 through 1544, for  
466 an action taken by the water right holder under the terms of the water right holder's agreement  
467 with the fishing group for a fixed time change application.

468 (f) The director may deny a proposed change if the proposed change would not be in  
469 the public's interest.

470 (g) (i) In considering a fixed time change application, the state engineer shall follow  
471 the same procedures as provided in this title for an application to appropriate water.

472 (ii) The rights and the duties of a fixed time change applicant are the same as provided  
473 in this title for an applicant to appropriate water.

474 (h) A fishing group may refile a fixed time change application by filing a written  
475 request with the state engineer no later than 60 days before the application expires.

476 (i) (i) The water right for which the state engineer has approved a fixed time change  
477 application will automatically revert to the point of diversion and place and purpose of use that  
478 existed before the approved fixed time change application when the fixed time change  
479 application expires or is terminated.

480 (ii) The applicant shall give written notice to the state engineer and the lessor, if  
481 applicable, if the applicant wishes to terminate a fixed time change application before the fixed  
482 time change application expires.

483 (4) In addition to the requirements of Section [73-3-3](#), an application authorized by this  
484 section shall:

485 (a) set forth the legal description of the points on the stream channel between which the  
486 instream flow will be provided by the change application; and

487 (b) include appropriate studies, reports, or other information required by the state  
488 engineer demonstrating the necessity for the instream flow in the specified section of the  
489 stream and the projected benefits to the public resulting from the change.

490 (5) (a) For a permanent change application or a fixed time change application filed  
491 according to this section, 60 days before the date on which proof of change for an instream  
492 flow is due, the state engineer shall notify the applicant by mail or by any form of



493 communication through which receipt is verifiable of the date when proof of change is due.

494 (b) Before the date when proof of change is due, the applicant must either:

495 (i) file a verified statement with the state engineer that the instream flow uses have  
496 been perfected, setting forth:

497 (A) the legal description of the points on the stream channel between which the  
498 instream flow is provided;

499 (B) detailed measurements of the flow of water in second-feet changed;

500 (C) the period of use; and

501 (D) any additional information required by the state engineer; or

502 (ii) apply for a further extension of time as provided for in Section 73-3-12.

503 (c) (i) Upon acceptance of the verified statement required under Subsection (5)(b)(i),  
504 the state engineer shall issue a certificate of change for instream flow use in accordance with  
505 Section 73-3-17.

506 (ii) The certificate expires at the same time the fixed time change application expires.

507 (6) ~~[No]~~ A person may not appropriate unappropriated water under Section 73-3-2 for  
508 the purpose of providing an instream flow.

509 (7) Water used in accordance with this section is considered to be beneficially used, as  
510 required by Section 73-3-1.

511 (8) A physical structure or physical diversion from the stream is not required to  
512 implement a change for instream flow use.

513 (9) This section does not allow enlargement of the water right that the applicant seeks  
514 to change.

515 (10) A change application authorized by this section may not impair a vested water  
516 right, including a water right used to generate hydroelectric power.

517 (11) The state engineer or the water commissioner shall distribute water under an  
518 approved or a certificated instream flow change application according to the change  
519 application's priority date relative to the other water rights located within the stream section  
520 specified in the change application for instream flow.

521 (12) An approved fixed time change application does not create a right of access across  
522 private property or allow any infringement of a private property right.