

1 **WATER RIGHTS PROOFS ON SMALL AMOUNTS OF WATER**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Scott D. Sandall**

5 House Sponsor: Joel Ferry

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the requirements for a proof submitted to the state engineer regarding
10 a small amount of water.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ permits the state engineer to act under certain circumstances when the proof does
- 14 not conform to the underlying approved application; and
- 15 ▶ makes technical changes.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **73-3-5.6**, as last amended by Laws of Utah 2021, Chapter 81

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

25 Section 1. Section **73-3-5.6** is amended to read:

26 **73-3-5.6. Applications to appropriate or permanently change a small amount of**
27 **water -- Proof of appropriation or change.**

28 (1) As used in this section:

29 (a) "Application" means an application to:

- 30 (i) appropriate a small amount of water; or
- 31 (ii) permanently change a small amount of water.
- 32 (b) "Livestock water right" means a right for:
- 33 (i) livestock to consume water:
- 34 (A) directly from the water source; or
- 35 (B) from an impoundment into which the water is diverted; and
- 36 (ii) associated uses of water related to the raising and care of livestock.
- 37 (c) "Proof" means proof of:
- 38 (i) appropriation; or
- 39 (ii) permanent change.
- 40 (d) "Small amount of water" means the amount of water necessary to meet the
- 41 requirements of:
- 42 (i) one residence;
- 43 (ii) 1/4 acre of irrigable land; and
- 44 (iii) a livestock watering right for:
- 45 (A) 10 cattle; or
- 46 (B) the equivalent amount of water of Subsection (1)(d)(iii)(A) for livestock other than
- 47 cattle.
- 48 (2) The state engineer may approve an application if:
- 49 (a) the state engineer undertakes a thorough investigation of the application;
- 50 (b) notice is provided in accordance with Subsection (3);
- 51 (c) the application complies with the state engineer's regional policies and restrictions
- 52 and Section 73-3-3 or 73-3-8, as applicable; and
- 53 (d) the application does not conflict with a political subdivision's ordinance:
- 54 (i) for planning, zoning, or subdivision regulation; or
- 55 (ii) under Section 10-8-15.
- 56 (3) (a) Advertising of an application specified in Subsection (2) is at the discretion of
- 57 the state engineer.

58 (b) If the state engineer finds that the uses proposed by the application may impair
59 other rights, before approving the application, the state engineer shall give notice of the
60 application according to Section 73-3-6.

61 (4) An applicant receiving approval under this section is responsible for the time limit
62 for construction and submitting proof as required by Subsection (6).

63 (5) Sixty days before the end of the time limit for construction, the state engineer shall
64 notify the applicant by mail, or send notice electronically if receipt is verifiable, when proof is
65 due.

66 (6) (a) Notwithstanding Section 73-3-16, the state engineer shall issue a certificate
67 under Section 73-3-17 if, as proof, the applicant files an affidavit:

68 (i) on a form provided by the state engineer;

69 (ii) that specifies the amount of:

70 (A) irrigated land; and

71 (B) livestock watered; and

72 (iii) that declares the residence is constructed and occupied.

73 (b) The form provided by the state engineer under Subsection (6)(a) may require the
74 information the state engineer determines is necessary to maintain accurate records regarding
75 the point of diversion and place of use.

76 (7) For a proof filed under Subsection (6) that does not conform to the underlying
77 approved application, the state engineer may issue a certificate under Section 73-3-17 if the
78 discrepancy between the proof and the underlying approved application does not impair
79 existing rights and:

80 (a) the point of diversion represented in the proof is:

81 (i) located within 660 feet of the corresponding point of diversion described in the
82 underlying approved application; and

83 (ii) located on the same parcel as described in the underlying approved application;

84 (b) the place of use represented in the proof is located in a quarter-quarter section or lot
85 that is adjacent to the place of use in the underlying approved application; or

86 (c) the purpose of use represented in the proof is adjusted without exceeding the
87 amount of water defined under Subsection (1)(d).

88 ~~[(7)]~~ (8) If an applicant does not file the proof required by Subsection (6) by the day on
89 which the time limit for construction ends, the application lapses under Section 73-3-18.

90 ~~[(8)]~~ (9) (a) Except as provided in Subsections ~~[(9)]~~ (10) and ~~[(10)]~~ (11), an applicant
91 whose application lapses may file a request with the state engineer to reinstate the application,
92 if the applicant demonstrates that the applicant or the applicant's predecessor in interest:

- 93 (i) constructed and occupied a residence within the time limit for construction; and
- 94 (ii) beneficially uses the water.

95 (b) Except as provided in Subsection ~~[(10)]~~ (11), if an applicant meets the requirements
96 of Subsection ~~[(8)]~~ (9)(a) and submits an affidavit as provided by Subsection (6), the state
97 engineer shall issue a certificate for the beneficial uses the applicant attests to in an affidavit
98 described in Subsection (6).

99 ~~[(9)]~~ (10) For an application related to the use of water located within an area where
100 general determination proceedings under Title 73, Chapter 4, Determination of Water Rights,
101 are pending or concluded, an applicant whose application lapses may not file a request for
102 reinstatement with the state engineer if:

103 (a) the application lapsed before the state engineer issued notice of the time to file a
104 statement of water users claim under Section 73-4-3; and

105 (b) the applicant failed to timely submit a statement of claim as described in
106 Subsection ~~[(10)]~~ (11)(c)(ii).

107 ~~[(10)]~~ (11) For an application related to the use of water located within an area where
108 general determination proceedings under Title 73, Chapter 4, Determination of Water Rights,
109 are pending, the state engineer shall allow a reinstatement request under Subsection ~~[(8)]~~ (9)(a)
110 and, instead of issuing a certificate, evaluate the reinstatement request and statement of claim
111 as part of the general adjudication for the area, if:

112 (a) the application lapsed before the state engineer issued notice of the time to file a
113 statement of water users claim under Section 73-4-3;

114 (b) the applicant files the request for reinstatement no more than 90 days after the day
115 on which the state engineer issues the notice of the time to file statements of claim in
116 accordance with Section 73-4-3; and

117 (c) the applicant files:

118 (i) an affidavit described in Subsection (6); and

119 (ii) a timely statement of claim under Section 73-4-5.

120 ~~[(11)]~~ (12) If an applicant fulfills the requirements in Subsection ~~[(10)]~~ (11), the state
121 engineer may issue a certificate before evaluating the claim in the general adjudication.

122 ~~[(12)]~~ (13) The priority date for an application reinstated under this section is the day
123 on which the applicant files the request for reinstatement of the application.