



UTAH

**WATER RIGHTS LAW
TITLE 73,
CHAPTERS 1-6, 22**

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With minor formatting changes
(includes 2010 legislative changes)**

**STATE OF UTAH
DEPARTMENT OF NATURAL
RESOURCES**

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P R E F A C E

EARLY HISTORY AND INTRODUCTION

The Utah pioneers in the late 1840's were the first Anglo-Saxons to practice irrigation on an extensive scale in the United States. Being a desert, it contained incoming mountain streams. The principle was first established that those who first made beneficial use had preference in those who came later. This fundamental principle was later sanctioned and is known as the Doctrine of Prior Appropriation.

In the early Territorial days, rights to the use of public streams of water were acquired by actual diversion and application of water to beneficial use, or by legislative grant. A county court's water legislation was enacted in 1852, and was in effect until 1880, when it was replaced by a statute for the provision for county water commissioners.

The Utah State Engineer's Office was created in 1897. The State Engineer is the chief water rights administrative officer. A complete "water code" was enacted in 1903 and was revised and reenacted in 1919. This law, with succeeding complete reenactments of State statutes, and, as amended, is presently in force. Portions of the Utah Water Code, *Title 73, Water and Irrigation, Chapters 1-6, and 22*, and contained in this publication.

CHAPTER 1 GENERAL PROVISIONS

73-1-1. Waters declared property of public.

(1) All waters in this state, whether above or under the ground are hereby declared to be the property of the public, subject to all existing rights to the use thereof.

(2) The declaration of public ownership of water in Subsection (1) does not create or recognize an easement for public recreational use on private property.

(3) The Legislature shall govern the use of public water for beneficial purposes, as limited by constitutional protections for private property.

(4) The right of the public to use public water for recreational purposes is governed by Chapter 29, Public Waters Access Act.

Amended by Chapter 410, 2010 General Session

73-1-2. Unit of measurement -- Of flow -- Of volume.

The standard unit of measurement of the flow of water shall be the discharge of one cubic foot per second of time, which shall be known as a second-foot; and the standard unit of measurement of the volume of water shall be the acre-foot, being the amount of water upon an acre covered one foot deep, equivalent to 43,560 cubic feet.

No Change Since 1953

73-1-3. Beneficial use basis of right to use.

Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state.

No Change Since 1953

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

- (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) "Shareholder" is as defined in Section 73-3-3.5.
 - (d) "Water company" is as defined in Section 73-3-3.5.
 - (e) "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) When an appropriator or the appropriator's successor in interest abandons or ceases to use all or a portion of a water right for a period of seven years, the water right or the unused portion of that water right is subject to forfeiture in accordance with Subsection (2)(c), unless the appropriator or the appropriator's successor in interest files a nonuse application with the state engineer.

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

(ii) 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.

(c)(i) A water right or a portion of the water right may not be forfeited unless a judicial action to declare the right forfeited is commenced within 15 years from the end of the latest period of nonuse of at least seven years.

(ii) If forfeiture is asserted in an action for general determination of rights in conformance with the provisions of Chapter 4, Determination of Water Rights, the 15-year limitation period shall commence to run back in time from the date the state engineer's proposed determination of rights is served upon each claimant.

(iii) A decree entered in an action for general determination of rights under Chapter 4, Determination of Water Rights, shall bar any claim of forfeiture for prior nonuse against any right determined to be valid in the decree, but does not bar a claim for periods of nonuse that occur after the entry of the decree.

(iv) A proposed determination by the state engineer in an action for general determination of rights under Chapter 4, Determination of Water Rights, bars a claim of forfeiture for prior

nonuse against any right proposed to be valid, unless a timely objection has been filed within the time allowed in Chapter 4, Determination of Water Rights.

(v) 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 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.

(d) This section applies whether the unused or abandoned water or a portion of the water is:

(i) permitted to run to waste; or

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

(e) This section does not apply to:

(i) the use of water according to a 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, if:

(A) the water is stored for present or future use; or

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

(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 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 use of the supplemental water right; or

(ix) a water right subject to an approved change application where the applicant is diligently pursuing certification.

(f)(i) The reasonable future water requirement of the public is the amount of water needed in the next 40 years by the persons within the public water supplier's projected service area based on projected population growth or other water use demand.

(ii) For purposes of Subsection (2)(f)(i), a community water system's projected 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.

(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.

(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) Filing the nonuse application extends the time during which nonuse may continue until the state engineer issues an order on the nonuse application.

(ii) Approval of a nonuse application protects a water right from forfeiture for nonuse from the application's filing date until the approved application's expiration date.

(c)(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 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.

(d) Any interested person may file a written protest with the state engineer against the 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.

(e) In any proceedings to determine whether the nonuse

application should be approved or rejected, the state engineer shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

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

(iii) operation of legal proceedings;

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

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

(vi) 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 any 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.

Amended by Chapter 388, 2009 General Session

73-1-4.5. Authorization for water companies to allocate water rights lost by forfeiture or nonuse -- Redemption and retirement of water shares.

(1)(a) If a water right, to which a mutual water company holds title, ceases or is lost due to forfeiture or abandonment for lack of beneficial use, in whole or in part, the water company shall, through procedures consistent with this section, and as defined in the company's articles of incorporation or bylaws, apportion the loss to each stockholder whose failure to make beneficial use caused the loss of the water right.

(b) The water company shall make an apportionment if the Utah Division of Water Rights or a court of proper jurisdiction makes a final decision that a loss has occurred.

(c) The water company shall also reduce the amount of water provided to the shareholder in proportion to the amount of the lost water right during an appeal of a decision that reduced the company water rights, unless otherwise ordered by a court of proper jurisdiction.

(d) The water company may take any action under this Subsection (1), whether the loss occurred:

(i) under Utah Code Annotated Section 73-1-4, including losses that occur as part of a general determination under Title 73, Chapter 4, Determination of Water Rights; or

(ii) through any other decision by a court of proper jurisdiction.

(2)(a) If the water company apportions a water right under Subsection (1), a sufficient number of shares to account for the water right lost, including necessary transport or "carrier water" losses, shall be treated by the water company as shares redeemed by the company from the stockholder responsible for the loss.

(b) The number of shares owned by that shareholder shall be reduced accordingly on the records of the company.

(c) Upon the redemption, the authorized shares of the company shall be reduced by the amount of shares that were redeemed under this Subsection (2).

(3) The redemption and retirement under this section of

shares belonging to a stockholder does not relieve the stockholder of liability for unpaid assessments on the stock or debts the shareholder may owe to the water company.

Enacted by Chapter 19, 2002 General Session

73-1-5. Use of water a public use.

The use of water for beneficial purposes, as provided in this title, is hereby declared to be a public use.

No Change Since 1953

73-1-6. Eminent domain -- Purposes.

Any person shall have a right of way across and upon public, private and corporate lands, or other rights of way, for the construction, maintenance, repair and use of all necessary reservoirs, dams, water gates, canals, ditches, flumes, tunnels, pipelines and areas for setting up pumps and pumping machinery or other means of securing, storing, replacing and conveying water for domestic, culinary, industrial and irrigation purposes or for any necessary public use, or for drainage, upon payment of just compensation therefor, but such right of way shall in all cases be exercised in a manner not unnecessarily to impair the practical use of any other right of way, highway or public or private road, or to injure any public or private property.

No Change Since 1953

73-1-7. Enlargement for joint use of ditch.

When any person desires to convey water for irrigation or any other beneficial purpose and there is a canal or ditch already constructed that can be used or enlarged to convey the required quantity of water, such person shall have the right to use or enlarge such canal or ditch already constructed, by compensating the owner of the canal or ditch to be used or enlarged for the damage caused by such use or enlargement, and by paying an equitable proportion of the maintenance of the canal or ditch jointly used or enlarged; provided, that such enlargement shall be made between the 1st day of October and the 1st day of March, or at any other

time that may be agreed upon with the owner of such canal or ditch. The additional water turned in shall bear its proportion of loss by evaporation and seepage.

No Change Since 1953

73-1-8. Duties of owners of ditches -- Safe condition -- Bridges.

(1) The owner of any ditch, canal, flume or other watercourse shall:

(a) maintain it to prevent waste of water or damage to the property of others; and

(b) by bridge or otherwise, keep it in good repair where it crosses any public road or highway to prevent obstruction to travel or damage or overflow on the public road or highway.

(2) The provisions of Subsection (1)(b) do not apply where a governmental entity maintains or elects to maintain a bridge or other device to prevent obstruction to travel or damage or overflow on the public road or highway.

(3) An owner or operator of a ditch, canal, stream, or river, is immune from suit if:

(a) the damage or personal injury arises out of, is in connection with, or results from the use of a pedestrian or equestrian trail that is along a ditch, canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river;

(b) the trail is designated under a general plan adopted by a municipality under Section 10-9a-401 or by a county under Section 17-27a-401;

(c) the trail right-of-way or the right-of-way where the trail is located is open to public use as evidenced by a written agreement between the owner or operator of the trail right-of-way, or of the right-of-way where the trail is located, and the municipality or county where the trail is located; and

(d) the written agreement:

(i) contains a plan for operation and maintenance of the trail; and

(ii) provides that an owner or operator of the trail

right-of-way, or of the right-of-way where the trail is located has, at minimum, the same level of immunity from suit as the governmental entity in connection with or resulting from use of the trail.

Amended by Chapter 357, 2007 General Session

73-1-9. Contribution between joint owners of ditch or reservoir.

When two or more persons are associated in the use of any dam, canal, reservoir, ditch, lateral, flume or other means for conserving or conveying water for the irrigation of land or for other purposes, each of them shall be liable to the other for the reasonable expenses of maintaining, operating and controlling the same, in proportion to the share in the use or ownership of the water to which he is entitled.

No Change Since 1953

73-1-10. Conveyance of water rights -- Deed -- Exceptions -- Filing and recording of deed -- Report of water right conveyance.

(1)(a) A water right, whether evidenced by a decree, a certificate of appropriation, a diligence claim to the use of surface or underground water, or a water user's claim filed in general determination proceedings, shall be transferred by deed in substantially the same manner as is real estate.

(b) The deed must be recorded in the office of the recorder of the county where the point of diversion of the water is located and in the county where the water is used.

(c) A recorded deed of a water right shall from the time of its recording in the office of the county recorder constitute notice of its contents to all persons.

(d) Beginning July 1, 2011, a deed under Subsection (1)(a) may include a water rights addendum as provided in Section 57-3-109.

(2) The right to the use of water evidenced by shares of stock in a corporation shall be transferred in accordance with the

procedures applicable to securities set forth in Title 70A, Chapter 8, Uniform Commercial Code - Investment Securities.

(3)(a) To update water right ownership on the records of the state engineer, a water right owner shall submit a report of water right conveyance to the state engineer.

(b) The report of water right conveyance shall be on forms provided by the state engineer.

(c) The report shall be prepared by:

(i) or prepared under the direction of and certified by, any of the following persons licensed in Utah:

(A) an attorney;

(B) a professional engineer;

(C) a title insurance producer; or

(D) a professional land surveyor; or

(ii) the water right owner as authorized by rule of the state engineer.

(d) The filing and processing of a report of water right conveyance with the state engineer is neither an adjudication of water right ownership nor an opinion as to title or validity of the water right.

(e) The state engineer shall adopt rules that specify:

(i) the information required in a report of water right conveyance; and

(ii) the procedures for processing the reports.

Amended by Chapter 70, 2010 General Session

73-1-11. Appurtenant water rights pass to grantee of land -- Exceptions -- Conveyance of a portion of irrigated land -- Appurtenant water rights -- Evidence -- Where appurtenant -- Partial conveyances of water and land.

(1) A water right appurtenant to land shall pass to the grantee of the land unless the grantor:

(a) specifically reserves the water right or any part of the water right in the land conveyance document;

(b) conveys a part of the water right in the land conveyance document; or

(c) conveys the water right in a separate conveyance document prior to or contemporaneously with the execution of the land conveyance document.

(2)(a) If the water right has been exercised in irrigating different parcels of land at different times, it shall pass to the grantee of a parcel of land on which the water right was exercised next preceding the time the land conveyance was executed.

(b) Subsection (2)(a) applies only to land conveyances executed before May 4, 1998.

(3) In any conveyance, the grantee assumes the obligation for any unpaid assessment.

(4) The right to the use of water evidenced by shares of stock in a corporation shall not be deemed appurtenant to land.

(5)(a) This Subsection (5) governs land conveyances executed on or after May 4, 1998, and has no retrospective operation.

(b) For purposes of land conveyances only, a water right evidenced by any of the following documents is appurtenant to land:

(i) a decree entered by a court;

(ii) a certificate issued under Section 73-3-17;

(iii) a diligence claim for surface or underground water filed pursuant to Section 73-5-13;

(iv) a water user's claim executed for general determination of water rights proceedings conducted pursuant to Title 73, Chapter 4, Determination of Water Rights, or pursuant to Section 73-3-16;

(v) an approval for an application to appropriate water issued under Section 73-3-10;

(vi) an approval for an application to permanently change the place of use of water issued under Section 73-3-10; or

(vii) an approval for an application to exchange water issued under Section 73-3-20.

(c) For purposes of land conveyances only, the land to which a water right is appurtenant is the authorized place of use of water as described in the:

(i) decree;

(ii) certificate;
(iii) diligence claim;
(iv) water user's claim;
(v) approved application to appropriate water;
(vi) approved application to permanently change the place of use of water; or

(vii) approved exchange application.

(d) If a grantor conveys part of the water right in a land conveyance document pursuant to Subsection (1)(b), the portion of the water right not conveyed is presumed to be reserved by the grantor.

(e) If the land conveyed constitutes only a portion of the authorized place of use for the water right, the amount of the appurtenant water right that passes to the grantee shall be proportionate to the conveyed portion of the authorized place of use.

(6) Beginning July 1, 2011, a deed conveying fee simple title to land may include a water rights addendum as provided in Section 57-3-109.

Amended by Chapter 70, 2010 General Session

73-1-12. Failure to record -- Effect.

Every deed of a water right which shall not be recorded as provided in this title shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same water right, or any portion thereof, where his own deed shall be first duly recorded.

No Change Since 1953

73-1-13. Corporations -- One water company may own stock in another.

Any irrigation or reservoir company incorporated and existing under the laws of this state may purchase or subscribe for the capital stock of any other similar corporation which at the time of such purchase or subscription shall be or is about to be incorporated; provided, that such purchase or subscription shall be made only when permitted by the articles of incorporation, and

such corporations are hereby permitted and authorized to amend their articles of incorporation so as to authorize such purchase or subscription.

No Change Since 1953

73-1-14. Interfering with waterworks or with apportioning official -- Penalty and liability.

(1) Any person, who in any way unlawfully interferes with, injures, destroys or removes any dam, head gate, weir, casing, valve, cap or other appliance for the diversion, apportionment, measurement or regulation of water, or who interferes with any person authorized to apportion water while in the discharge of his duties, is guilty of a crime punishable under Section 73-2-27.

(2) Any person who commits an act defined as a crime under this section is also liable in a civil action for damages or other relief to any person injured by that act.

(3)(a) A civil action under this section may be brought independent of a criminal action.

(b) Proof of the elements of a civil action under this section need only be made by a preponderance of the evidence.

Amended by Chapter 215, 2005 General Session

73-1-15. Obstructing canals or other watercourses -- Penalties.

(1) Whenever any person has a right-of-way of any established type or title for any canal or other watercourse it shall be unlawful for any person to place or maintain in place any obstruction, or change of the water flow by fence or otherwise, along or across or in such canal or watercourse, except as where said watercourse inflicts damage to private property, without first receiving written permission for the change and providing gates sufficient for the passage of the owner or owners of such canal or watercourse. That the vested rights in the established canals and watercourse shall be protected against all encroachments. That indemnifying agreements may be entered as may be just and

proper by governmental agencies.

(2) Any person violating this section is guilty of a crime punishable under Section 73-2-27.

(3) Any person who commits an act defined as a crime under this section is also liable for damages or other relief and costs in a civil action to any person injured by that act.

(4)(a) A civil action under this section may be brought independent of a criminal action.

(b) Proof of the elements of a civil action under this section need only be made by a preponderance of the evidence.

Amended by Chapter 215, 2005 General Session

73-1-16. Petition for hearing to determine validity -- Notice -- Service -- Pleading -- Costs -- Review.

Where any water users' association, irrigation company, canal company, ditch company, reservoir company, or other corporation of like character or purpose, organized under the laws of this state has entered into or proposes to enter into a contract with the United States for the payment by such association or company of the construction and other charges of a federal reclamation project constructed, under construction, or to be constructed within this state, and where funds for the payment of such charges are to be obtained from assessments levied upon the stock of such association or company, or where a lien is created or will be created against any of the land, property, canals, water rights or other assets of such association or company or against the land, property, canals, water rights or other assets of any stockholder of such association or company to secure the payment of construction or other charges of a reclamation project, the water users' association, irrigation company, canal company, ditch company, reservoir company or other corporation of like character or purpose may file in the district court of the county wherein is situated the office of such association or company a petition entitled "..... Water Users' Association" or "..... Company," as the case may be, "against the stockholders of said association or company and the owners and mortgagees of land within the Federal Reclamation Project." No other or more specific

description of the defendants shall be required. In the petition it may be stated that the water users' association, irrigation company, canal company, ditch company, reservoir company or other corporation of like character and purpose has entered into or proposes to enter into a contract with the United States, to be set out in full in said petition, with a prayer that the court find said contract to be valid, and a modification of any individual contracts between the United States and the stockholders of such association or company, or between the association or company, and its stockholders, so far as such individual contracts are at variance with the contract or proposed contract between the association or company and the United States. Thereupon a notice in the nature of a summons shall issue under the hand and seal of the clerk of said court, stating in brief outline the contents of said petition, and showing where a full copy of said contract or proposed contract may be examined, such notice to be directed to the said defendants under the same general designations, which shall be considered sufficient to give the court jurisdiction of all matters involved and parties interested. Service shall be obtained (a) by publication of such notice once a week for three consecutive weeks (three times) in a newspaper published in each county where the irrigable land of such federal reclamation project is situated, (b) as required in Section 45-1-101 for three weeks, (c) by publishing the notice on the Utah Public Notice Website created in Section 63F-1-701, for three weeks prior to the date of the hearing, and (d) by the posting at least three weeks prior to the date of the hearing on said petition of the notice and a complete copy of the said contract or proposed contract in the office of the plaintiff association or company, and at three other public places within the boundaries of such federal reclamation project. Any stockholder in the plaintiff association or company, or owner, or mortgagee of land within said federal reclamation project affected by the contract proposed to be made by such association or company, may demur to or answer said petition before the date set for such hearing or within such further time as may be allowed therefor by the court. The failure of any persons affected by the said contract to answer or demur shall be construed, so far as such persons are concerned as an

acknowledgment of the validity of said contract and as a consent to the modification of said individual contracts if any with such association or company or with the United States, to the extent that such modification is required to cause the said individual contracts if any to conform to the terms of the contract or proposed contract between the plaintiff and the United States. All persons filing demurrers or answers shall be entered as defendants in said cause and their defense consolidated for hearing or trial. Upon hearing the court shall examine all matters and things in controversy and shall enter judgment and decree as the case warrants, showing how and to what extent, if any, the said individual contracts of the defendants or under which they claim are modified by the plaintiff's contract or proposed contract with the United States. In reaching his conclusion in such causes, the court shall follow a liberal interpretation of the laws, and shall disregard informalities or omissions not affecting the substantial rights of the parties, unless it is affirmatively shown that such informalities or omissions led to a different result than would have been obtained otherwise. The Code of Civil Procedure shall govern matters of pleading and practice as nearly as may be. Costs may be assessed or apportioned among contesting parties in the discretion of the trial court. Review of the judgment of the district court by the Supreme Court may be had as in other civil causes.

Amended by Chapter 90, 2010 General Session

73-1-17. Borrowing from federal government authorized.

That irrigation companies, drainage districts, and irrigation districts heretofore organized under the laws of the state of Utah be and they are hereby authorized and empowered to borrow money from the Reconstruction Finance Corporation, organized pursuant to an Act of Congress of the United States, or from any other governmental loaning agency or agencies to aid them in refunding or refinancing their obligations outstanding on the date of enactment by the Congress of the United States of the Emergency Relief and Construction Act of 1932 through the purchase and retirement of such obligations at a discount, or otherwise, if such obligations were issued in connection with irrigation and/or

drainage projects of such companies and/or districts, respectively, which are self-liquidating in character, or where the loan can be repaid by the applicant for such loan by assessment on the issued and outstanding capital stock of the irrigation company, or by assessment on the land or lands within the exterior boundaries of the drainage district, or by assessments on the lands and/or water allotted to lands within the exterior boundaries of the irrigation district.

No Change Since 1953

73-1-18. Bonds issued -- Interest -- Lien.

The money so borrowed shall be evidenced by the bond or bonds or other obligations of the irrigation companies, drainage districts, or irrigation districts borrowing the same and shall constitute and be secured by a first lien on the water rights, canal rights and all assets of the irrigation companies, and on all lands within the exterior boundaries of drainage districts, and on all lands and/or water allotted to lands within the exterior boundaries of the irrigation districts, and shall bear such rate of interest and mature at such time or times as the contracting parties may agree upon.

No Change Since 1953

73-1-19. State, agency, county, city or town -- Authority of -- To procure stock of irrigation or pipeline company -- To bring its land within conservation or conservancy district.

The state of Utah, or any department, board or agency thereof, and any county, city, or town, owning or having control of land or improvements thereon which is in need of a supply of water for such land or the improvements thereon, or in need of facilities for conveyance of such water, is authorized to subscribe for or purchase corporate stock of irrigation companies, pipeline companies, or associations and take the necessary steps to bring the land owned or controlled by any of them within any conservation or conservancy district formed or to be formed under

the laws of the state of Utah to procure such supply of water to all intents and purposes as if an individual.

No Change Since 1953

CHAPTER 2

STATE ENGINEER – DIVISION OF WATER RIGHTS

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 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) sewage effluent reuse;
- (f) geothermal resource conservation; and

(g) enforcement orders and the imposition of fines and penalties.

(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) ground-water recharge and recovery;

(d) the determination of water rights; and

(e) the form and content of applications and related documents, maps, and reports.

(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 those waters;

(c) enable him 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 local district under Title 17B, Limited Purpose Local Government Entities - Local 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 all 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.

(8)(a) The state engineer may establish water distribution systems and define their 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.

Amended by Chapter 360, 2008 General Session

Amended by Chapter 382, 2008 General Session

73-2-1.1. Division of Water Rights -- Creation -- Power and authority.

There is created the Division of Water Rights, which shall be within the Department of Natural Resources under the administration and general supervision of the executive director of natural resources. The Division of Water Rights shall be the water rights authority of the state of Utah and is vested with such powers and required to perform such duties as are set forth in law.

Amended by Chapter 198, 1969 General Session

73-2-1.2. Director of Division of Water Rights -- Appointment of state engineer.

The Division of Water Rights shall be administered by the state engineer who shall act as the director of the Division of Water Rights and who shall be appointed as provided by Section 73-2-1. Nothing contained in this act shall modify, repeal or impair the powers or duties of the state engineer relating to the administration, appropriation, adjudication and distribution of the waters of the state of Utah as are conferred upon him pursuant to Title 73, or the provisions of any other laws.

Enacted by Chapter 176, 1967 General Session

73-2-1.3. Report to executive director of natural resources.

The state engineer shall report to the executive director of

natural resources at such times and on such administrative matters concerning his office as the executive director may require.

Enacted by Chapter 176, 1967 General Session

73-2-1.5. Procedures -- Adjudicative proceedings.

Except as provided in Sections 63G-4-102 and 73-2-25, the state engineer and the Division of Water Rights shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

Amended by Chapter 382, 2008 General Session

73-2-2. Oath.

(1) Before entering upon the duties of the office, the state engineer shall take and subscribe the constitutional oath of office.

(2) The state engineer shall file the oath with the Division of Archives.

Amended by Chapter 298, 2010 General Session

73-2-4. Deputy and assistants -- Employment and salaries -- Purchase of equipment and supplies.

For the purpose of performing the duties of his office the state engineer may:

(1) employ a deputy and all necessary assistants;

(2) fix division employees' salaries in accordance with salary standards adopted by the Division of Finance; and

(3) purchase all necessary equipment and supplies.

Amended by Chapter 136, 2007 General Session

73-2-5. Aid to district court.

In aid of the district court the state engineer shall have power to collect facts and make surveys and do all other necessary things, the cost of which shall be paid by the state upon presentation to the director of the Division of Finance of monthly statements and certification by the state engineer.

Amended by Chapter 320, 1983 General Session

73-2-7. Aid to federal court.

The state engineer, when requested by the district court of the United States for the district of Utah, may assist said court in any matter relating to the distribution and use of any of the waters of the state, and may when so requested cooperate with any water commissioner appointed by said court in any such matter.

No Change Since 1953

73-2-10. Knowledge of waterways and irrigation -- Suggestions as to amendment or enactment of laws.

The state engineer shall become conversant with the waterways of the state and its needs as to irrigation matters; and he shall make such suggestions as to the amendment of existing laws or the enactment of new laws as his information and experience shall suggest.

Amended by Chapter 201, 1983 General Session

73-2-11. Records -- Certified copies -- Evidence.

He shall keep on file in his office full and proper records of his work, including all field notes, computations and facts made or collected by him, all of which shall be part of the records of his office and the property of the state. All records, maps and papers recorded or filed in the office of the state engineer shall be open to the public during business hours. The office of the state engineer is hereby declared to be an office of public record, and none of the files, records or documents shall be removed therefrom, except in the custody of the state engineer or one of his deputies. Certified copies of any record or document shall be furnished by the state engineer on demand, upon payment of the reasonable cost of making the same, together with the legal fee for certification. Such copies shall be competent evidence, and shall have the same force and effect as the originals.

No Change Since 1953

73-2-12. Seal.

The state engineer shall have a seal which he shall affix to all certificates issued from his office, and he shall file a description

and an impression of the same with the Division of Archives.

Amended by Chapter 67, 1984 General Session

73-2-13. Attorney general and county attorneys to counsel.

In all matters requiring legal advice in the performance of his duties and the prosecution or defense of any action growing out of the performance of his duties, the attorney general or county attorney of the county in which any legal question arises, shall be the legal advisers of the state engineer, and they are hereby required to perform any and all legal services required of them by him without other compensation than their salaries.

Amended by Chapter 186, 1971 General Session

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

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

- (a) applications to appropriate water;
- (b) applications to temporarily appropriate water;
- (c) applications for permanent or temporary change;
- (d) applications for exchange;
- (e) applications for an extension of time in which to resume use of water;
- (f) applications to appropriate water, or make a permanent or temporary change, for use outside the state filed pursuant to Title 73, Chapter 3a, Water Exports;
- (g) groundwater recovery permits;
- (h) diligence claims for surface or underground water filed pursuant to Section 73-5-13;
- (i) republication of notice to water users after amendment of application where required by this title;
- (j) applications to segregate;
- (k) requests for an extension of time in which to submit proof of appropriation not to exceed 14 years after the date of approval of the application;
- (l) requests for an extension of time in which to submit proof of appropriation 14 years or more after the date of approval

of the application;

- (m) groundwater recharge permits;
- (n) applications for a well driller's license, annual renewal of a well driller's license, and late annual renewal of a well driller's license;
- (o) certification of copies;
- (p) preparing copies of documents;
- (q) reports of water right conveyance; and
- (r) requests for a livestock water use certificate under Section 73-3-31.

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

(3) Fees collected under this section:

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

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

(i) meet the publication of notice requirements under this title;

(ii) process reports of water right conveyance;

(iii) process a request for a livestock water use certificate; and

(iv) hire an employee to assist with processing an application.

Amended by Chapter 183, 2009 General Session

73-2-15. Agreements with federal and state agencies -- Investigations, surveys or adjudications.

The state engineer, for and on behalf of the state of Utah, with the approval of the executive director of natural resources and the governor, is authorized to enter into agreements with any federal or state agency, subdivision or institution for cooperation in making snow surveys and investigations of both underground and surface water resources of the state. The state engineer is further

authorized to cooperate with such agencies, subdivisions and institutions, with the approval of the executive director and the governor, for the investigation of flood and erosion control and for the adjudication of water rights. The expenses of such investigations, surveys and adjudications shall be divided between the cooperating parties upon an equitable basis.

Amended by Chapter 198, 1969 General Session

73-2-16. Arbitration -- Confirmation by district court.

The state engineer is authorized to conduct informal proceedings for the arbitration or settlement of disputes over water or the distribution thereof; provided all persons having an interest in the water in controversy shall in writing agree to any settlement effected thereby, and provided further that settlements shall be confirmed by decree of a court of competent jurisdiction.

No Change Since 1953

73-2-17. Authorization of cooperative investigations of groundwater resources.

The state engineer, for and on behalf of the state of Utah, with the approval of the executive director and the governor, is authorized and directed to enter into an agreement with the United States geological survey or any other federal or state agency, for cooperation in making investigations of the groundwater resources of the state and reporting thereon.

Amended by Chapter 198, 1969 General Session

73-2-20. Employees authorized to enter and cross lands -- Injuring monuments a crime.

(1) In order to carry out the purposes of this title any person properly employed hereunder is authorized to enter and cross all lands within the state if no damage is done to private property.

(2) It is a crime punishable under Section 73-2-27 for any person to knowingly or intentionally remove or injure any equipment, permanent marks, or monuments made or installed by

any person properly employed under this title.

Amended by Chapter 215, 2005 General Session

73-2-22. Emergency flood powers -- Action to enforce orders -- Access rights to private and public property -- Injunctive relief against state engineer's decisions -- Judicial review provisions not applicable.

Whenever the state engineer, with approval of the chairman of the Disaster Emergency Advisory Council, makes a written finding that any reservoir or stream has reached or will reach during the current water year a level far enough above average and in excess of capacity that public safety is or is likely to be endangered or that substantial property damage is occurring or is likely to occur, he shall have emergency powers until the danger to the public and property is abated. Emergency powers shall consist of the authority to control stream flow and reservoir storage or release. The state engineer must protect existing water rights to the maximum extent possible when exercising emergency powers. Any action taken by the state engineer under this section shall be by written order.

If any person refuses or neglects to comply with any order of the state engineer issued pursuant to his emergency powers, the state engineer may bring action in the name of the state in the district court to enforce them. In carrying out his emergency powers, the state engineer shall have rights of access to private and public property.

Any person affected by a decision of the state engineer made under his emergency powers shall have the right to seek injunctive relief, including temporary restraining orders and temporary injunctions in any district court of the county where that person resides. No order of the state engineer shall be enjoined or set aside unless shown by clear and convincing evidence that an emergency does not in fact exist or that the order of the state engineer is arbitrary or capricious. The provisions of Sections 73-3-14 and 73-3-15 shall not be applicable to any order of the state engineer issued pursuant to this section.

Enacted by Chapter 33, 1984 General Session

73-2-22.1. Assistance of state engineer in management of flood waters.

In addition to his other flood management authority provided for in Section 73-2-22, the state engineer may assist in the management of flood waters pursuant to court judgments and decrees.

Enacted by Chapter 172, 1985 General Session

73-2-23. Emergency powers of state engineer -- Multi-county flood mitigation activities -- Termination of assistance.

(1) In addition to the emergency powers under Section 73-2-22, the state engineer shall assist counties in emergency flood mitigation on intercounty waterways when all the following conditions exist:

- (a) two or more counties are involved;
- (b) the flood mitigation activity has or may have adverse effect on the county;
- (c) the county executive of that adversely impacted county requests the state engineer's involvement;
- (d) the requesting county is providing an ongoing flood control program with jurisdiction-wide funding equivalent to .0004 per dollar of taxable value of taxable property; and
- (e) the requesting county has established a flood control program through zoning.

(2) Multi-county flood mitigation activities by the state engineer shall include:

- (a) assisting the counties in emergency flood mitigation planning;
- (b) furnishing engineering or other technical services;
- (c) making recommendations in emergency situations, and, if requested, participating in making emergency flood control decisions; and

(d) in the event a decision is not reached, the final decision-making authority.

(3) The assistance or involvement will cease when in the state engineer's judgment the flood conditions or potential for flooding subsides or when the county governing bodies of all

affected counties request that the jurisdiction cease.

Amended by Chapter 227, 1993 General Session

73-2-23.1. Assistance of state engineer in management of flood waters.

In addition to his other flood management authority under Sections 73-2-22 and 73-2-23, the state engineer may assist in the management of flood waters pursuant to court judgments and decrees.

Enacted by Chapter 228, 1985 General Session

73-2-25. State engineer enforcement powers.

(1) For purposes of this section, "initial order" means one of the following issued by the state engineer:

- (a) a notice of violation; or
- (b) a cease and desist order.

(2)(a) The state engineer may commence an enforcement action under this section if the state engineer finds that a person:

(i) is diverting, impounding, or using water for which no water right has been established;

(ii) is diverting, impounding, or using water in violation of an existing water right;

(iii) violates Section 73-5-4;

(iv) violates Section 73-5-9;

(v) violates a written distribution order from the state engineer;

(vi) violates an order issued under Section 73-3-29 regarding the alteration of the bed or bank of a natural stream channel;

(vii) violates a notice or order regarding dam safety issued under Chapter 5a, Dam Safety;

(viii) fails to submit a report required by Section 73-3-25;

or

(ix) engages in well drilling without a license required by Section 73-3-25.

(b) To commence an enforcement action under this section, the state engineer shall issue an initial order, which shall

include:

- (i) a description of the violation;
- (ii) notice of any penalties to which a person may be subject under Section 73-2-26; and
- (iii) notice that the state engineer may treat each day's violation of the provisions listed in Subsection (2)(a) as a separate violation under Subsection 73-2-26(1)(d).

(c) The state engineer's issuance and enforcement of an initial order is exempt from Title 63G, Chapter 4, Administrative Procedures Act.

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the state engineer shall make rules necessary to enforce an initial order, which shall include:

(a) provisions consistent with this section and Section 73-2-26 for enforcement of the initial order if a person to whom an initial order is issued fails to respond to the order or abate the violation;

(b) the right to a hearing, upon request by a person against whom an initial order is issued; and

(c) provisions for timely issuance of a final order after:

(i) the person to whom the initial order is issued fails to respond to the order or abate the violation; or

(ii) a hearing held under Subsection (3)(b).

(4) A person may not intervene in an enforcement action commenced under this section.

(5) After issuance of a final order under rules made pursuant to Subsection (3)(c), the state engineer shall serve a copy of the final order on the person against whom the order is issued by:

(a) personal service under Utah Rules of Civil Procedure 5; or

(b) certified mail.

(6)(a) The state engineer's final order may be reviewed by trial de novo by the district court in:

(i) Salt Lake County; or

(ii) the county where the violation occurred.

(b) A person shall file a petition for judicial review of

the state engineer's final order issued under this section within 20 days from the day on which the final order was served on that person.

(7) The state engineer may bring suit in a court of competent jurisdiction to enforce a final order issued under this section.

(8) If the state engineer prevails in an action brought under Subsection (6)(b) or (7), the state may recover all court costs and a reasonable attorney fee.

Amended by Chapter 282, 2008 General Session

Amended by Chapter 382, 2008 General Session

73-2-26. Administrative penalties.

(1)(a) As part of a final order issued under Section 73-2-25, the state engineer may order that a person to whom an order is issued:

(i) pay an administrative fine not to exceed:

(A) \$5,000 for each knowing violation; or

(B) \$1,000 for each violation that is not knowing;

(ii) replace up to 200% of water taken; and

(iii) be liable for any expense incurred by the state engineer or division in investigating and stopping the violation.

(b) The definition of "knowingly" under Subsection 76-2-103(2) shall apply to determinations under Subsection (1)(a)(i).

(c) The penalties described in Subsection (1)(a) shall be in addition to:

(i) any criminal penalty established for a violation described in Subsection (1); and

(ii) any private right of action.

(d)(i) Each day of a continuing violation of the provisions described in Subsection 73-2-25(2)(a) or an initial or final order issued under Section 73-2-25 is a separate violation.

(ii) A penalty may not be imposed for a violation of the provisions listed in Subsection 73-2-25(2)(a) or an initial or a final order issued under Section 73-2-25 for a violation occurring more than 12 months before the day on which a notice of violation is

issued.

(e) Separate violations under Subsection (1)(d) may be consolidated for resolution in one enforcement proceeding under Section 73-2-25.

(f) The state engineer has discretion to pursue an administrative fine, order requiring replacement, or both.

(2) Before imposing a fine or ordering replacement under Subsection (1), the state engineer shall consider:

(a) the value or quantity of water unlawfully taken, including the cost or difficulty of replacing the water;

(b) the gravity of the violation, including the economic injury or impact to others;

(c) whether the person subject to fine or replacement attempted to comply with the state engineer's orders; and

(d) the violator's economic benefit from the violation.

(3)(a) The state engineer may require that the water unlawfully taken be replaced after:

(i) a person fails to request judicial review of a final order issued under Section 73-2-25; or

(ii) the completion of judicial review, including any appeals.

(b) The state engineer's order shall require that replacement of water begin within one year of the day on which:

(i) the time period for requesting judicial review of a final order issued under Section 73-2-25 expires without a person requesting judicial review of the final order; or

(ii) the completion of judicial review, including any appeals.

(4) Water replaced under Subsection (3) shall be taken from water that the person subject to the order requiring replacement would be entitled to use during the replacement period.

(5)(a) If the state engineer issues an order requiring replacement, a copy of the order shall be placed in the Division of Water Rights' water rights records.

(b) The order requiring replacement shall constitute a

lien upon the water right affected if the state engineer files a notice of lien in the office of the county recorder in the county where the place of use of the water right is located.

(c) A notice of lien under Subsection (5)(b) shall include a legal description of the place of use of the water right.

(6) Any money collected under this section shall be deposited into the General Fund.

Enacted by Chapter 33, 2005 General Session

73-2-27. Criminal penalties.

(1) This section applies to offenses committed under:

- (a) Section 73-1-14;
- (b) Section 73-1-15;
- (c) Section 73-2-20;
- (d) Subsection 73-3-3(9);
- (e) Section 73-3-26;
- (f) Section 73-3-29;
- (g) Section 73-5-9;
- (h) Section 76-10-201;
- (i) Section 76-10-202; and
- (j) Section 76-10-203.

(2) Under circumstances not amounting to an offense with a greater penalty under Subsection 76-6-106(2)(b)(ii) or Section 76-6-404, violation of a provision listed in Subsection (1) is punishable:

(a) as a felony of the third degree if:

(i) the value of the water diverted or property damaged or taken is \$2,500 or greater; and

(ii) the person violating the provision has previously been convicted of violating the same provision;

(b) as a class A misdemeanor if:

(i) the value of the water diverted or property damaged or taken is \$2,500 or greater; or

(ii) the person violating the provision has previously been convicted of violating the same provision; or

(c) as a class B misdemeanor if Subsection (2)(a) or (b)

does not apply.

Enacted by Chapter 215, 2005 General Session

73-2-28. Costs and fees in civil actions.

The prevailing party in a civil action is entitled to collect reasonable costs and attorney fees, if that action is brought:

- (1) under Section 73-1-14;
- (2) under Section 73-1-15;
- (3) for injuries caused by a diversion of water for which no water right has been established;
- (4) for injuries caused by a diversion of water in violation of an existing water right; or
- (5) for injuries caused by a violation of a written distribution order from the state engineer.

Enacted by Chapter 33, 2005 General Session

73-2-29. Agreement with another state -- Regulation, distribution, and administration of interstate water.

(1) The state engineer, after receiving approval from the executive director of the Department of Natural Resources and the governor, may enter into an agreement with another state to regulate, distribute, and administer the water from an interstate surface water source that is not otherwise subject to an interstate compact.

(2) The state engineer may coordinate with another state to implement:

- (a) the terms of an agreement entered into according to Subsection (1); and
- (b) an interstate compact that regulates, distributes, or administers an interstate surface water source.

Enacted by Chapter 67, 2008 General Session

CHAPTER 3 APPROPRIATION

73-3-1. Appropriation -- Manner of acquiring water rights.

(1) A person may acquire a right to the use of the unappropriated public waters in this state only as provided for in this title.

(2) The appropriation of public waters in the state shall comply with the requirements of this title.

(3) Except as provided in Subsection (7), a person obtaining, initiating the use of, or providing notice of intent to appropriate a water right shall comply with the requirements of this chapter.

(4) An appropriation may be made only for a useful and beneficial purpose.

(5)(a) Between appropriators, the one first in time is first in rights.

(b) A use designated by an application to appropriate any of the unappropriated waters of the state that would materially interfere with a more beneficial use of the water shall be dealt with as provided in Section 73-3-8.

(6) A person may not acquire a right to the use of water either appropriated or unappropriated by adverse use or adverse possession.

(7) Notwithstanding Section 73-3-2, a person may directly capture and store precipitation as provided in Section 73-3-1.5.

Amended by Chapter 19, 2010 General Session

73-3-1.5. Capture and storage of precipitation.

(1) As used in this section, "parcel" means an identifiable contiguous unit of property that is treated as separate for valuation or zoning purposes and includes an improvement on that unit of property.

(2) Notwithstanding Section 73-3-2, a person may:

(a) directly capture and store precipitation on a parcel

owned or leased by the person in accordance with Subsection (3) or (4); and

(b) place the water captured and stored as provided in Subsection (2)(a) to beneficial use on the parcel on which the water is captured and stored.

(3) If a person collects or stores precipitation in an underground storage container, the person may collect and store precipitation:

(a) in only one underground storage container for a parcel if the underground storage container:

(i) has a maximum capacity of no more than 2,500 gallons; and

(ii) is installed in accordance with relevant building codes adopted under Title 58, Chapter 56, Utah Uniform Building Standards Act; and

(b) after registering for the capture and storage of precipitation in accordance with Subsection (5).

(4) If a person collects or stores precipitation in a covered storage container, the person may collect and store precipitation in no more than two covered storage containers, if the maximum storage capacity of any one covered storage container is not greater than 100 gallons.

(5)(a) The state engineer shall provide a website on which a person may register as required by Subsection (3).

(b) To register, a person shall complete information required by the state engineer including the:

(i) name and address of the person capturing or storing precipitation;

(ii) total capacity of all containers storing precipitation; and

(iii) street address or other suitable description of the location where precipitation is to be captured and stored.

Enacted by Chapter 19, 2010 General Session

73-3-2. Application for right to use unappropriated public water -- Necessity -- Form -- Contents -- Validation of prior applications by state or United States or officer or agency thereof.

(1)(a) In order to acquire the right to use any unappropriated public water in this state, any person who is a citizen of the United States, or who has filed his declaration of intention to become a citizen as required by the naturalization laws, or any association of citizens or declarants, or any corporation, or the state of Utah by the directors of the divisions of travel development, business and economic development, wildlife resources, and state lands and forestry, or the executive director of the Department of Transportation for the use and benefit of the public, or the United States of America shall make an application in a form prescribed by the state engineer before commencing the construction, enlargement, extension, or structural alteration of any ditch, canal, well, tunnel, or other distributing works, or performing similar work tending to acquire such rights or appropriation, or enlargement of an existing right or appropriation.

(b) The application shall be upon a form to be furnished by the state engineer and shall set forth:

(i) the name and post office address of the person, corporation, or association making the application;

(ii) the nature of the proposed use for which the appropriation is intended;

(iii) the quantity of water in acre-feet or the flow of water in second-feet to be appropriated;

(iv) the time during which it is to be used each year;

(v) the name of the stream or other source from which the water is to be diverted;

(vi) the place on the stream or source where the water is to be diverted and the nature of the diverting works;

(vii) the dimensions, grade, shape, and nature of the proposed diverting channel; and

(viii) other facts that clearly define the full purpose of the proposed appropriation.

(2)(a) In addition to the information required in Subsection (1)(b), if the proposed use is for irrigation, the application shall show:

(i) the legal subdivisions of the land proposed to be irrigated, with the total acreage thereof; and

(ii) the character of the soil.

(b) In addition to the information required in Subsection (1)(b), if the proposed use is for developing power, the application shall show:

(i) the number, size, and kind of water wheels to be employed and the head under which each wheel is to be operated;

(ii) the amount of power to be produced;

(iii) the purposes for which and the places where it is to be used; and

(iv) the point where the water is to be returned to the natural stream or source.

(c) In addition to the information required in Subsection (1)(b), if the proposed use is for milling or mining, the application shall show:

(i) the name of the mill and its location or the name of the mine and the mining district in which it is situated;

(ii) its nature; and

(iii) the place where the water is to be returned to the natural stream or source.

(d)(i) The point of diversion and point of return of the water shall be designated with reference to the United States land survey corners, mineral monuments or permanent federal triangulation or traverse monuments, when either the point of diversion or the point of return is situated within six miles of the corners and monuments.

(ii) If the point of diversion or point of return is located in unsurveyed territory, the point may be designated with reference to a permanent, prominent natural object.

(iii) The storage of water by means of a reservoir shall be regarded as a diversion, and the point of diversion in those cases is the point where the longitudinal axis of the dam crosses the

center of the stream bed.

(iv) The point where released storage water is taken from the stream shall be designated as the point of redirection.

(v) The lands to be inundated by any reservoir shall be described as nearly as may be, and by government subdivision if upon surveyed land. The height of the dam, the capacity of the reservoir, and the area of the surface when the reservoir is filled shall be given.

(vi) If the water is to be stored in an underground area or basin, the applicant shall designate, with reference to the nearest United States land survey corner if situated within six miles of it, the point of area of intake, the location of the underground area or basin, and the points of collection.

(e) Applications for the appropriation of water filed prior to the enactment of this title, by the United States of America, or any officer or agency of it, or the state of Utah, or any officer or agency of it, are validated, subject to any action by the state engineer.

Amended by Chapter 136, 2001 General Session

73-3-3. Permanent or temporary changes in point of diversion, place of use, or purpose of use.

(1) For purposes of this section:

(a) "Permanent change" means a change for an indefinite period of time with an intent to relinquish the original point of diversion, place of use, or purpose of use.

(b) "Temporary change" means a change for a fixed period of time not exceeding one year.

(2)(a) Any person entitled to the use of water may make permanent or temporary changes in the:

(i) point of diversion;

(ii) place of use; or

(iii) purpose of use for which the water was originally appropriated.

(b) Except as provided by Section 73-3-30, a change may not be made if it impairs a vested water right without just compensation.

(3) A person entitled to use water shall change a point of diversion, place of use, or purpose of water use, including water involved in a general adjudication or other suit, in the manner provided in this section.

(4)(a) A person entitled to use water may not make a change unless the state engineer approves the change application.

(b) A person entitled to use water shall submit a change application upon forms furnished by the state engineer and shall set forth:

- (i) the applicant's name;
 - (ii) the water right description;
 - (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, purpose, and extent of the present use;
 - (viii) the place, purpose, and extent of the proposed use;
- and
- (ix) any other information that the state engineer requires.

(5)(a) The state engineer shall follow the same procedures, and the rights and duties of the applicants with respect to applications for permanent changes of point of diversion, place of use, or purpose of use shall be the same, as provided in this title for applications to appropriate water.

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

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

(b) If the state engineer finds that the temporary change will not impair a vested water right, the state engineer shall issue an order authorizing the change.

(c) If the state engineer finds that the change sought

might impair a vested water right, before authorizing the change, the state engineer shall give notice of the application to any person whose right may be affected by the change.

(d) Before making an investigation or giving notice, the state engineer may require the applicant to deposit a sum of money sufficient to pay the expenses of the investigation and publication of notice.

(7)(a) Except as provided by Section 73-3-30, the state engineer may not reject a permanent or temporary change application for the sole reason that the change would impair a vested water right.

(b) If otherwise proper, the state engineer may approve a permanent or temporary change application for part of the water involved or upon the condition that the applicant acquire the conflicting water right.

(8)(a) A person holding an approved application for the appropriation of water may change the point of diversion, place of use, or purpose of use.

(b) A change of an approved application does not:

(i) affect the priority of the original application; or

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

(9) Any person who changes or who attempts to change a point of diversion, place of use, or purpose of use, either permanently or temporarily, without first applying to the state engineer in the manner provided in this section:

(a) obtains no right;

(b) is guilty of a crime punishable under Section 73-2-27 if the change or attempted change is made knowingly or intentionally; and

(c) is guilty of a separately punishable offense for each day of the unlawful change.

(10)(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) Any replacement well must be drilled in accordance

with the requirements of Section 73-3-28.

Amended by Chapter 311, 2008 General Session

73-3-3.5. Application for a change of point of diversion, place of use, or purpose of use of water in a water company made by a shareholder.

(1) As used in this section:

(a) "Shareholder" means the owner of a share of stock, or other evidence of stock ownership, that entitles the person to a proportionate share of water in a water company.

(b) "Water company" means any company, operating for profit or not for profit, in which a shareholder has the right to receive a proportionate share, based on that shareholder's ownership interest, of water delivered by the company.

(2) A shareholder who seeks to change the point of diversion, place of use, or purpose of use of the shareholder's proportionate share of water in the water company shall submit a request for the change, in writing, to the water company. This request shall include the following information:

(a) the details of the requested change, which may include the point of diversion, period of use, place, or nature of use;

(b) the quantity of water sought to be changed;

(c) the certificate number of the stock affected by the change;

(d) a description of the land proposed to be retired from irrigation pursuant to Section 73-3-3, if the proposed change in place or nature of use of the water involves a situation where the water was previously used for irrigation;

(e) an agreement by the shareholder to continue to pay all applicable corporate assessments on the share affected by the change; and

(f) any other information that the water company may reasonably need to evaluate the requested change application.

(3)(a) A water company shall make a decision and provide written notice of that decision on a shareholder's request for a

change application within 120 days from receipt of the request.

(b) Based on the facts and circumstances of each proposed change, a water company may take the following action:

- (i) approve the change request;
- (ii) approve the change request with conditions; or
- (iii) deny the change request.

(c) If the water company fails to respond to a shareholder's request for a change application, pursuant to Subsection (3)(a), the failure to respond shall be considered to be a denial of the request.

(d) The water company may not withhold approval if any potential damage, liability, or impairment to the water company, or its shareholders, can be reasonably mitigated without cost to the water company.

(e) A water company may consider the following factors in evaluating change applications:

(i) any increased cost to the water company or its shareholders;

(ii) interference with the water company's ability to manage and distribute water for the benefit of all shareholders;

(iii) whether the proposed change represents more water than the shareholder's pro rata share of the water company's right;

(iv) impairment of either the quantity or quality of water delivered to other shareholders under the existing water rights of the water company, including rights to carrier water;

(v) whether the proposed change would cause a violation of any statute, ordinance, regulation, or order of a court or governmental agency;

(vi) whether the shareholder has or can arrange for the beneficial use of water to be retired from irrigation within the water company's service under the proposed change; or

(vii) the cumulative effects that the approval of the change application may have on other shareholders or water company operations.

(4) The water company may require that all costs associated with the change application, including costs of

submitting proof, be paid by the shareholder.

(5)(a) The shareholder requesting the change must be current on all water company assessments and agree to continue to pay all applicable future assessments, except that the shareholder may choose to prepay any portion of the water company assessments attributable to an existing debt of the water company.

(b) Other than prepaid assessments, the water company may require that the shareholder continue to pay all applicable assessments.

(6) If the water company approves the requested change, with or without conditions, the change application may be filed with the state engineer, and must:

(a) be signed on behalf of the water company; or

(b) be accompanied by written authorization from the water company assenting to the change.

(7)(a) The state engineer may evaluate a change application authorized by a water company under this section in the same manner and using the same criteria that he or she uses to evaluate any other change application.

(b) Nothing in this section shall limit the authority of the state engineer in evaluating and processing any change application.

(8) If an application authorized by a water company under this section is approved by the state engineer, the shareholder may file requests for extensions of time to submit proof of beneficial use under the change application without further permission of the water company.

(9)(a) Change applications approved under this section are subject to all conditions imposed by the water company and the state engineer.

(b) If a shareholder fails to comply with all of the conditions imposed by the water company, the water company may, after written notice to the shareholder and after allowing reasonable time to remedy the failure, withdraw its approval of the application, and petition the state engineer for an order canceling

the change application.

(c) The water company may not revoke its approval of the change application or seek an order canceling the application if the conditions are substantially satisfied.

(10)(a) The shareholder requesting the change shall have a cause of action, including an award of actual damages incurred, against the water company if the water company:

(i) unreasonably withholds approval of a requested change;

(ii) imposes unreasonable conditions in its approval; or

(iii) withdraws approval of a change application in a manner other than as provided in Subsection (9).

(b) The action referred to in Subsection (10)(a) shall be referred to mediation by the court under Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act, unless both parties decline mediation.

(c) If mediation is declined, the prevailing party to the action shall be entitled to costs and reasonable attorney fees.

Amended by Chapter 3, 2008 General Session

73-3-4. "Received," "filed" defined.

Whenever in this title the word "received" is used with reference to any paper deposited in the office of the state engineer, it shall be deemed to mean the date when such paper was first deposited in the state engineer's office; and whenever the term "filed" is used, it shall be deemed to mean the date when such paper was acceptably completed in form and substance and filed in said office.

No Change Since 1953

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

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

(2) It shall be the duty of the state engineer to examine

the application and determine whether any corrections, amendments or changes are required for clarity and if so, see that such changes are made before further processing.

(3) All applications which shall comply with the provisions of this chapter and with the regulations of the state engineer shall be filed and recorded.

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

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

Amended by Chapter 136, 2001 General Session

73-3-5.5. Temporary applications to appropriate water -- Approval by engineer -- Expiration -- Proof of appropriation not required.

(1) The state engineer may issue temporary applications to appropriate water for beneficial purposes.

(2) The provisions of this chapter governing regular applications to appropriate water shall apply to temporary applications with the following exceptions:

(a)(i) The state engineer shall undertake a thorough investigation of the proposed appropriation, and if the temporary application complies with the provisions of Section 73-3-8, may make an order approving the application.

(ii) If the state engineer finds that the appropriation sought might impair other rights, before approving the application, the state engineer shall give notice of the application to all persons

whose rights may be affected by the temporary appropriations.

(b) The state engineer may issue a temporary application for a period of time not exceeding one year.

(c)(i) The state engineer, in the approval of a temporary application, may make approval subject to whatever conditions and provisions he considers necessary to fully protect prior existing rights.

(ii) If the state engineer determines that it is necessary to have a water commissioner distribute the water under a temporary application for the protection of other vested rights, the state engineer may assess the distribution costs against the holder of the temporary application.

(d)(i) A temporary application does not vest in its holder a permanent vested right to the use of water.

(ii) A temporary application automatically expires and is cancelled according to its terms.

(e) Proof of appropriation otherwise required under this chapter is not required for temporary applications.

Amended by Chapter 161, 1987 General Session

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

(1) As used in this section:

(a) "Application" means an application to:

(i) appropriate a small amount of water; or

(ii) permanently change a small amount of water.

(b) "Livestock water right" means a right for:

(i) livestock to consume water:

(A) directly from the water source; or

(B) from an impoundment into which the water is diverted; and

(ii) associated uses of water related to the raising and care of livestock.

(c) "Proof" means proof of:

(i) appropriation; or

(ii) permanent change.

(d) "Small amount of water" means the amount of

water necessary to meet the requirements of:

- (i) one residence;
 - (ii) 1/4 acre of irrigable land; and
 - (iii) a livestock watering right for:
 - (A) 10 cattle; or
 - (B) the equivalent amount of water of Subsection (1)(d)(iii)(A) for livestock other than cattle.
- (2) The state engineer may approve an application if:
- (a) the state engineer undertakes a thorough investigation of the application;
 - (b) notice is provided in accordance with Subsection (3);
 - (c) the application complies with the state engineer's regional policies and restrictions and Section 73-3-3 or 73-3-8, as applicable; and
 - (d) the application does not conflict with a political subdivision's ordinance:
 - (i) for planning, zoning, or subdivision regulation; or
 - (ii) under Section 10-8-15.
- (3)(a) Advertising of an application specified in Subsection (2) is at the discretion of the state engineer.
- (b) If the state engineer finds that the uses proposed by the application may impair other rights, before approving the application, the state engineer shall give notice of the application according to Section 73-3-6.
- (4) An applicant receiving approval under this section is responsible for the time limit for construction and submitting proof as required by Subsection (6).
- (5) Sixty days before the end of the time limit for construction, the state engineer shall notify the applicant by mail when proof is due.
- (6)(a) Notwithstanding Section 73-3-16, the state engineer shall issue a certificate under Section 73-3-17 if an applicant files an affidavit, on a form provided by the state engineer, as proof.
- (b) The affidavit shall:
 - (i) specify the amount of:
 - (A) irrigated land; and

- (B) livestock watered; and
- (ii) declare the residence is constructed and occupied.

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

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

(8)(a) An applicant whose application lapses may file a request with the state engineer to reinstate the application, if the applicant demonstrates that the applicant or the applicant's predecessor in interest:

- (i) constructed and occupied a residence within the time limit for construction; and

- (ii) beneficially uses the water.

(b) If an applicant meets the requirements of Subsection (8)(a) and submits an affidavit as provided by Subsection (6), the state engineer shall issue a certificate:

- (i) for the amount of water actually in use as described in the affidavit; and

- (ii) with a priority date of the day on which the applicant files the request for reinstatement of the application.

Amended by Chapter 367, 2009 General Session

73-3-6. Publication of notice of application -- Corrections or amendments of applications.

(1)(a) When an application is filed in compliance with this title, the state engineer shall publish a notice of the application:

- (i) once a week for a period of two successive weeks in a newspaper of general circulation in the county in which the source of supply is located, and where the water is to be used; and

- (ii) in accordance within Section 45-1-101 for two weeks.

- (b) The notice shall:

- (i) state that an application has been made; and

- (ii) specify where the interested party may obtain

additional information relating to the application.

(c) Clerical errors, ambiguities, and mistakes that do not prejudice the rights of others may be corrected by order of the state engineer either before or after the publication of notice.

(2) After publication of notice to water users, the state engineer may authorize amendments or corrections that involve a change of point of diversion, place, or purpose of use of water, only after republication of notice to water users.

Amended by Chapter 388, 2009 General Session

73-3-7. Protests.

(1) Any person interested may file a protest with the state engineer:

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

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

(2) The state engineer shall consider the protest and shall approve or reject the application.

Amended by Chapter 19, 1995 General Session

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.

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

(i) 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 is physically and economically feasible, unless the application is filed by the United States Bureau of Reclamation, and would not prove detrimental to the public welfare;

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

(v) the application was filed in good faith and not for

purposes of speculation or monopoly.

(b)(i) 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 to appropriate water will interfere with its more beneficial use for irrigation, 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, it is the state engineer's duty to withhold approval or rejection of the application until the state engineer has investigated the matter.

(ii) 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, 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) No extension shall 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 in the event of the failure of the applicant to comply with terms of the royalty contract.

Amended by Chapter 136, 2007 General Session

73-3-10. Approval or rejection of application.

(1) When the approval or rejection of an application is decided, a record of the decision shall be made in the state engineer's office.

(2) The state engineer's decision shall be mailed to the applicant.

(3) If the application is approved, the applicant shall be authorized upon receipt of the decision to:

(a) proceed with the construction of the necessary works;

(b) take any steps required to apply the water to the use named in the application; and

(c) perfect the proposed application.

(4) If the application is rejected, the applicant shall take no steps toward the prosecution of the proposed work or the diversion and use of the public water under the application.

(5) The state engineer shall state in any decision approving an application the time within which the construction work must be completed and the water applied to beneficial use.

Amended by Chapter 48, 1997 General Session

73-3-11. Statement of financial ability of applicants.

Before either approving or rejecting an application the state

engineer may require such additional information as will enable him properly to guard the public interests, and may require a statement of the following facts: In case of an incorporated company, he may require the submission of the articles of incorporation, the names and places of residence of its directors and officers, and the amount of its authorized and its paid-up capital. If the applicant is not a corporation, he may require a showing as to the names of the persons proposing to make the appropriation and a showing of facts necessary to enable him to determine whether or not they are qualified appropriators and have the financial ability to carry out the proposed work, and whether or not the application has been made in good faith.

No Change Since 1953

73-3-12. Time limit on construction and application to beneficial use -- Extensions -- Procedures and criteria.

(1) As used in this section:

(a) "Public water supplier" is as defined in Section 73-1-4.

(b) "Wholesale electrical cooperative" is as defined in Section 54-2-1.

(2)(a) Within the time set by the state engineer under Subsection 73-3-10(5), an applicant shall:

(i) construct works, if necessary;

(ii) apply the water to beneficial use; and

(iii) file proof with the state engineer in accordance with Section 73-3-16.

(b) Except as provided by Subsection (4), the state engineer shall extend the time in which an applicant shall comply with Subsection (2)(a) if:

(i) the date set by the state engineer is not after 50 years from the day on which the application is approved; and

(ii) the applicant shows:

(A) reasonable and due diligence in completing the appropriation; or

(B) a reasonable cause for delay in completing the

appropriation.

(c) An applicant shall file a request for an extension of time with the state engineer on or before the date set for filing proof.

(d) The state engineer may grant an extension of time authorized by Subsection (2)(b) if the state engineer sets a date:

(i) no later than 14 years from the day on which the application is approved if the applicant meets the requirements of Subsection (2)(b); and

(ii) after 14 years from the day on which the application is approved if:

(A) the applicant meets the requirements of Subsection (2)(b); and

(B) the state engineer publishes notice as provided in Subsection (2)(e).

(e)(i) The state engineer shall publish a notice of the request for an extension of time:

(A) once a week for two successive weeks, in a newspaper of general circulation, in the county:

(I) in which the water source is located; and

(II) where the water will be used; and

(B) in accordance with Section 45-1-101 for two weeks.

(ii) The notice shall:

(A) state that a request for an extension of time has been made; and

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

(f) A person who owns a water right or holds an application from the water source referred to in Subsection (2)(e) may file a protest with the state engineer:

(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.

(g) The approved extension of time is effective so long as the applicant continues to exercise reasonable and due diligence

in completing the appropriation.

(h) The state engineer shall consider the holding of an approved application by a public water supplier or a wholesale electrical cooperative to meet the reasonable future water or electricity requirements of the public to be reasonable and due diligence in completing the appropriation for the purposes of this section for 50 years from the date on which the application is approved.

(i) If the state engineer finds unreasonable delay or lack of reasonable and due diligence in completing the appropriation, the state engineer may:

(i) deny the extension of time; or

(ii) grant the request in part or upon conditions, including a reduction of the priority of all or part of the application.

(3) Except as provided by Subsection (4), an application upon which proof has not been filed shall lapse and have no further force or effect after 50 years from the date on which the application is approved.

(4)(a) If the works are constructed with which to make beneficial use of the water applied for, the state engineer may, upon showing of that fact, extend the time in which to file proof by setting a date after 50 years from the day on which the application is approved.

(b)(i) The state engineer may extend the time in which the applicant shall comply with Subsection (2)(a) by setting a date after 50 years from the day on which the application is approved if the applicant:

(A) is:

(I) a public water supplier; or

(II) a wholesale electrical cooperative; and

(B) provides information that shows the water applied for in the application is needed to meet the reasonable future requirements of the public.

(ii) The information provided by a public water supplier shall be in accordance with the criteria listed in Subsection 73-1-4(2)(f).

(c) The state engineer shall extend the time in which to file proof by setting a reasonable date after 50 years from the day on which the application is approved if the applicant:

(i) meets the requirements in Subsection (4)(b); and

(ii) has:

(A) constructed works to apply the water to beneficial use; or

(B) made substantial expenditures to construct the works.

Amended by Chapter 247, 2009 General Session

Amended by Chapter 388, 2009 General Session

73-3-13. Protests -- Procedure.

(1) Any other applicant, or any user of water from any river system or water source may file a request for agency action with the state engineer alleging that such work is not being diligently prosecuted to completion.

(2) Upon receipt of the request for agency action, the state engineer shall give the applicant notice and hold an adjudicative proceeding.

(3) If diligence is not shown by the applicant, the state engineer may declare the application and all rights under it forfeited.

Amended by Chapter 161, 1987 General Session

73-3-14. Judicial review of state engineer order.

(1)(a) A person aggrieved by an order of the state engineer may obtain judicial review in accordance with Title 63G, Chapter 4, Administrative Procedures Act, and this section.

(b) Venue for judicial review of an informal adjudicative proceeding is in the county in which the water source or a portion of the water source is located.

(2) The state engineer shall be joined as a respondent in a petition to review the state engineer's decision, but no judgment for costs or expenses of the litigation may be rendered against the state engineer.

(3) A person who files a petition for judicial review as

authorized in this section shall:

(a) name the state engineer as a respondent; and

(b) provide written notice in accordance with Subsection (5) to each person who filed a protest in accordance with Section 73-3-7 of:

(i) the filing of the petition for judicial review; and

(ii) the opportunity to intervene in accordance with Utah Rules of Civil Procedure, Rule 24.

(4) In addition to the requirements of Subsection (3), a protestant in the adjudicative proceeding who files a petition for judicial review shall also name as a respondent the person:

(a) who requested the adjudicative proceeding; or

(b) against whom the state engineer brought the adjudicative proceeding.

(5) The written notice required by this section shall:

(a) be mailed:

(i) within the time provided for by Utah Rules of Civil Procedure, Rule 4(b); and

(ii) to the address on record with the state engineer's office at the time the order is issued; and

(b) include:

(i) a copy of the petition; and

(ii) the address of the court in which the petition is pending.

(6) If a person who files a petition for judicial review fails to provide notice as required by this section, the court shall dismiss the petition without prejudice upon:

(a) the motion of a party;

(b) the special appearance of a person who:

(i) participated in the adjudicative proceeding; and

(ii) is not a party; or

(c) the court's own motion.

(7) A person who files a petition for judicial review is not required to:

(a) notwithstanding Subsection 63G-4-401(3)(b), name a respondent that is not required by this section; and

(b) notwithstanding Subsection 63G-4-402(2)(a)(iv),

identify all parties to the adjudicative proceeding.

Amended by Chapter 165, 2008 General Session

Amended by Chapter 382, 2008 General Session

73-3-15. Dismissal of action for review of informal adjudicative proceedings.

(1) An action to review a decision of the state engineer from an informal adjudicative proceeding may be dismissed upon the application of any of the parties upon the grounds provided in Utah Rules of Civil Procedure, Rule 41 for:

- (a) the dismissal of actions generally; and
- (b) failure to prosecute the action with diligence.

(2) For the purpose of this section, failure to prosecute a suit to trial within two years after it is filed gives rise to a rebuttable presumption of a lack of diligence.

(3) In evaluating the rebuttable presumption, the court shall consider the totality of the circumstances.

Amended by Chapter 248, 2009 General Session

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 when proof of completion of the works and application of the water to a beneficial use is due.

(2) On or before the date set for completing the proof in accordance with the application, the applicant shall file proof with the state engineer on forms furnished by 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 applying the water to beneficial use;

and

(d)(i) detailed measurements of water put to beneficial use;

(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 Title 73, 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).

(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

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

(c) The completed proof shall conform to rules established by the state engineer.

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

(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) The completed proof shall conform to rules and standards established by the state engineer.

(8) In those areas in which general determination proceedings are pending, or have been concluded, under Title 73, 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 Title 73, Chapter 4, Determination of Water Rights, in lieu of proof of appropriation or proof of change.

(9) This section does not apply to an instream flow water right authorized by Section 73-3-30.

Amended by Chapter 108, 2010 General Session

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

(1) Upon it being made to appear to 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 73-3-16 or 73-3-30, 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;

(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) projects constructed according to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;

(b) federal projects 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 under this section does not extend the rights described in the application.

(4) Failure to file proof of appropriation or proof of change of the water on or before the date set therefor shall cause the application to lapse.

(5) One copy of a certificate issued under this section shall be filed in the office of the state engineer and the other shall be delivered to the appropriator or to the person making the change who shall, within 30 days, cause the same to be recorded in the office of the county recorder of the county in which the water is diverted from the natural stream or source.

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

Amended by Chapter 108, 2010 General Session

73-3-18. Lapse of application -- Notice -- Reinstatement -- Priorities -- Assignment of application -- Filing and recording -- Constructive notice -- Effect of failure to record.

When an application lapses for failure of the applicant to comply with the provisions of this title or the order of the state engineer, notice of such lapsing shall forthwith be given to the applicant by regular mail. Within 60 days after such notice the state engineer may, upon a showing of reasonable cause, reinstate the application with the date of priority changed to the date of reinstatement. The original priority date of a lapsed or forfeited application shall not be reinstated, except upon a showing of fraud or mistake of the state engineer. The priority of an application shall be determined by the date of receiving the written application in the state engineer's office, except as provided in Section 73-3-17 and as herein provided.

Prior to issuance of certificate of appropriation, rights claimed under applications for the appropriation of water may be

transferred or assigned by instruments in writing. Such instruments, when acknowledged or proved and certified in the manner provided by law for the acknowledgement or proving of conveyances of real estate, may be filed in the office of the state engineer and shall from time of filing of same in said office impart notice to all persons of the contents thereof. Every assignment of an application which shall not be recorded as herein provided shall be void as against any subsequent assignee in good faith and for valuable consideration of the same application or any portion thereof where his own assignment shall be first duly recorded.

Amended by Chapter 137, 1959 General Session

73-3-19. Right of entry on private property -- By applicant -- Bond -- Priority.

Whenever any applicant for the use of water from any stream or water source must necessarily enter upon private property in order to make a survey to secure the required information for making a water filing and is refused by the owner or possessor of such property such right of entry, he may petition the district court for an order granting such right, and after notice and hearing, such court may grant such permission, on security being given to pay all damage caused thereby to the owner of such property. In such case the priority of such application shall date from the filing of such petition with the district court as aforesaid.

No Change Since 1953

73-3-20. Right to divert appropriated waters into natural streams -- Requirements -- Storage in reservoir -- Information required by state engineer -- Lapse of application.

(1) Upon application in writing and approval of the state engineer, any appropriated water may, for the purpose of preventing waste and facilitating distribution, be turned from the channel of any stream or any lake or other body of water, into the channel of any natural stream or natural body of water or into a reservoir constructed across the bed of any natural stream, and commingled with its waters, and a like quantity less the quantity lost by evaporation and seepage may be taken out, either above or

below the point where emptied into the stream, body of water or reservoir. In so doing, the original water in such stream, body of water, or reservoir must not be deteriorated in quality or diminished in quantity for the purpose used, and the additional water turned in shall bear its share of the expense of maintenance of such reservoir and an equitable proportion of the cost of the reservoir site and its construction. Any person having stored his appropriated water in a reservoir for a beneficial purpose shall be permitted to withdraw the water at the times and in the quantities as his necessities may require if the withdrawal does not interfere with the rights of others.

(2) The state engineer may require the owner of record of an approved exchange application to provide information concerning the diverting works constructed, the extent to which the development under the exchange has occurred, and other information the state engineer considers necessary to insure the exchange is taking place, to establish the owner of the exchange still has a legal interest in the underlying water right used as the basis for the exchange, or to arrive at the quantity of water being exchanged. This information shall be provided by the owner of record of an approved exchange within 60 days of notification by the state engineer.

(3) The state engineer may lapse an application made pursuant to this section under the following conditions:

(a) the applicant has lost a legal interest in the underlying right used to facilitate the exchange;

(b) the exchange can no longer be carried out as stated in the application;

(c) the applicant has not complied with the conditions established in approving the exchange; or

(d) the applicant fails to provide the information as outlined in Subsection 73-3-20(2).

Amended by Chapter 140, 1985 General Session

73-3-21.1. Priorities between appropriators.

(1) As used in this section, "temporary water shortage

emergency" means a shortage of water:

(a) whether caused by drought, manmade, or naturally caused;

(b) for which the governor has declared an emergency; and

(c) that may not exceed in duration more than two consecutive calendar years.

(2)(a) Appropriators shall have priority among themselves according to the dates of their respective appropriations, so that each appropriator is entitled to receive the appropriator's whole supply before any subsequent appropriator has any right.

(b) Notwithstanding Subsection (2)(a), if there is a temporary water shortage emergency, the use of water for drinking, sanitation, and fire suppression has a preferential right over any other water right for the duration of the temporary water shortage emergency if:

(i) the water is used by:

(A) an individual water user;

(B) a county or municipality; or

(C) a public water supplier, as defined in Section 73-1-4; and

(ii) the water is used without unnecessary waste.

(c) Notwithstanding Subsection (2)(a), if there is a temporary water shortage emergency, the use of water for agricultural purposes, including irrigation and livestock water, has a preferential right over any other right, except as provided in Subsection (2)(b).

(3) A person using water preferentially during a temporary water shortage emergency shall pay annually to the appropriator whose water use is interrupted the reasonable value of the water use interrupted, crop losses, and other consequential damages incurred as a result of the interruption.

Enacted by Chapter 252, 2010 General Session

73-3-23. Replacement of water.

In all cases of appropriations of underground water the right of replacement is hereby granted to any junior appropriator

whose appropriation may diminish the quantity or injuriously affect the quality of appropriated underground water in which the right to the use thereof has been established as provided by law. No replacement may be made until application in writing has been made to and approved by the state engineer. In all cases replacement shall be at the sole cost and expense of the applicant and subject to such rules and regulations as the state engineer may prescribe. The right of eminent domain is hereby granted to any applicant for the purpose of replacement as provided herein.

No Change Since 1953

73-3-25. Well driller's license -- Enforcement.

(1) As used in this section:

(a) "Well" means an open or cased excavation or borehole for diverting, using, or monitoring underground water made by any construction method.

(b) "Well driller" means a person with a license to engage in well drilling for compensation or otherwise.

(c) "Well drilling" means the act of:

(i) drilling, constructing, repairing, renovating, deepening, cleaning, developing, or abandoning a well; or

(ii) installing or repairing a pump in a well.

(2)(a) Notwithstanding Subsection (3), a person who installs or repairs a pump in a well on the person's own property for the person's own use is not required to obtain a license under this section.

(b) Except as provided in Subsection (2)(c), a person who installs or repairs a pump in a well for compensation:

(i) shall obtain a license as required by Subsection (3); and

(ii) is subject to all of this section's provisions.

(c) Notwithstanding the requirements of Subsection (2)(b), a person who performs electrical repairs on a pump in a well is not required to obtain a license as required by Subsection (3).

(3)(a)(i) A person shall obtain a license as provided in this section before engaging in well drilling.

(ii) The state engineer may enforce Subsection (3)(a)(i) in accordance with Sections 73-2-25 and 73-2-26.

(b) A person applying for a well driller license shall file a well driller bond:

(i) with the state engineer; and

(ii) payable to the Division of Water Rights.

(c)(i) Compliance with this section and the rules authorized by this section is required to obtain or renew a well driller license.

(ii) The state engineer may refuse to issue a license if it appears an applicant violates a rule authorized by this section.

(d) A well driller license is not transferable.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the state engineer may make rules establishing:

(a) the amount, form, and general administrative requirements of a well driller bond;

(b) the amount of a well driller fine;

(c) minimum well drilling standards;

(d) well driller reporting requirements;

(e) the requirements for obtaining a well driller license,

including:

(i) a well driller license application form;

(ii) the license expiration date; and

(iii) the license renewal cycle; and

(f) a procedure to enforce a well drilling standard or other well drilling requirement.

(5)(a) A well driller shall submit a report to the state engineer:

(i) containing data relating to each well;

(ii) within 30 days after the completion or abandonment of the well drilling;

(iii) on forms furnished by the state engineer; and

(iv) containing information required by the state engineer.

(b) In accordance with Sections 73-2-25 and 73-2-26, the state engineer may commence an enforcement action against a

person who fails to submit a report required by Subsection (5)(a) within 90 days of the day on which the well driller license lapses.

(6)(a) A well driller shall comply with the rules authorized by this section.

(b) If the state engineer determines that a well driller has failed to comply with a rule, the state engineer may, in accordance with the procedures established in rule:

- (i)(A) order that a well driller pay a fine; or
- (B) revoke or suspend the well driller's license; and
- (ii) exact the bond.

(7)(a) The state engineer shall retain the money from a fine or exacting a bond as a dedicated credit.

(b) The state engineer may expend:

- (i) money retained from a fine for:
 - (A) well drilling inspection;
 - (B) well drilling enforcement; or
 - (C) well driller education; and
- (ii) money retained from exacting a bond to investigate

or correct a deficiency by a well driller that could adversely affect the public interest resulting from noncompliance with a rule authorized by this section.

Amended by Chapter 124, 2010 General Session

73-3-26. Violations -- Penalty.

(1) Any person drilling a well or wells in the state or who advertises or holds himself out as a well driller, or who follows such business, without first having obtained a license as provided by this act or who drills a well or wells after revocation or expiration of his license theretofore issued, is guilty of a crime punishable under Section 73-2-27.

(2) Each day that a violation under Subsection (1) continues is a separate offense.

Amended by Chapter 215, 2005 General Session

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.
- (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.

Amended by Chapter 247, 2009 General Session

73-3-28. Replacement wells -- Requirements -- State engineer's approval -- Application to drill -- Filing -- Form -- Contents -- Notice -- Fees -- Definition -- Plugging of old well.

An existing well may be replaced with a replacement well within a radius of 150 feet from the existing well without the filing of a change application under Section 73-3-3, upon approval first having been obtained from the state engineer.

Such request for permission to drill a replacement well shall be filed with the state engineer upon a form to be furnished by the state engineer. Such form shall contain, but need not be limited to, the name and post office address of the person, corporation or association making the request. The number of the claim or application filed with the state engineer covering the well which is being replaced, the number of the award if in a decree, the reason for the replacement, the location of the replacement well with reference to the nearest United States land survey corner, and from the old well, and the name of the driller employed by the applicant to do the work.

No filing fee shall be required for the filing of such a request for permission to drill a replacement well and the state engineer need give only such notice as, in his judgment, is necessary to protect existing rights and in the event the state engineer shall determine that it is necessary to publish notice the Advertising fee shall be paid in advance by the applicant.

The term "replacement well" as used herein means a new well drilled for the sole purpose of replacing an existing well which is impaired or made useless by structural difficulties and no new right in the use of water accrues. Upon completion of the new well the old well must be plugged by the applicant in a manner satisfactory to the state engineer.

Amended by Chapter 136, 2001 General Session

73-3-29. Relocation of natural streams -- Written permit required -- Emergency work -- Violations.

(1) Except as provided in Subsection (2), a state agency, county, city, corporation, or person may not relocate any natural stream channel or alter the beds and banks of any natural stream without first obtaining the written approval of the state engineer.

(2)(a) The state engineer may issue an emergency permit or order to relocate a natural stream channel or alter the beds and banks of a natural stream as provided by this Subsection (2) and Section 63G-4-502.

(b) If an emergency situation arises which involves immediate or actual flooding and threatens injury or damage to persons or property, steps reasonably necessary to alleviate or mitigate the threat may be taken before a written permit is issued subject to the requirements of this section.

(c)(i) If the threat occurs during normal working hours, the state engineer or the state engineer's representative must be notified immediately of the threat. After receiving notification of the threat, the state engineer or the state engineer's representative may orally approve action to alleviate or mitigate the threat.

(ii) If the threat does not occur during normal working hours, action may be taken to alleviate or mitigate the threat and the state engineer or the state engineer's representative shall be notified of the action taken on the first working day following the work.

(d) A written application outlining the action taken or the action proposed to be taken to alleviate or mitigate the threat

shall be submitted to the state engineer within two working days following notification of the threat to the state engineer or the state engineer's representative.

(e)(i) The state engineer shall inspect in a timely manner the site where the emergency action was taken.

(ii) After inspection, additional requirements, including mitigation measures, may be imposed.

(f) Adjudicative proceedings following the emergency work shall be informal unless otherwise designated by the state engineer.

(3) An application to relocate any natural stream channel or alter the beds and banks of any natural stream shall be in writing and shall contain the following:

(a) the name and address of the applicant;

(b) a complete and detailed statement of the location, nature, and type of relocation or alteration;

(c) the methods to be employed;

(d) the purposes of the application; and

(e) any additional information that the state engineer considers necessary, including, but not limited to, plans and specifications of the proposed construction of works.

(4)(a) The state engineer shall, without undue delay, conduct investigations that may be reasonably necessary to determine whether the proposed relocation or alteration will:

(i) impair vested water rights;

(ii) unreasonably or unnecessarily affect any recreational use or the natural stream environment;

(iii) unreasonably or unnecessarily endanger aquatic wildlife; or

(iv) unreasonably or unnecessarily diminish the natural channel's ability to conduct high flows.

(b) The application shall be approved unless the proposed relocation or alteration will:

(i) impair vested water rights;

(ii) unreasonably or unnecessarily adversely affect any public recreational use or the natural stream environment;

(iii) unreasonably or unnecessarily endanger aquatic

wildlife; or

(iv) unreasonably or unnecessarily diminish the natural channel's ability to conduct high flows.

(c) The state engineer may approve the application, in whole or in part, with any reasonable terms to protect vested water rights, any public recreational use, the natural stream environment, or aquatic wildlife.

(5) No cost incurred by the applicant, including any cost incurred to comply with the terms imposed by the state engineer, is reimbursable by the Division of Water Rights.

(6) Except as provided in Subsection (2), a person who knowingly or intentionally relocates any natural stream channel, or alters the bed or bank of any natural stream channel without first obtaining the written approval of the state engineer is guilty of a crime punishable under Section 73-2-27.

Amended by Chapter 382, 2008 General Session

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

(1) As used in this section:

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

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

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

(ii) promotes fishing opportunities in the state.

(c) "Fixed time change" means a change in a water right's point of diversion, place of use, or purpose of use for a fixed period of time longer than one year but not longer than 10 years.

(2)(a) A division may file a permanent or temporary change application, as provided by Section 73-3-3, for the purpose of providing water for an instream flow, within a specified section of a natural or altered stream channel, necessary within the state for:

(i) the propagation of fish;

(ii) public recreation; or

(iii) the reasonable preservation or enhancement of the

natural stream environment.

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

(i) a perfected water right:

(A) presently owned by the division;

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

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

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

(c) A division may:

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

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

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

(3)(a) A fishing group may file a fixed time change application on a perfected, consumptive water right for the purpose of providing water for an instream flow, within a specified section of a natural or altered stream channel, to protect or restore habitat for three native trout:

(i) the Bonneville cutthroat;

(ii) the Colorado River cutthroat; or

(iii) the Yellowstone cutthroat.

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

(i) in a manner outlined in the water company's articles of incorporation or bylaws;

(ii) at an annual or regular meeting described in Section 16-6a-701; or

(iii) at a special meeting convened under Section

16-6a-702.

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

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

(ii) The director may approve the proposed change if:

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

(B) the proposed purpose of use is consistent with an existing state management or recovery plan for that specie; and

(C) the water right owner has received a certificate of inclusion from a person who has:

(I) entered into a programmatic Candidate Conservation Agreement with Assurances with the United States Fish and Wildlife Service, as authorized by 16 U.S.C. Sec. 1531(a)(5) and 1536(a)(1); and

(II) obtained an enhancement of survival permit, as authorized by 16 U.S.C. Sec. 1539(a)(1)(A).

(iii) The director may disapprove the proposed change if the proposed change would not be in the public's interest.

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

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

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

(g)(i) The water right for which the state engineer has approved a fixed time change application will automatically revert

to the point of diversion and place and purpose of use that existed before the approved fixed time change application when the fixed time change application expires or is terminated.

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

(4) In addition to the requirements of Subsection 73-3-3(4)(b), an application authorized by this section shall:

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

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

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

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

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

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

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

(C) the period of use; and

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

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

(c)(i) Upon acceptance of the verified statement required

under Subsection (5)(b)(i), the state engineer shall issue a certificate of change for instream flow use in accordance with Section 73-3-17.

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

(6) No person may appropriate unappropriated water under Section 73-3-2 for the purpose of providing an instream flow.

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

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

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

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

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

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

Amended by Chapter 344, 2009 General Session

73-3-31. Water right for watering livestock on public land.

(1) As used in this section:

(a) "Acquire" means to gain the right to use water through obtaining:

(i) an approved application to appropriate water; or

(ii) a perfected water right.

(b) "Allotment" means a designated area of public land available for livestock grazing.

(c)(i) "Beneficial user" means the person that has the right

to use the grazing permit.

(ii) "Beneficial user" does not mean the public land agency issuing the grazing permit.

(d) "Grazing permit" means a document authorizing livestock to graze on an allotment.

(e) "Livestock" means a domestic animal raised or kept for profit or personal use.

(f) "Livestock watering right" means a right for:

(i) livestock to consume water:

(A) directly from the water source located on public land; or

(B) from an impoundment located on public land into which the water is diverted; and

(ii) associated uses of water related to the raising and care of livestock on public land.

(g)(i) "Public land" means land owned or managed by the United States or the state.

(ii) "Public land" does not mean land owned by:

(A) the Division of Wildlife Resources;

(B) the School and Institutional Trust Lands Administration; or

(C) the Division of Parks and Recreation.

(h) "Public land agency" means the agency that owns or manages the public land.

(2) On or after May 12, 2009, a livestock watering right may only be acquired by a public land agency jointly with a beneficial user.

(3) The state engineer may not approve a change application under Section 73-3-3 for a livestock watering right without the consent of the beneficial user.

(4) A beneficial user may file a nonuse application under Section 73-1-4 on a livestock watering right or a portion of a livestock watering right that the beneficial user puts to beneficial use.

(5) A livestock watering right is appurtenant to the allotment on which the livestock is watered.

(6)(a)(i) A beneficial user or a public land agency may file a

request with the state engineer for a livestock water use certificate.

(ii) The state engineer shall:

(A) provide the livestock water use certificate application form on the Internet; and

(B) allow electronic submission of the livestock water use certificate application.

(b) The state engineer shall grant a livestock water use certificate to:

(i) a beneficial user if the beneficial user:

(A) demonstrates that the beneficial user has a right to use a grazing permit for the allotment to which the livestock watering right is appurtenant; and

(B) pays the fee set in accordance with Section 73-2-14; and

(ii) the public land agency if the public land agency:

(A)(I) demonstrates that the public land agency owns a livestock watering right; or

(II) issues a grazing permit for the allotment to which the livestock watering right is appurtenant; and

(B) pays the fee set in accordance with Section 73-2-14.

(c) A livestock water use certificate is valid as long as the livestock watering right is:

(i) put to beneficial use within a seven-year time period; or

(ii) subject to a nonuse application approved under Section 73-1-4.

Amended by Chapter 285, 2009 General Session

CHAPTER 3a WATER EXPORTS

73-3a-101. Policy statement.

(1) To ensure the welfare of its citizens, the state of Utah is dedicated to:

- (a) the conservation of its scarce water resources;
- (b) providing adequate water supplies;
- (c) ensuring that the waters of the state's streams are available to meet the state's water requirements; and
- (d) controlling its water resources in a manner that is in the best interest of the public.

(2) To fulfill the policy stated in Subsection (1), the state of Utah has entered into interstate compacts on several of the state's streams that flow outside the state.

(3) The state of Utah recognizes that under certain conditions the transportation of water for use outside the state may not be contrary to:

- (a) the conservation of Utah's waters; or
- (b) the public welfare.

Enacted by Chapter 234, 1991 General Session

73-3a-102. Water mixed with substances.

For the purposes of this chapter, water mixed with substances to form a solution or slurry, for the transportation of dissolved substances or suspended solids, is not considered to have lost its character as water.

Enacted by Chapter 234, 1991 General Session

73-3a-103. Water exports governed by this chapter.

This chapter governs application procedures and criteria for the approval of applications for:

- (1) the appropriation of water from sources within the state of Utah for use outside the state; and
- (2) permanent or temporary changes of point of diversion, place of use, or purpose of use of water that is:

- (a) appropriated from sources within the state of Utah;
 - and
 - (b) used, or proposed to be used, outside the state.
- Enacted by Chapter 234, 1991 General Session

73-3a-104. Rulemaking power of state engineer.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the state engineer may make rules necessary to administer this chapter.

Amended by Chapter 382, 2008 General Session

73-3a-105. Procedures -- Adjudicative proceedings.

(1) Except where inconsistent with the provisions of this chapter, the procedures to be followed by the state engineer in processing and considering applications filed under this chapter, and the rights and duties of the applicants, are the same as the procedures, rights, and duties specified in Title 73, Chapter 3, relating to appropriations of water or changes in the point of diversion, place of use, or purpose of use of water.

(2) Adjudicative proceedings relating to applications made under this chapter shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 382, 2008 General Session

73-3a-106. Application form.

Applications for appropriations or changes referred to in Section 73-3a-103 must:

- (1) be made upon forms furnished by the state engineer;
- and
- (2) set forth:
 - (a) the name of the applicant;
 - (b) the description of the water right, if applicable;
 - (c) the quantity of water;
 - (d) the stream or source;
 - (e) the point on the stream or source where the water is diverted;
 - (f) the point to which it is proposed to change the

diversion of the water, if applicable;

(g) the place, purpose, and extent of the present use, if applicable;

(h) the place, purpose, and extent of the proposed use;

(i) an agent in the state of Utah designated for reception of service of process and other legal notices; and

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

Enacted by Chapter 234, 1991 General Session

73-3a-107. Publication of notice of application -- Corrections or amendments of applications.

(1)(a) When an application is filed in accordance with Section 73-3a-106 and relevant provisions of Chapter 3, Appropriation, the state engineer shall publish a notice of the application:

(i) once a week for a period of two successive weeks in a newspaper of general circulation in the county in which the water source is located and where the water is to be used; and

(ii) in accordance with Section 45-1-101 for two weeks.

(b) The notice shall:

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

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

(c) The notice described in Subsection (1)(a)(i) may be published in more than one newspaper.

(2) Clerical errors, ambiguities, and mistakes in the application that do not prejudice the rights of others may be corrected by order of the state engineer either before or after the publication of notice.

(3) If amendments or corrections to the application are made that involve a change of point of diversion, place of use, or purpose of use of water, the notice must be republished.

Amended by Chapter 388, 2009 General Session

73-3a-108. Approval of applications -- Criteria.

(1) The state engineer shall:

(a) undertake an investigation of any application made under this chapter; and

(b) approve the application, if he finds that:

(i) the proposed appropriation or change:

(A) satisfies Section 73-3-3, 73-3-5.5, or 73-3-8, whichever is applicable;

(B) is consistent with Utah's reasonable water conservation policies or objectives;

(C) is not contrary to the public welfare; and

(D) does not impair the ability of the state of Utah to comply with its obligation under any interstate compact or judicial decree which apportions water among Utah and other states; and

(ii) the water can be transported, measured, delivered, and beneficially used in the recipient state.

(2) In reviewing the criteria of Subsections (1)(b)(i)(B) and (1)(b)(i)(C), the state engineer shall consider the following factors:

(a) the supply and quality of water available to the state of Utah;

(b) the current and reasonably anticipated water demands of the state of Utah;

(c) whether there are current or reasonably anticipated water shortages within Utah;

(d) whether the water that is the subject of the application could feasibly be used to alleviate current or reasonably anticipated water shortages within Utah;

(e) the alternative supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(f) the demands placed on the applicant's alternate water supply in the state where the applicant intends to use the water.

(3) If any application fails to meet any criteria of Subsection (1), it shall be rejected.

(4) The state engineer may condition any approval to ensure that the use of the water in another state:

(a) is subject to the same laws, rules, and controls that

may be imposed upon water use within the state of Utah; or

(b) is consistent with the terms and conditions of any applicable interstate compact to which the state of Utah is a party.

Enacted by Chapter 234, 1991 General Session

73-3a-109. Certification of appropriation or change.

(1) Any person holding an application approved under this chapter shall comply with the substantive and procedural requirements of Sections 73-3-16 and 73-3-17 to obtain a certificate of appropriation or change.

(2) Verification that the appropriation or change has been perfected and put to beneficial use may be accepted from the recipient state's equivalent to the Utah state engineer.

Enacted by Chapter 234, 1991 General Session

CHAPTER 3b
GROUNDWATER RECHARGE AND RECOVERY ACT

73-3b-101. Short title.

This chapter is known as the "Groundwater Recharge and Recovery Act."

Enacted by Chapter 146, 1991 General Session

73-3b-102. Definitions.

As used in this chapter:

(1) "Artificially recharge" means to place water in an aquifer:

(a) by means of:

(i) injection;

(ii) surface infiltration; or

(iii) another method; and

(b) for the purposes of:

(i) storing the water; and

(ii) recovering the water.

(2) "Division" means Division of Water Rights.

(3) "Recharge permit" means a permit issued by the state engineer to construct and operate a recharge project.

(4) "Recharge project" means to artificially recharge water into an aquifer.

(5) "Recovery permit" means a permit issued by the state engineer to construct and operate a recovery project.

(6) "Recovery project" means to withdraw from an aquifer water that has been artificially recharged pursuant to a recharge permit.

Amended by Chapter 107, 2010 General Session

73-3b-103. Prohibitions.

(1) A person may not artificially recharge an aquifer without first obtaining a recharge permit.

(2) A person may not recover from an aquifer water that has been artificially recharged unless the person first obtains a recovery permit.

(3) A person holding a recharge permit or recovery permit may not operate a recharge project or recovery project in a manner that is inconsistent with the permit conditions set by the state engineer.

Amended by Chapter 107, 2010 General Session

73-3b-104. Rulemaking power of state engineer.

The state engineer may make rules to administer this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 382, 2008 General Session

73-3b-105. Administrative procedures.

The administrative procedures applicable to the issuance, modification, suspension, or revocation of a recharge permit or recovery permit are those set forth in Title 63G, Chapter 4, Administrative Procedures Act, and Sections 73-3-6, 73-3-7, 73-3-14, and 73-3-15.

Amended by Chapter 107, 2010 General Session

73-3b-106. Water right for recharged water -- Change of use of recovered water.

(1) A person proposing to artificially recharge water into an aquifer must have:

(a) a valid water right for the water proposed to be recharged; or

(b) an agreement to use the water proposed to be recharged with a person who has a valid water right for the water proposed to be recharged.

(2) A person who holds a recovery permit may use or exchange recovered water only in the manner in which the water was permitted to be used or exchanged before the water was artificially recharged, unless a change or exchange application is filed and approved pursuant to Section 73-3-3 or 73-3-20, as applicable.

Amended by Chapter 107, 2010 General Session

73-3b-107. Recoverable water -- State engineer to determine.

A person who holds a recovery permit may recover the amount of water stored by the recharge project which the state engineer determines has reached the aquifer and remains within the hydrologic area of influence.

Enacted by Chapter 146, 1991 General Session

73-3b-201. Application for a recharge permit -- Required information -- Filing fee.

(1) The application for obtaining a recharge permit shall include the following information:

- (a) the name and mailing address of the applicant;
- (b) the name of the groundwater basin or groundwater sub-basin in which the applicant proposes to operate the recharge project;
- (c) the name and mailing address of the owner of the land on which the applicant proposes to operate the recharge project;
- (d) a legal description of the location of the proposed recharge project;
- (e) the source and annual quantity of water proposed to be artificially recharged;
- (f) evidence of a water right or an agreement to use the water proposed to be artificially recharged;
- (g) the quality of the water proposed to be artificially recharged and the water quality of the receiving aquifer;
- (h) evidence that the applicant has applied for all applicable water quality permits;
- (i) a plan of operation for the proposed recharge project, which shall include:
 - (i) a description of the proposed recharge project;
 - (ii) its design capacity;
 - (iii) a detailed monitoring program; and
 - (iv) the proposed duration of the recharge project;
- (j) a copy of a study demonstrating:
 - (i) the area of hydrologic impact of the recharge project;

- (ii) that the recharge project is hydrologically feasible;
- (iii) that the recharge project will not:
 - (A) cause unreasonable harm to land; or
 - (B) impair any existing water right within the area of hydrologic impact; and
- (iv) the percentage of anticipated recoverable water;
- (k) evidence of financial and technical capability; and
- (l) any other information that the state engineer requires.

(2)(a) A filing fee must be submitted with the application.

(b) The state engineer shall establish the filing fee in accordance with Section 63J-1-504.

Amended by Chapter 107, 2010 General Session

73-3b-202. Issuance of recharge permit -- Criteria -- Conditions.

The state engineer:

(1) shall issue a recharge permit if:

(a) the applicant has:

(i) the technical and financial capability to construct and operate the recharge project; and

(ii)(A) a valid water right for the use of the water proposed to be artificially recharged; or

(B) an agreement to use the water proposed to be artificially recharged with a person who has a valid water right for the use of the water proposed to be artificially recharged; and

(b) the project:

(i) is hydrologically feasible;

(ii) will not cause unreasonable harm to land;

(iii) will not impair any existing water right within the area of hydrologic impact; and

(iv) will not adversely affect the water quality of the aquifer;

(2) shall condition any approval on acquiring the applicable water quality permits prior to construction and operation of the recharge project; and

(3) may attach to the permit any condition the state

engineer determines is appropriate.

Amended by Chapter 107, 2010 General Session

73-3b-203. Proof of completion, certification, or lapse of recharge permit.

(1) Sixty days before the date on which the recharge permit will lapse under Subsection (3), the state engineer shall notify the applicant by mail when proof of completion is due.

(2)(a) Before the date on which the recharge permit will lapse under Subsection (3), the applicant shall file proof of completion with the state engineer on a form furnished by the state engineer, which shall include:

(i) the location and description of the recharge works constructed;

(ii) the water source for the water artificially recharged and where the water is delivered for artificial recharge;

(iii) the quantity of water, in acre-feet, the flow in second-feet, or both, diverted from the water source described in Subsection (2)(a)(ii);

(iv) the method of artificially recharging the water; and

(v) any other information the state engineer requires.

(b) The state engineer may waive the filing of a map, a profile, or drawing if in the state engineer's opinion the written proof of completion adequately describes the construction and the nature and extent of the recharge project.

(c) The completed proof shall conform to a rule established by the state engineer.

(3) A recharge permit will lapse if the proof of completion of the recharge project's construction is not submitted to the state engineer within five years from the date of the permit application's approval, unless:

(a) the applicant requests an extension of time to complete the recharge project's construction; and

(b) the state engineer approves the extension of time.

(4)(a) The state engineer shall issue a recharge certificate if the recharge permittee has demonstrated to the state engineer's satisfaction that:

(i) a recharge project is perfected in accordance with the recharge permit; and

(ii) the water is being artificially recharged.

(b) The recharge certificate shall include:

(i) the name and post office address of the recharge permittee;

(ii) the maximum quantity of water, in acre-feet or the flow in second-feet, that may be recharged;

(iii) the name of the water source from which the water to be artificially recharged is diverted; and

(iv) other information that defines the extent and conditions of the recharge permit.

(c) A recharge certificate issued for a recharge permit need show no more than the facts shown in the proof of completion.

(d)(i) The state engineer shall:

(A) retain and file one copy of the recharge certificate; and

(B) deliver one copy of the recharge certificate to the recharge permittee.

(ii) A recharge permittee shall file the recharge certificate with the county recorder of the county in which the water is recharged.

(e) The recharge certificate issued and filed under this section is prima facie evidence of the permittee's right to the artificially recharged water for the purpose, at the place, and during the time specified in the recharge certificate.

Amended by Chapter 107, 2010 General Session

73-3b-204. Application for a recovery permit -- Required information.

(1) A person may file a recovery permit application with a recharge permit application.

(2) The application for obtaining a recovery permit shall include the following information:

(a) the name and mailing address of the applicant;

(b) a legal description of the location of the existing well or proposed new well from which the applicant intends to recover artificially recharged water;

(c) a written consent from the owner of the recharge permit, if the applicant does not hold the recharge permit;

(d) the name and mailing address of the owner of the land from which the applicant proposes to recover artificially recharged water;

(e) the name or description of the artificially recharged groundwater aquifer which is the source of supply;

(f) the purpose for which the artificially recharged water will be recovered;

(g) the depth and diameter of the existing well or proposed new well;

(h) a legal description of the area where the artificially recharged water is proposed to be used;

(i) the design pumping capacity of the existing well or proposed new well; and

(j) any other information including maps, drawings, and data that the state engineer requires.

(3)(a) A filing fee must be submitted with the application.

(b) The state engineer shall establish the filing fee in accordance with Section 63J-1-504.

Amended by Chapter 107, 2010 General Session

73-3b-205. Issuance of recovery permit -- Criteria -- Conditions.

The state engineer:

(1) shall issue the recovery permit if the state engineer determines that:

(a) the proposed recovery of artificially recharged water will not impair any existing water right;

(b) the applicant is the holder of an approved recharge permit or recovery permit, or if the applicant does not hold the recharge permit, has a valid agreement with the owner of the recharge permit to divert and use the recovered water; and

(c) the recovery point of diversion is located within the area of hydrologic impact of the recharge project, as determined by the state engineer; and

(2) may attach to the permit any conditions the state engineer determines are appropriate.

Amended by Chapter 107, 2010 General Session

73-3b-206. Proof of completion, certification, or lapse of recovery permit.

(1) Sixty days before the date on which the recovery permit will lapse under Subsection (3), the state engineer shall notify the applicant by mail when proof of completion is due.

(2)(a) Before the date on which the recovery permit will lapse under Subsection (3), the applicant shall file proof of completion with the state engineer on a form furnished by the state engineer, which shall include documentation and a map prepared by a Utah licensed land surveyor or Utah licensed professional engineer that shows:

(i) the location and description of the recovery works constructed;

(ii) the method of recovering the artificially recharged water;

(iii) the facilities in place to recover and deliver the recovered water; and

(iv) the purpose and place of use of the recovered water.

(b) The state engineer may waive the filing of a map, profile, or drawing, if in the state engineer's opinion the written proof of completion adequately describes the works and the nature and extent of the recovery project.

(c) The completed proof shall conform to a rule established by the state engineer.

(3) A recovery permit will lapse if the recovery project is not completed within five years from the date of the recovery permit application's approval unless:

(a) the applicant requests an extension of time to complete the recovery project; and

(b) the state engineer approves the extension of time.

(4)(a) The state engineer shall issue a recovery certificate if the recovery permittee has demonstrated to the state engineer's satisfaction that:

(i) the recovery project is perfected in accordance with the recovery permit; and

(ii) water is being recovered.

(b) The recovery certificate shall include:

(i) the name and post office address of the recovery permittee;

(ii) the works used to recover and deliver recovered water; and

(iii) other information that defines the extent and conditions of the recovery permit.

(c) A recovery certificate issued for a recovery permit need show no more than the facts shown in the proof of completion.

(d) A recovery certificate issued under this section does not extend the rights described in the recovery permit.

(e)(i) The state engineer shall:

(A) retain and file one copy of the recovery certificate; and

(B) deliver one copy of the recovery certificate to the recovery permittee.

(ii) A recovery permittee shall file the recovery certificate with the county recorder of the county in which the water is recovered.

(f) The recovery certificate issued and filed under this section is prima facie evidence of the recovery permittee's right to the recovered water for the purpose, at the place, and during the time specified in the recovery certificate.

Amended by Chapter 107, 2010 General Session

73-3b-207. Assignment of permits.

(1) A person who holds a recharge or recovery permit may not assign a permit to another person without the written approval of the state engineer.

(2) The state engineer must approve an assignment if the proposed assignee meets the requirements of Section 73-3b-202 or 73-3b-205, as applicable.

Enacted by Chapter 146, 1991 General Session

73-3b-208. Proposed new well -- Compliance with water well construction rules.

An applicant for a recharge permit or recovery permit who intends to construct a new well to recharge or recover artificially recharged water must comply with Sections 73-3-25 and 73-3-26, and rules adopted under those sections, regarding the construction of water wells.

Amended by Chapter 107, 2010 General Session

73-3b-301. Storage account -- Monitoring and reporting required.

(1) The state engineer shall establish a storage account for each groundwater recharge and recovery project for which a permit has been issued.

(2) In accordance with specifications of the state engineer, any person holding a groundwater recharge or recovery permit shall:

(a) monitor the operation of the project and its impact on land, the groundwater aquifer, and water rights within the project's area of hydrologic impact; and

(b) file reports with the state engineer regarding:

(i) the quantity of water stored and recovered; and

(ii) the water quality of the recharged water, receiving aquifer, and recovered water.

Enacted by Chapter 146, 1991 General Session

73-3b-302. Fee.

(1) The state engineer shall assess an annual fee, in accordance with Section 63J-1-504, on each person who holds a groundwater recharge or recovery permit.

(2) The fee shall reflect the division's costs to

administer and monitor groundwater recharge and recovery projects.

Amended by Chapter 183, 2009 General Session

73-3b-303. Modification of recharge or recovery permits.

(1) The state engineer, on his own initiative or at the request of any person holding a recharge or recovery permit, may modify the conditions of the respective permit, if he finds that modifications are necessary and will not impair existing water rights or the water quality of the aquifer.

(2) Before any permit condition is modified, the state engineer may require notice to potentially impaired water users if he finds that the modification under consideration may impair existing water rights.

Enacted by Chapter 146, 1991 General Session

73-3b-401. Revocation or suspension of recharge and recovery permits.

The state engineer may:

(1) periodically review a project to determine if the person who holds the recharge or recovery permit is complying with the conditions of the permit; and

(2) permanently revoke or temporarily suspend a permit for good cause after an investigation and a hearing.

Enacted by Chapter 146, 1991 General Session

73-3b-402. Penalty.

(1) A person who violates Section 73-3b-103 is subject to a civil penalty in an amount not to exceed \$10,000 per day.

(2) An action to recover damages under this section shall be brought by the state engineer in the district court in the county in which the violation occurred.

Enacted by Chapter 146, 1991 General Session

CHAPTER 3c

WASTEWATER REUSE ACT

73-3c-101. Title.

This chapter is known as the "Wastewater Reuse Act."

Enacted by Chapter 179, 2006 General Session

73-3c-102. Definitions.

As used in this chapter:

(1) "Domestic wastewater" or "sewage" means:

(a) a combination of the liquid or water-carried wastes from:

(i) structures with installed plumbing facilities; and

(ii) industrial establishments; and

(b) any groundwater, surface water, and storm water that is present with the waste.

(2) "POTW" means a publicly owned treatment works as defined by Section 19-5-102.

(3) "Public agency" means a public agency as defined by Section 11-13-103 that:

(a) owns or operates a POTW;

(b) collects and transports domestic wastewater;

(c) holds legal title to a water right;

(d) is delegated the right to the beneficial use or reuse of water by the legal title holder of the water right;

(e) is a water supplier; or

(f) sells wholesale or retail water.

(4) "Return flow requirement" means return flow required under a water right.

(5)(a) "Reuse authorization contract" means a contract or contracts among:

(i) a public agency proposing a water reuse project;

(ii) the owner or operator of a POTW that treats domestic wastewater proposed for use in a reuse project;

(iii) the owner of a domestic wastewater collection or transportation system if the reuse project will divert domestic wastewater directly from that entity's collection or transportation

system;

(iv) the legal title holder of the water right designated for use in the reuse project, unless the legal title holder of the water right has delegated to another the right to the beneficial use or reuse of the water;

(v) each water supplier not holding legal title to the water right designated for use in the reuse project that sells or delivers water under the water right designated for use in the reuse project;

(vi) each entity that will engage in the wholesale or retail sale of water from the water reuse project; and

(vii) the retail water supplier retailing water that will be replaced by reuse water supplied under the proposed reuse project.

(b) A reuse authorization contract shall:

(i) provide that a water supplier that is a party to the agreement consents to the use of reuse water under each water right, in which the water supplier has an interest, that is identified for use in the water reuse project; and

(ii) provide that any proposed water reuse project based on the contract shall be consistent with the underlying water right.

(6) "Reuse water" means domestic wastewater treated to a standard acceptable under rules made by the Water Quality Board under Section 19-5-104.

(7) "Water reuse project" or "project" means a project for the reuse of domestic wastewater that requires approval by the Water Quality Board in accordance with Section 19-5-104 and the state engineer under Section 73-3c-302.

(8) "Water right" means:

(a) a right to use water evidenced by any means identified in Section 73-1-10; or

(b) a right to use water under an approved application:

(i) to appropriate;

(ii) for a change of use; or

(iii) for the exchange of water.

(9) "Water supplier" means an entity engaged in the delivery of water for municipal purposes.

Enacted by Chapter 179, 2006 General Session

73-3c-201. Reuse by a public agency owning underlying water right.

(1) A public agency owning or operating a POTW that treats domestic wastewater consisting of water supplied under a water right the public agency owns may use, or contract for the use of, reuse water if:

(a) the water right is administered by the state engineer as a municipal water right;

(b) the reuse is consistent, under Subsection 73-3c-302(5), with the underlying water right; and

(c) the public agency receives approval in accordance with Sections 73-3c-301 and 73-3c-302.

(2) A change application shall be filed in accordance with Section 73-3-3 if the public agency proposes a water reuse that is inconsistent with the underlying water right.

Enacted by Chapter 179, 2006 General Session

73-3c-202. Reuse by a public agency under a contract authorizing the use of water.

(1) A public agency may use or contract for the use of reuse water if:

(a) the domestic wastewater consists of water for which the public agency has a reuse authorization contract;

(b) the water right is administered by the state engineer as a municipal water right;

(c) the reuse is consistent, under Subsection 73-3c-302(5), with the underlying water right; and

(d) the public agency receives approval in accordance with Sections 73-3c-301 and 73-3c-302.

(2) A change application shall be filed in accordance with Section 73-3-3 if the public agency proposes a water reuse that is inconsistent with the underlying water right.

Enacted by Chapter 179, 2006 General Session

73-3c-301. Application to the Water Quality Board.

(1) A public agency proposing a water reuse project shall apply to the Water Quality Board created by Section

19-1-106.

(2) The Water Quality Board may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing the consideration and approval of water reuse applications and administration of water reuse construction and operating permits.

(3) Rules created under Subsection (2) shall require that water reuse meet standards and requirements for water quality set by the Water Quality Board in accordance with Title 19, Chapter 5, Water Quality Act.

(4) The Water Quality Board shall issue a written decision for each water reuse application.

Amended by Chapter 382, 2008 General Session

73-3c-302. Application to the state engineer.

(1) A public agency proposing water reuse shall apply to the state engineer.

(2) An application for water reuse under Subsection (1) shall be made upon forms furnished by the state engineer and shall include:

- (a) the name of the applicant;
- (b) a description of the underlying water right;
- (c) an evaluation of the underlying water right's diversion, depletion, and return flow requirements;
- (d) the estimated quantity of water to be reused;
- (e) the location of the POTW;
- (f) the place, purpose, and extent of the proposed water reuse;
- (g) an evaluation of depletion from the hydrologic system caused by the water reuse; and
- (h) any other information consistent with this chapter that is requested by the state engineer.

(3) An application under Subsection (1) shall include a copy of a reuse authorization contract for water reuse proposed by a public agency for any underlying water right not owned by the public agency.

(4) In considering an application for water reuse, the

state engineer shall comply with:

- (a) Section 73-3-6;
- (b) Section 73-3-7;
- (c) Section 73-3-10; and
- (d) Section 73-3-14.

(5) In determining whether a proposed water reuse is consistent with the underlying water right, the state engineer shall conclude that a proposed water reuse is consistent with the underlying water right if:

- (a) the use of the reuse water does not enlarge the underlying water right; and
- (b) any return flow requirement of the underlying water right is satisfied.

(6)(a) The state engineer shall approve a water reuse application if the state engineer concludes that the proposed water reuse is consistent with the underlying water right.

(b) The state engineer may:

- (i) deny an application for water reuse if the proposed water reuse is inconsistent with the underlying water right; or
- (ii) approve the application in part or with conditions to assure consistency with the underlying water right.

(7) A public agency with an approved reuse application shall submit a report, as directed by the state engineer, concerning the ongoing water reuse operation.

(8) The state engineer may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this chapter.

Amended by Chapter 382, 2008 General Session

73-3c-303. Inflow of unappropriated water -- Application to appropriate.

If domestic wastewater inflow to a POTW consists of any unappropriated infiltration water, a person may apply to the state engineer to appropriate the unappropriated infiltration water to a beneficial use in accordance with Section 73-3-8.

Enacted by Chapter 179, 2006 General Session

73-3c-304. Change in point of discharge.

(1) The point of discharge of water from a POTW may be changed if the Water Quality Board determines that a change is necessary:

- (a) for treatment purposes;
- (b) to enhance environmental quality;
- (c) to protect public health, safety, or welfare; or
- (d) to comply with:

(i) rules created by the Water Quality Board in accordance with Section 19-5-104; or

- (ii) the POTW's discharge permit.

(2) Before changing the point of discharge from a POTW under Subsection (1), the Water Quality Board shall consult with the state engineer.

Enacted by Chapter 179, 2006 General Session

73-3c-401. Priority of reuse water.

If the use of reuse water is consistent with the underlying water right, the priority of the reuse water is the same as the priority of the underlying water right.

Enacted by Chapter 179, 2006 General Session

CHAPTER 4 DETERMINATION OF WATER RIGHTS

73-4-1. By engineer on petition of users -- Upon request of Department of Environmental Quality.

(1) Upon a verified petition to the state engineer, signed by five or more or a majority of water users upon any stream or water source, requesting the investigation of the relative rights of the various claimants to the waters of such stream or water source, it shall be the duty of the state engineer, if upon such investigation he finds the facts and conditions are such as to justify a determination of said rights, to file in the district court an action to determine the various rights. In any suit involving water rights the court may order an investigation and survey by the state engineer of all the water rights on the source or system involved.

(2)(a) As used in this section, "executive director" means the executive director of the Department of Environmental Quality.

(b) The executive director, with the concurrence of the governor, may request that the state engineer file in the district court an action to determine the various water rights in the stream, water source, or basin for an area within the exterior boundaries of the state for which any person or organization or the federal government is actively pursuing or processing a license application for a storage facility or transfer facility for high-level nuclear waste or greater than class C radioactive waste.

(c) Upon receipt of a request made under Subsection (2)(b), the state engineer shall file the action in the district court.

(d) If a general adjudication has been filed in the state district court regarding the area requested pursuant to Subsection (2)(b), the state engineer and the state attorney general shall join the United States as a party to the action.

Amended by Chapter 107, 2001 General Session

73-4-2. Interstate streams.

For the purpose of co-operating with the state engineers of adjoining states in the determination and administration of rights to interstate waters and for such other purposes as he may deem

expedient, the state engineer, with the approval of the executive director and the governor, is authorized to initiate and to join in suits for the adjudication of such rights in the federal courts and in the courts of other states without requiring a petition of water users as provided by Section 73-4-1. The state engineer, with the approval of the executive director and the governor, may also commence, prosecute and defend suits to adjudicate interstate waters on behalf of this state or its citizens in the courts of other states, in federal courts, and in the Supreme Court of the United States.

Amended by Chapter 198, 1969 General Session

73-4-3. Procedure for action to determine rights -- Notice to and list of claimants -- Manner of giving notice of further proceedings -- Duties of engineer -- Survey -- Notice of completion.

(1) Upon the filing of any action by the state engineer as provided in Section 73-4-1, or by any person claiming the right to use the waters of any river system, lake, underground water basin, or other natural source of supply that involves a determination of the rights to the major part of the water of the source of supply or the rights of 10 or more of the claimants of the source of supply, the clerk of the district court shall notify the state engineer that a suit has been filed.

(2)(a) The state engineer then shall give notice to the claimants by publishing notice:

(i) once a week for two consecutive weeks in a newspaper designated by the court as most likely to give notice to such claimants; and

(ii) in accordance with Section 45-1-101 for two weeks.

(b) The notice shall state:

(i) an action has been filed;

(ii) the name of the action;

(iii) the name and location of the court in which the action is pending; and

(iv) the name or description of the water source involved.

(c) Claimants to the use of water shall notify the state engineer within 90 days from the date notice is given of their names and addresses.

(d) After the expiration of 90 days, the state engineer shall prepare a list that shall include the names and addresses of all claimants then of record in the state engineer's office and all claimants who have notified the state engineer of their addresses, and this list shall be certified by the state engineer as complete and filed with the clerk of the court.

(e) At any time during the action:

(i) the court upon petition may by order permit the addition of names and addresses to the list prepared under Subsection (2)(d);

(ii) the court upon petition by the state engineer may by order permit amendment or substitution of the list prepared under Subsection (2)(d); and

(iii) the clerk of the court may, without court order, upon notice from the claimant and upon amendment of the state engineer's records note any change of address.

(f) If any claimant appears in this action by an attorney, the clerk shall note on the list the address of the attorney.

(g) After the list is filed by the state engineer, notice of further proceedings, after service of summons, may be given without court order by mailing a copy thereof to the persons listed at the addresses listed and by mailing a copy thereof to any attorney of record for any such person, and notice may be given to the listed persons and to all other claimants by publication in the manner and for the time prescribed by order of the district court and in accordance with Subsection (2)(a).

(3) After the statement or list is filed, the state engineer shall:

(a) begin the survey of the water source and the ditches, canals, wells, tunnels, or other works diverting water from the water source; and

(b) hold a public meeting in the survey area to inform a water right claimant of the survey.

(4)(a) As soon as the survey is complete, the state

engineer shall file notice of completion with the clerk and give notice by mail or by personal service to all claimants whose names appear on the list that:

(i) the survey is complete;
(ii) their claims are due within 90 days from the date of notice; and
(iii) within 90 days after service of the notice, each claimant must file a written statement with the clerk of the court setting forth the claimant's respective claim to the use of the water.

(b) Notice given by mail is complete when the notice is mailed.

(5) When a suit has been filed by the state engineer as provided by Section 73-4-1, or by any person involving the major part of the waters of any river system, lake, underground water basin, or other source of supply, or the rights of 10 or more of the water claimants of the source of supply, whether the suit is filed prior to or after the enactment hereof, the state engineer, upon receiving notice, shall examine the records of the state engineer's office with respect to the water source involved, and if they are incomplete to make such further investigation and survey as may be necessary for the preparation of the report and recommendation as required by Section 73-4-11.

(6) In all such cases the court shall proceed to determine the water rights involved in the manner provided by this chapter, and not otherwise.

Amended by Chapter 365, 2009 General Session

Amended by Chapter 388, 2009 General Session

73-4-4. Summons -- Service -- Publication -- Form -- Delivery of form for claimant's statement.

(1)(a) Claimants whose names appear on the list prescribed by Section 73-4-3 at the time the list is filed by the state engineer with the clerk of the court shall be served with a summons issued out of the district court and served as a summons is served in other civil cases.

(b) Upon the filing by the state engineer of an affidavit

that the state engineer has searched the records of the state engineer's office and has listed all names as required by Section 73-4-3, and upon proof of publication of notice to all claimants to notify the state engineer of their names and addresses, summons may be served on all other persons and claimants not listed on said list by publication of summons:

(i) in a newspaper or newspapers designated by the judge of the court as most likely to give notice to the persons served, five times, once each week for five successive weeks; and

(ii) in accordance with Section 45-1-101 for five weeks.

(c) Service of summons is completed upon the date of the publication.

(d) The summons shall be substantially in the following form:

"In the District Court of County, State of Utah, in the matter of the general adjudication of water rights in the described water source.

SUMMONS

The State of Utah to the said defendant:

You are hereby summoned to appear and defend the above entitled action which is brought for the purpose of making a general determination of the water rights of the described water source. Upon the service of this summons upon you, you will thereafter be subject to the jurisdiction of the entitled court and it shall be your duty to follow further proceedings in the above entitled action and to protect your rights therein. When the state engineer has completed the survey you will be given a further written notice, either in person or by mail, sent to your last-known address, that you must file a water users claim in this action setting forth the nature of your claim, and said notice will specify the date upon which your water users claim is due and thereafter you must file said claim within the time set and your failure so to do will constitute a default in the premises and a judgment may be entered against you declaring and adjudging that you have no right in or to the waters of described water source."

(2) At the time the said notice of completion of survey is given, the state engineer must mail or otherwise deliver a form

upon which the claimant shall present in writing, as provided in the next succeeding section, all the particulars relating to the appropriation of the water of said river system or water source to which the claimant lays claim.

Amended by Chapter 388, 2009 General Session

73-4-5. Statements by claimants.

Each person claiming a right to use any water of such river system or water source shall, within 90 days after the completed service of the notice of completion of survey prescribed by Section 73-4-3 hereof, file in the office of the clerk of the district court a statement in writing which shall be signed and verified by the oath of the claimant, and shall include as near as may be the following: The name and post-office address of the person making the claim; the nature of the use on which the claim of appropriation is based; the flow of water used in cubic feet per second or the quantity of water stored in acre-feet, and the time during which it has been used each year; the name of the stream or other source from which the water is diverted, the point on such stream or source where the water is diverted, and the nature of the diverting works; the date when the first work for diverting the water was begun, and the nature of such work; the date when the water was first used, the flow in cubic feet per second or the quantity of water stored in acre-feet, and the time during which the water was used the first year; and the place and manner of present use; and such other facts as will clearly define the extent and nature of the appropriation claimed, or as may be required by the blank form which shall be furnished by the state engineer under the direction of the court.

No Change Since 1953

73-4-6. In case of use for irrigation.

If the water claimed to have been appropriated is used for irrigation, the statement shall show, in addition to the facts required by Section 73-4-5, as nearly as possible the area of land irrigated the first year and each subsequent year; the total area irrigated at the time of filing and its location in each section,

township and range wherein it is situated; the character and depth of the soil, the kind of crops raised and the maximum and minimum acreage irrigated during the total period of use.

No Change Since 1953

73-4-7. In case of use for power purposes.

If the water claimed to have been appropriated is used for developing power, the statement shall show, in addition to the facts required by Section 73-4-5, the number, size and kind of water wheels employed; the head under which each wheel is operated; the amount of power produced, and the purposes for which and the places where it is used; and the point where the water is returned to the natural stream or source.

No Change Since 1953

73-4-8. In case of use for mining or milling.

If water claimed to have been appropriated is used for milling or mining, the statement shall show, in addition to the facts required by Section 73-4-5, the name of the mill and its location, or the name of the mine and the mining district in which it is situated; the nature of the material milled or mined, and the point where the water is returned to the natural stream or source.

No Change Since 1953

73-4-9. Failure to file statement -- Relief.

The filing of each statement by a claimant shall be considered notice to all persons of the claim of the party making the same, and any person failing to make and deliver such statement of claim to the clerk of the court within the time prescribed by law shall be forever barred and estopped from subsequently asserting any rights, and shall be held to have forfeited all rights to the use of the water theretofore claimed by him; provided, that any claimant, upon whom no other service of said notice shall have been made than by publication in a newspaper and as required in Section 45-1-101, may apply to the court for permission to file a statement of claim after the time therefor has expired, and the court may extend the time for filing

such statement, not exceeding six months from the publication of said notice; but, before said time is extended, the applicant shall give notice by publication in a newspaper having general circulation and as required in Section 45-1-101 on such river system or near the water source to all other persons interested in the water of such river system or water source, and shall make it appear to the satisfaction of the court that during the pendency of the proceedings he had no actual notice thereof in time to appear and file a statement and make proof of his claim; and all parties interested may be heard as to the matter of his actual notice of the pendency of such proceedings.

Amended by Chapter 388, 2009 General Session

73-4-10. Amendment of pleadings -- Extensions of time.

The court shall have power to allow amendments to any petition, statement or pleading; to extend as provided in this title the time for filing any statement of claim; and to extend, upon due cause shown, the time for filing any other pleading, statement, report or protest.

No Change Since 1953

73-4-11. Report and recommendation by engineer to court -- Notice -- Public meeting.

(1) Within 30 days after the expiration of the 90 days allowed for filing statements of claims, the state engineer shall begin to tabulate the facts contained in the statements filed and to investigate, whenever the state engineer shall consider necessary, the facts set forth in the statements by reference to the surveys already made or by further surveys, and shall as expeditiously as possible report to the court a recommendation of how all rights involved shall be determined.

(2) After full consideration of the statements of claims, and of the surveys, records, and files, and after a personal examination of the river system or water source involved, if the examination is considered necessary, the state engineer shall:

(a) formulate a report and a proposed determination of all rights to the use of the water of the river system or water

source;

(b) mail or deliver a copy of the report and proposed determination to each claimant with notice that any claimant dissatisfied with the report and proposed determination may within 90 days from the date of mailing or delivery file with the clerk of the district court a written objection; and

(c) hold a public meeting in the area covered by the report and proposed determination to describe the report and proposed determination to the claimants.

(3) The state engineer shall distribute the waters from the natural streams or other natural sources:

(a) in accordance with the proposed determination or modification to the proposed determination by court order until a final decree is rendered by the court; or

(b) if the right to the use of the waters has been decreed or adjudicated, in accordance with the decree until the decree is reversed, modified, vacated, or otherwise legally set aside.

Amended by Chapter 320, 2010 General Session

73-4-12. Judgment -- In absence of contest.

If no contest on the part of any claimant shall have been filed, the court shall render a judgment in accordance with such proposed determination, which shall determine and establish the rights of the several claimants to the use of the water of said river system or water source; and among other things it shall set forth the name and post-office address of the person entitled to the use of the water; the quantity of water in acre-feet or the flow of water in second-feet; the time during which the water is to be used each year; the name of the stream or other source from which the water is diverted; the point on the stream or other source where the water is diverted; the priority date of the right; and such other matters as will fully and completely define the rights of said claimants to the use of the water.

No Change Since 1953

73-4-13. In case of contest -- Notice of hearing.

If any contest or objection on the part of any claimant shall

have been filed, as in this chapter provided, the court shall give not less than 15 days' notice to all claimants, stating when and where the matter will be heard.

No Change Since 1953

73-4-14. Pleadings -- Expert assistance for court.

The statements filed by the claimants shall stand in the place of pleadings, and issues may be made thereon. Whenever requested so to do the state engineer shall furnish the court with any information which he may possess, or copies of any of the records of his office which relate to the water of said river system or water source. The court may appoint referees, masters, engineers, soil specialists or other persons as necessity or emergency may require to assist in taking testimony or investigating facts, and in all proceedings for the determination of the rights of claimants to the water of a river system or water source the filed statements of claimants shall be competent evidence of the facts stated therein unless the same are put in issue.

No Change Since 1953

73-4-15. Judgment after hearing.

Upon the completion of the hearing, after objections filed, the court shall enter judgment which shall determine and establish the rights of the several claimants to the use of the water of the river system or water source as provided in Section 73-4-12.

No Change Since 1953

73-4-16. Appeals.

From all final judgments of the district court there shall be a right of appeal to the Supreme Court as in other cases. The appeal shall be upon the record made in the district court, and may as in equity cases be on questions of both law and fact. All proceedings on appeal shall be conducted according to the provisions of the Code of Civil Procedure.

No Change Since 1953

73-4-17. Certified copy of final judgment -- Filing.

Within 30 days after the entry of final judgment of the district court, or if an appeal is taken from a district court judgment, within 30 days after the final judgment on remittitur is entered, it shall be the duty of the clerk of the district court to deliver to the state engineer a certified copy of such judgment and to cause a certified copy thereof to be filed with the county recorder of each county in which the water adjudicated is diverted from its natural source and of each county where the water is applied. No filing fee shall be charged by either the state engineer or the county recorder.

Amended by Chapter 127, 1992 General Session

73-4-18. General determination in court's discretion -- State to be made a party.

Whenever any civil action is commenced in the district court involving fewer than 10 water claimants or less than the major part of the rights to the use of water from any river system, lake, underground water basin, or other source, the court in its discretion may, if a general determination of the rights to the use of water from said water source has not already been made, proceed, as in this chapter provided, to make such a general determination. In any such action for the determination of water rights the state of Utah shall be joined as a necessary party.

No Change Since 1953

73-4-19. Redetermination -- Bond of applicant.

Wherever a general determination of water rights upon any river system or water source has been made by the district court, any claimant to the use of water from such river system or water source seeking a redetermination of water rights upon such river system or water source shall, before commencing any action for such redetermination or for the revision of any final judgment other than as provided in Section 73-4-1, furnish to the court in which such action is commenced and before the filing of any petition or complaint for such purpose, a good and sufficient bond, in a form and with sureties approved by the court, in a sum fixed by the court

at least equal to twice the estimated costs which may arise in such action, conditioned that if final judgment after hearing, or after appeal should appeal be taken, is awarded against such claimant, then such claimant will pay all costs arising in such action and all damages to other parties thereto arising therefrom.

No Change Since 1953

73-4-20. Revolving fund -- Money expended not assessable against water users -- Transfer of unexpended money to adjudication fund -- Payment of costs of determinations -- Money expended from adjudication fund not assessable against water users -- Surplus to remain in adjudication fund.

Money heretofore expended from the state engineer's revolving fund in pending adjudications shall not be assessable against the water users. All money remaining and unexpended in the state engineer's revolving fund as of July 1, 1953, including money appropriated to the revolving fund for the biennium ending June 30, 1955, shall be transferred to a fund of the state engineer to be known as the adjudication fund. The revolving fund shall be closed out upon such transfer of money. The state engineer shall pay all costs of determinations with money appropriated to the office of the state engineer and deposited in the adjudication fund and with money transferred to such fund as provided above. The money expended from such fund shall not be assessable against the water users. Any money remaining in such fund at the end of the biennium shall not revert to the general fund but shall remain in the adjudication fund until expended.

Amended by Chapter 131, 1953 General Session

73-4-21. Duty to follow court proceedings -- Additional notice.

After the service of summons in the manner prescribed by Section 73-4-4 hereof, it shall be the duty of every person served to thereafter follow all court proceedings and no further or additional notice shall be required except the notice that the survey has been completed and the water users claim is due as prescribed by Section 73-4-3, and notice of the proposed determinations

as provided by Section 73-4-11. The district court may, however, require notice of other proceedings to be given when, in the judgment of the court, it deems notice necessary.

No Change Since 1953

73-4-22. State engineer's duty to search records for and serve summons on claimants -- Filing of affidavit -- Publication of summons -- Binding on unknown claimants.

The state engineer, throughout the pendency of proceedings, shall serve summons in the manner prescribed by Section 73-4-4 upon all claimants to the use of water in the described source embraced by said action, whenever the names and addresses of said persons come to the attention of the state engineer. The names and addresses of such persons so served shall be added to the list prescribed by Section 73-4-3 hereof. Immediately after the notice of the proposed determination is given, in accordance with Section 73-4-11 hereof, the state engineer shall diligently search for the names and addresses of any claimants to water in the source covered by the proposed determination who have not been previously served with summons other than by publication, and any such persons located shall forthwith be served with summons, and after the state engineer has exhausted his search for other claimants he shall make such fact known to the district court by affidavit and the clerk of the district court shall again publish summons five times, once each week, for five successive weeks which said service shall be binding upon all unknown claimants.

No Change Since 1953

73-4-23. Effective date of amendatory act -- Application to pending suits -- State engineer's certificate.

This act shall be effective 60 days from its enactment and shall apply to all suits now pending under Title 73, Chapter 4, Utah Code Annotated 1953, except those proceedings under which the state engineer has by the effective date hereof completed his survey, and it is expressly provided that those actions where the state engineer has by the effective date of this act completed his

survey may proceed to completion under the procedure prescribed by the statutes heretofore existing. The state engineer shall within 10 days after the effective date of this act file with the clerk of the court in each action then pending under Title 73, Chapter 4, Utah Code Annotated 1953, a certificate under the seal of his office stating whether or not he has completed the survey so that all persons will have notice and can know whether or not this act is applicable to such existing suit.

No Change Since 1953

73-4-24. Petition for expedited hearing of objection -- Petition for limited determination.

(1) A claimant to the use of water may petition the court to expedite the hearing of a valid, timely objection to a report and proposed determination prepared in accordance with Section 73-4-11 in which the claimant has a direct interest.

(2) A petition under Subsection (1) shall identify any party directly affected by the objection, if known to the claimant, and state why the hearing of the objection should be expedited.

(3) A petitioner under Subsection (1) shall notify those affected by the petition as directed by the court.

(4) The court may grant a petition under Subsection (1) if:

(a) the court finds that the expedited hearing is necessary in the interest of justice;

(b) granting the petition will facilitate a reasonably prompt resolution of the matters raised in the objection; and

(c) granting the petition does not prejudice the right of another claimant.

(5) During the pendency of a general adjudication suit, a claimant or group of claimants may petition the court to direct the state engineer to survey and prepare a proposed determination for a limited area within the general adjudication area in which the claimant or group of claimants has a claim.

(6) The court may grant a petition under Subsection (5) if:

(a) the claimant or group of claimants will suffer

prejudice if the petition is not granted;

(b) the matters raised by the claimant or group of claimants are proper for determination in a general adjudication;

(c) granting the petition will not unduly burden the state engineer's resources; and

(d) granting the petition will not unduly interfere with the state engineer's discretion to allocate resources for the preparation of another proposed determination.

(7) If the court grants a petition under this section, the state engineer shall comply with this chapter in satisfying the court's order.

Repealed and Re-enacted by Chapter 320, 2010 General Session

CHAPTER 5 ADMINISTRATION AND DISTRIBUTION

73-5-1. Appointment of water commissioners -- Procedure.

(1)(a) If, in the judgment of the state engineer or the district court, it is necessary to appoint a water commissioner for the distribution of water from any river system or water source, the commissioner shall be appointed for a four-year term by the state engineer.

(b) The state engineer shall determine whether all or a part of a river system or other water source shall be served by a commissioner, and if only a part is to be served, the state engineer shall determine the boundaries of that part.

(c) The state engineer may appoint:

(i) more than one commissioner to distribute water from all or a part of a water source; or

(ii) a single commissioner to distribute water from several separate and distinct water sources.

(2)(a) The state engineer shall consult with the water users before appointing a commissioner. The form of consultation and notice to be given shall be determined by the state engineer so as to best suit local conditions, while providing for full expression of majority opinion.

(b) If a majority of the water users agree upon a qualified person to be appointed as water commissioner, the duties the person shall perform, and the compensation the person shall receive, and they make recommendations to the state engineer on the appointment, duties, and compensation, the state engineer shall act in accordance with their recommendations.

(c) If a majority of water users do not agree on the appointment, duties, or compensation, the state engineer shall make a determination for them.

(3)(a)(i) The salary and expenses of the commissioner and all other expenses of distribution, including printing, postage, equipment, water users' expenses, and any other expenses considered necessary by the state engineer, shall be borne pro rata by the users of water from the river system or water source in

accordance with a schedule to be fixed by the state engineer.

(ii) The schedule shall be based on the established rights of each water user, and the pro rata share shall be paid by each water user to the state engineer on or before May 1 of each year.

(b) The payments shall be deposited in the Water Commissioner Fund created in Section 73-5-1.5.

(c) If a water user fails to pay the assessment as provided by Subsection (3)(a), the state engineer may do any or all of the following:

(i) create a lien upon the water right affected by filing a notice of lien in the office of the county recorder in the county where the water is diverted and bring an action to enforce the lien;

(ii) forbid the use of water by the delinquent water user or the delinquent water user's successors or assignees, while the default continues; or

(iii) bring an action in the district court for the unpaid expense and salary.

(d) In any action brought to collect any unpaid assessment or to enforce any lien under this section, the delinquent water user shall be liable for the amount of the assessment, interest, any penalty, and for all costs of collection, including all court costs and a reasonable attorney fee.

(4)(a) A commissioner may be removed by the state engineer for cause.

(b) The users of water from any river system or water source may petition the district court for the removal of a commissioner and after notice and hearing, the court may order the removal of the commissioner and direct the state engineer to appoint a successor.

Amended by Chapter 193, 2006 General Session

73-5-1.5. Water Commissioner Fund.

(1) There is created a private-purpose trust fund known as the "Water Commissioner Fund."

(2) The fund consists of assessments paid to the state engineer by water users pursuant to Subsection 73-5-1(3).

(3)(a) The fund shall earn interest.

(b) Interest earned on fund money shall be deposited into the fund.

(4) The state engineer shall use fund money to pay for salary and expenses of water commissioners and other expenses related to the distribution of water specified in Subsection 73-5-1(3).

Amended by Chapter 256, 2002 General Session

73-5-3. Control by engineer of division and distribution under judgments.

The state engineer and his duly authorized assistants shall carry into effect the judgments of the courts in relation to the division, distribution or use of water under the provisions of this title. The state engineer shall divide, or cause to be divided, the water within any district created under the provisions of this title among the several appropriators entitled thereto in accordance with the right of each respectively, and shall regulate and control, or cause to be regulated and controlled, the use of such water by such closing or partial closing of the head gates, caps, valves or other controlling works of any ditch, canal, pipe, flume, well or tunnel or other means of diversion as will prevent the waste of water or its use in excess of the quantity to which any appropriator is lawfully entitled, and shall regulate, or cause to be regulated, the controlling works of reservoirs in accordance with the provisions of this title. Whenever in pursuance of his duties the state engineer regulates or causes to be regulated any head gate, cap, valve or other controlling works of any ditch, canal, pipe, flume, well or tunnel or other means of diversion or the controlling works of any reservoir, he may attach to such controlling works a written notice, properly dated and signed, setting forth that such controlling works have been properly regulated and are wholly under his control, and such notice shall be a legal notice as to the facts therein contained to all parties interested in the division and distribution of the water of such ditch, canal, pipe, flume, well or tunnel or other means of diversion or reservoir. Whenever the state engineer is required to enter upon private property in order to carry out the provisions of

this title and is refused by the owner or possessor of such property such right of entry, he may petition the district court for an order granting such right, and after notice and hearing the court may grant such permission, on security being given to pay all damage caused thereby to the owner of such property.

No Change Since 1953

73-5-4. Controlling works and measuring devices.

(1) To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, a person using water in this state, except as provided by Subsection (4), shall construct or install and maintain controlling works and a measuring device at:

- (a) each location where water is diverted from a source; and
- (b) any other location required by the state engineer.

(2) A person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.

(3) The state engineer shall approve the design of:

- (a) the measuring device; and
- (b) controlling works so that the state engineer or a water commissioner may regulate and lock the works.

(4) A person using water as an instream flow:

- (a) shall install and maintain a measuring device or stream gauging station in the section of the stream within which the instream flow is maintained; and

(b) is not required to install controlling works unless the state engineer's order approving the application requires the installation because controlling works are necessary to achieve the purpose of the application.

(5)(a) An owner or manager of a reservoir shall construct and maintain a measuring device as directed by the state engineer to measure the inflow, storage content, and outflow from the reservoir.

(b) The state engineer shall approve the design and location of the measuring device.

(c) The owner or manager of a reservoir shall make the measuring device accessible to the state engineer or water commissioner.

(6) If a water user refuses or neglects to construct or install the controlling works or measuring device after 30 days' notice to do so by the state engineer, the state engineer may:

(a) forbid the use of water until the user complies with the state engineer's requirement; and

(b) commence enforcement proceedings authorized by Section 73-2-25.

Amended by Chapter 311, 2008 General Session

73-5-7. Inspection of ditches and diverting works by engineer.

The state engineer shall have authority to examine and inspect any ditch or other diverting works, and at the time of such inspection he may order the owners thereof to make any addition or alteration which he considers necessary for the security of such works, the safety of persons, or the protection of property. If any person, firm, copartnership, association or corporation refuses or neglects to comply with such requirements of the state engineer, he may bring action in the name of the state in the district court to enforce his order.

No Change Since 1953

73-5-8. Reports by users to engineer.

Every person using water from any river system or water source, when requested by the state engineer, shall within 30 days after such request report to the state engineer in writing:

(1) the nature of the use of any such water;

(2) the area on which used;

(3) the kind of crops to be grown; and

(4) water elevations on wells or tunnels and quantity of underground water used.

Amended by Chapter 215, 2005 General Session

73-5-9. Powers of state engineer as to waste, pollution, or contamination of waters.

(1) To prevent waste, loss, pollution, or contamination of any waters whether above or below the ground, the state engineer may require the repair or construction of head gates or other devices on ditches or canals, and the repair or installation of caps, valves, or casings on any well or tunnel or the plugging or filling thereof to accomplish the purposes of this section.

(2) Any requirement made by the state engineer in accordance with this section shall be executed by and at the cost and expense of the owner, lessee or person having control of such diverting works affected.

(3) If within 10 days after notice of such requirement as provided in this section, the owner, lessee or person having control of the water affected, has not commenced to carry out such requirement, or if he has commenced to comply therewith but shall not thereafter proceed diligently to complete the work, the state engineer may forbid the use of water from such source until the user thereof shall comply with such requirement.

(4) Failure to comply with any requirement made by the state engineer under this section is a crime punishable under Section 73-2-27 if the failure to comply is knowing or intentional.

(5) Each day that such violation is permitted to continue shall constitute a separate offense.

Amended by Chapter 215, 2005 General Session

73-5-13. Claim to surface or underground water not otherwise represented -- Information required -- Corrections -- Filing -- Investigation -- Publication -- Judicial action to determine validity -- Rules.

(1)(a) All claimants to the right to the use of water, including both surface and underground, whose rights are not represented by certificates of appropriation issued by the state engineer, by applications filed with the state engineer, by court decrees, or by notice of claim filed pursuant to law, shall submit the claim to the state engineer.

(b) Subsections (2) through (7) shall only apply to claims submitted to the state engineer pursuant to this section after May 4, 1997.

(2)(a) Each claim submitted under this section shall be verified under oath by the claimant or the claimant's duly appointed representative and submitted on forms furnished by the state engineer setting forth any information the state engineer requires, including:

(i) the name and post office address of the person making the claim;

(ii) the quantity of water claimed in acre-feet or rate of flow in second-feet, or both, where appropriate;

(iii) the source of supply;

(iv) the priority date of the right;

(v) the location of the point of diversion with reference to a United States land survey corner;

(vi) the place of use;

(vii) the nature and extent of use;

(viii) the time during which the water has been used each year; and

(ix) the date when the water was first used.

(b) The claim shall also include the following information verified under oath by a registered engineer or land surveyor:

(i) measurements of the amount of water diverted;

(ii) a statement that the quantity of water claimed either in acre-feet or cubic feet per second is consistent with the beneficial use claimed and the supply which the source is capable of producing; and

(iii) a map showing the original diversion and conveyance works and where the water was placed to beneficial use, including irrigated lands, if irrigation is the claimed beneficial use.

(c) The state engineer may require additional information as necessary to evaluate any claim including:

(i) affidavits setting forth facts of which the affiant has personal knowledge;

(ii) authenticated or historic photographs, plat or survey maps, or surveyors' notes;

(iii) authenticated copies of original diaries, personal histories, or other historical documents which document the claimed use of water; and

(iv) other relevant records on file with any county recorder's, surveyor's, or assessor's office.

(3)(a) A claim may be corrected by submitting to the state engineer a verified corrected claim designated as such and bearing the same number as the original claim.

(b) No fee shall be charged for submitting a corrected claim.

(4)(a) Upon submission by a claimant of a claim that is acceptably complete under Subsection (2) and the deposit of money by a claimant with the state engineer sufficient to pay the expenses of conducting a field investigation and publishing a notice of the claim, the state engineer shall:

(i) file the claim;

(ii) endorse the date of its receipt;

(iii) assign the claim a water right number; and

(iv) publish a notice of the claim following the same procedures as provided in Section 73-3-6.

(b) Any claim not acceptably complete under Subsection (2) shall be returned to the claimant.

(c) The acceptance of any claim filed under this section by the state engineer may not be considered to be an adjudication by the state engineer of the validity of the claimed water right.

(5)(a) The state engineer shall:

(i) conduct a field investigation of each claim filed; and

(ii) prepare a report of the investigation.

(b) The report of the investigation shall:

(i) become part of the file on the claim; and

(ii) be admissible in any administrative or judicial proceeding on the validity of the claim.

(6)(a) Any person who may be damaged by a diversion and use of water as described in a claim submitted pursuant to this

section may file an action in district court to determine the validity of the claim, whether or not the claim has been accepted for filing by the state engineer.

(b) Venue for the action shall be in the county in which the point of diversion listed in the claim is located, or in a county where the place of use, or some part of it, is located.

(c) The action shall be brought against the claimant to the use of water or the claimant's successor in interest.

(d) In any action brought to determine the validity of a claim to the use of water under this section, the claimant shall have the initial burden of proof as to the validity of the claimed right.

(e) Any person filing an action challenging the validity of a claim to the use of water under this section shall notify the state engineer of the pendency of the action in a manner prescribed by the state engineer. Upon receipt of the notice, the state engineer may take no action on any change or exchange applications founded on the claim that is the subject of the pending litigation, until the court adjudicates the matter.

(f) Upon the entering of any final order or decree in any judicial action to determine the validity of a claim under this section, the prevailing party shall file a certified copy of the order or decree with the state engineer, which shall become part of the state engineer's file on the claim.

(7) The state engineer may make rules consistent with this section specifying information required to be included in a claim and claim procedures.

Amended by Chapter 136, 2001 General Session

73-5-14. Determination by the state engineer of watershed to which particular source is tributary -- Publications of notice and result -- Hearing -- Judicial review.

(1) The state engineer may determine for administrative and distribution purposes the watershed to which any particular stream or source of water is tributary.

(2) A determination under Subsection (1) may be made only after publication of notice to the water users.

(3) Publication of notice under Subsection (2) shall be

made:

(a) in a newspaper or newspapers having general circulation in every county in the state in which any rights might be affected, once each week for five consecutive weeks;

(b) in accordance with Section 45-1-101 for five weeks;
and

(c) on the Utah Public Notice Website created in Section 63F-1-701, for five weeks.

(4) The state engineer shall fix the date and place of hearing and at the hearing any water user shall be given an opportunity to appear and adduce evidence material to the determination of the question involved.

(5)(a) The state engineer shall publish the result of the determination as provided in Subsections (3)(a) and (b), and the notice of the decision of the state engineer shall notify the public that any person aggrieved by the decision may appeal the decision as provided by Section 73-3-14.

(b) The notice under Subsection (5)(a) shall be considered to have been given so as to start the time for appeal upon completion of the publication of notice.

Amended by Chapter 90, 2010 General Session

73-5-15. Groundwater management plan.

(1) As used in this section:

(a) "Critical management area" means a groundwater basin in which the groundwater withdrawals consistently exceed the safe yield.

(b) "Safe yield" means the amount of groundwater that can be withdrawn from a groundwater basin over a period of time without exceeding the long-term recharge of the basin or unreasonably affecting the basin's physical and chemical integrity.

(2)(a) The state engineer may regulate groundwater withdrawals within a specific groundwater basin by adopting a groundwater management plan in accordance with this section for any groundwater basin or aquifer or combination of hydrologically connected groundwater basins or aquifers.

(b) The objectives of a groundwater management plan

are to:

- (i) limit groundwater withdrawals to safe yield;
- (ii) protect the physical integrity of the aquifer; and
- (iii) protect water quality.

(c) The state engineer shall adopt a groundwater management plan for a groundwater basin if more than 1/3 of the water right owners in the groundwater basin request that the state engineer adopt a groundwater management plan.

(3)(a) In developing a groundwater management plan, the state engineer may consider:

- (i) the hydrology of the groundwater basin;
- (ii) the physical characteristics of the groundwater basin;

(iii) the relationship between surface water and groundwater, including whether the groundwater should be managed in conjunction with hydrologically connected surface waters;

(iv) the geographic spacing and location of groundwater withdrawals;

- (v) water quality;
- (vi) local well interference; and
- (vii) other relevant factors.

(b) The state engineer shall base the provisions of a groundwater management plan on the principles of prior appropriation.

(c)(i) The state engineer shall use the best available scientific method to determine safe yield.

(ii) As hydrologic conditions change or additional information becomes available, safe yield determinations made by the state engineer may be revised by following the procedures listed in Subsection (5).

(4)(a)(i) Except as provided in Subsection (4)(b), the withdrawal of water from a groundwater basin shall be limited to the basin's safe yield.

(ii) Before limiting withdrawals in a groundwater basin to safe yield, the state engineer shall:

(A) determine the groundwater basin's safe yield; and

(B) adopt a groundwater management plan for the groundwater basin.

(iii) If the state engineer determines that groundwater withdrawals in a groundwater basin exceed the safe yield, the state engineer shall regulate groundwater rights in that groundwater basin based on the priority date of the water rights under the groundwater management plan, unless a voluntary arrangement exists under Subsection (4)(c) that requires a different distribution.

(b) When adopting a groundwater management plan for a critical management area, the state engineer shall, based on economic and other impacts to an individual water user or a local community caused by the implementation of safe yield limits on withdrawals, allow gradual implementation of the groundwater management plan.

(c)(i) In consultation with the state engineer, water users in a groundwater basin may agree to participate in a voluntary arrangement for managing withdrawals at any time, either before or after a determination that groundwater withdrawals exceed the groundwater basin's safe yield.

(ii) A voluntary arrangement under Subsection (4)(c)(i) shall be consistent with other law.

(iii) The adoption of a voluntary arrangement under this Subsection (4)(c) by less than all of the water users in a groundwater basin does not affect the rights of water users who do not agree to the voluntary arrangement.

(5) To adopt a groundwater management plan, the state engineer shall:

(a) give notice as specified in Subsection (7) at least 30 days before the first public meeting held in accordance with Subsection (5)(b):

(i) that the state engineer proposes to adopt a groundwater management plan;

(ii) describing generally the land area proposed to be included in the groundwater management plan; and

(iii) stating the location, date, and time of each public

meeting to be held in accordance with Subsection (5)(b);

(b) hold one or more public meetings in the geographic area proposed to be included within the groundwater management plan to:

(i) address the need for a groundwater management plan;

(ii) present any data, studies, or reports that the state engineer intends to consider in preparing the groundwater management plan;

(iii) address safe yield and any other subject that may be included in the groundwater management plan;

(iv) outline the estimated administrative costs, if any, that groundwater users are likely to incur if the plan is adopted; and

(v) receive any public comments and other information presented at the public meeting, including comments from any of the entities listed in Subsection (7)(a)(iii);

(c) receive and consider written comments concerning the proposed groundwater management plan from any person for a period determined by the state engineer of not less than 60 days after the day on which the notice required by Subsection (5)(a) is given;

(d)(i) at least 60 days prior to final adoption of the groundwater management plan, publish notice:

(A) that a draft of the groundwater management plan has been proposed; and

(B) specifying where a copy of the draft plan may be reviewed; and

(ii) promptly provide a copy of the draft plan in printed or electronic form to each of the entities listed in Subsection (7)(a)(iii) that makes written request for a copy; and

(e) provide notice of the adoption of the groundwater management plan.

(6) A groundwater management plan shall become effective on the date notice of adoption is completed under Subsection (7), or on a later date if specified in the plan.

(7)(a) A notice required by this section shall be:

(i) published:

(A) once a week for two successive weeks in a newspaper of general circulation in each county that encompasses a portion of the land area proposed to be included within the groundwater management plan; and

(B) in accordance with Section 45-1-101 for two weeks;

(ii) published conspicuously on the state engineer's Internet website; and

(iii) mailed to each of the following that has within its boundaries a portion of the land area to be included within the proposed groundwater management plan:

(A) county;

(B) incorporated city or town;

(C) improvement district under Title 17B, Chapter 2a, Part 4, Improvement District Act;

(D) service area, under Title 17B, Chapter 2a, Part 9, Service Area Act;

(E) drainage district, under Title 17B, Chapter 2a, Part 2, Drainage District Act;

(F) irrigation district, under Title 17B, Chapter 2a, Part 5, Irrigation District Act;

(G) metropolitan water district, under Title 17B, Chapter 2a, Part 6, Metropolitan Water District Act;

(H) special service district providing water, sewer, drainage, or flood control services, under Title 17D, Chapter 1, Special Service District Act;

(I) water conservancy district, under Title 17B, Chapter 2a, Part 10, Water Conservancy District Act; and

(J) conservation district, under Title 17D, Chapter 3, Conservation District Act.

(b) A notice required by this section is effective upon substantial compliance with Subsections (7)(a)(i) through (iii).

(8) A groundwater management plan may be amended in the same manner as a groundwater management plan may be adopted under this section.

(9) The existence of a groundwater management plan

does not preclude any otherwise eligible person from filing any application or challenging any decision made by the state engineer within the affected groundwater basin.

(10)(a) A person aggrieved by a groundwater management plan may challenge any aspect of the groundwater management plan by filing a complaint within 60 days after the adoption of the groundwater management plan in the district court for any county in which the groundwater basin is found.

(b) Notwithstanding Subsection (9), a person may challenge the components of a groundwater management plan only in the manner provided by Subsection (10)(a).

(c) An action brought under this Subsection (10) is reviewed de novo by the district court.

(d) A person challenging a groundwater management plan under this Subsection (10) shall join the state engineer as a defendant in the action challenging the groundwater management plan.

(e)(i) Within 30 days after the day on which a person files an action challenging any aspect of a groundwater management plan under Subsection (10)(a), the person filing the action shall publish notice of the action:

(A) in a newspaper of general circulation in the county in which the district court is located; and

(B) in accordance with Section 45-1-101 for two weeks.

(ii) The notice required by Subsection (10)(e)(i)(A) shall be published once a week for two consecutive weeks.

(iii) The notice required by Subsection (10)(e)(i) shall:

(A) identify the groundwater management plan the person is challenging;

(B) identify the case number assigned by the district court;

(C) state that a person affected by the groundwater management plan may petition the district court to intervene in the action challenging the groundwater management plan; and

(D) list the address for the clerk of the district court in which the action is filed.

(iv)(A) Any person affected by the groundwater

management plan may petition to intervene in the action within 60 days after the day on which notice is last published under Subsections (10)(e)(i) and (ii).

(B) The district court's treatment of a petition to intervene under this Subsection (10)(e)(iv) is governed by the Utah Rules of Civil Procedure.

(v) A district court in which an action is brought under Subsection (10)(a) shall consolidate all actions brought under that Subsection and include in the consolidated action any person whose petition to intervene is granted.

(11) A groundwater management plan adopted or amended in accordance with this section is exempt from the requirements in Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(12) Recharge and recovery projects permitted under Chapter 3b, Groundwater Recharge and Recovery Act, are exempted from this section.

(13) Nothing in this section may be interpreted to require the development, implementation, or consideration of a groundwater management plan as a prerequisite or condition to the exercise of the state engineer's enforcement powers under other law, including powers granted under Section 73-2-25.

(14) A groundwater management plan adopted in accordance with this section may not apply to the dewatering of a mine.

(15)(a) A groundwater management plan adopted by the state engineer before May 1, 2006, remains in force and has the same legal effect as it had on the day on which it was adopted by the state engineer.

(b) If a groundwater management plan that existed before May 1, 2006, is amended on or after May 1, 2006, the amendment is subject to this section's provisions.

Amended by Chapter 388, 2009 General Session

CHAPTER 5a DAM SAFETY

73-5a-101. Power of state engineer to regulate dams.

(1) The state engineer has the authority to regulate dams for the purpose of protecting public safety.

(2) To protect life and property, the state engineer may make rules controlling the construction and operation of dams, including rules controlling:

- (a) design;
- (b) maintenance;
- (c) repair;
- (d) removal; and
- (e) abandonment.

(3) The state engineer may by rule exempt from this chapter any dam that:

(a) impounds less than 20 acre-feet of water and does not constitute a threat to human life if it fails; or

(b) does not constitute a threat to human life and would result in only minor damage to property of the owner if it fails.

Enacted by Chapter 319, 1990 General Session

73-5a-102. Chapter does not apply to certain federal dams and reservoirs.

This chapter does not apply to works owned by the United States Bureau of Reclamation. However, the Bureau of Reclamation shall file plans, drawings, and specifications of its works with the state engineer.

Amended by Chapter 264, 1996 General Session

73-5a-103. Liability of owner or operator.

(1) Nothing in this chapter shall be construed to relieve an owner or operator of a dam or reservoir of the legal duties, obligations, or liabilities incident to the ownership or operation of the dam or reservoir.

(2) The owner or operator of a dam or reservoir may not be held to be strictly liable for any act or omission incident to

the construction, ownership, or operation of the dam or reservoir.
Amended by Chapter 264, 1996 General Session

73-5a-104. Qualifications of persons designing dams.

Each plan for the construction, enlargement, repair, alteration, or removal of any dam in this state shall be prepared by a qualified engineer who is:

- (1) licensed in Utah; and
- (2) experienced in dam design and construction.

Enacted by Chapter 319, 1990 General Session

73-5a-105. Independent consultants -- Owner to pay costs.

(1) The state engineer may require the owner of a dam or proposed dam to obtain the services of an independent consultant or team of consultants approved by the state engineer to consult regarding the adequacy of the design, construction, or operation of the dam if safety considerations pertaining to the design, construction, or operation of the dam warrant an independent review.

(2) The state engineer shall make rules specifying:

- (a) the safety considerations that will be considered in determining if an independent review is required;
- (b) the requisite qualifications and experience of the independent consultants; and
- (c) the timing of the consultants' review so that their recommendations are made in a timely manner.

(3)(a) The independent consultants shall be considered to be the agents of the owner of the dam.

(b) The costs of the independent consultants' services shall be paid by the owner of the dam.

(c) The owner of the dam may require the independent consultants to consider other issues, in addition to safety considerations, such as:

- (i) design selections or alternatives;
- (ii) site selection;
- (iii) cost effectiveness; or

- (iv) other tasks as defined by the contract.

Enacted by Chapter 319, 1990 General Session

73-5a-106. Dams classified according to hazard and use.

(1) Dams shall be classified according to hazard and use.

(2) Hazard classifications are as follows:

(a) high hazard - those dams which, if they fail, have a high probability of causing loss of human life or extensive economic loss, including damage to critical public utilities;

(b) moderate hazard - those dams which, if they fail, have a low probability of causing loss of human life, but would cause appreciable property damage, including damage to public utilities; and

(c) low hazard - those dams which, if they fail, would cause minimal threat to human life, and economic losses would be minor or limited to damage sustained by the owner of the structure.

(3) Use classifications are as follows:

(a) water storage - dams which impound water for prolonged periods, including those built for irrigation, power generation, water supply, aquatic culture, and recreation;

(b) flood control - dams constructed to operate only during significant runoff events and which impound water for a small percentage of time, including those built for flood control or sediment control and debris basins;

(c) tailings - dams in which a large component of the material impounded consists of saturated solids; and

(d) other - dams which impound a minimal amount of water or where the head behind the dam is minimal, including stock ponds, wash water ponds, recirculated process water ponds, regulating reservoirs, and diversion dams.

Amended by Chapter 264, 1996 General Session

73-5a-201. Approval of state engineer necessary to construct, alter, or abandon dams.

No person may construct, enlarge, repair, alter, remove, or

abandon any dam or reservoir without obtaining written approval from the state engineer. Routine maintenance of the structure does not require approval from the state engineer.

Enacted by Chapter 319, 1990 General Session

73-5a-202. Submission of plans.

(1) Before a dam is constructed, enlarged, repaired, altered, removed, or abandoned, plans for the work shall be submitted to the state engineer for his approval, unless the dam:

- (a) impounds less than 20 acre-feet of water; and
- (b) is not classified as a high hazard structure under Section 73-5a-106.

(2)(a) The plans shall be submitted 90 days before:

- (i) awarding the construction contract; or
- (ii) the commencement of construction, if the owner constructs the dam.

(b) The state engineer may shorten the 90-day review period if the owner and the design engineer submit satisfactory preliminary plans and design reports for review.

(3) The state engineer may waive the requirement of plans if it can be demonstrated that failure of the proposed dam:

- (a) does not constitute a threat to human life; and
- (b) may result in only minor property damage that would be limited to property held by the owner of the structure.

Amended by Chapter 177, 2009 General Session

73-5a-203. Review of plans.

(1) The state engineer shall establish a formal written procedure for the review of plans submitted pursuant to Section 73-5a-202. Plans shall be reviewed according to:

- (a) design criteria which the state engineer shall specify in rules; and
- (b) data or criteria generally accepted by the general dam design community.

(2) Upon review of the plans, the state engineer will:

- (a) approve them with appropriate conditions;

- (b) reject them; or
- (c) return them for correction.
- (3) The state engineer shall document each review

indicating:

- (a) how the plans were reviewed; and
- (b) his evaluation of the plans.

Enacted by Chapter 319, 1990 General Session

73-5a-204. Application for approval.

(1) If the submission of plans is not required by Subsection 73-5a-202(1) or is waived pursuant to Subsection 73-5a-202(3), approval to construct, enlarge, repair, alter, remove, or abandon the dam must be obtained by submitting an application to the state engineer.

(2) The application shall contain:

- (a) the location of the dam;
- (b) physical dimensions of the dam;
- (c) water rights attached to the dam; and
- (d) any other information or drawings as required by

the state engineer to evaluate the application.

(3) Upon review, the application will be approved, rejected, or approved with conditions.

Amended by Chapter 5, 1991 General Session

73-5a-205. Approvals void after one year if construction delayed -- Exceptions.

(1) Any approval granted under Section 73-5a-203 is void one year after the date of approval if construction has not started.

(2) The state engineer may extend the approval in one year increments:

- (a) upon a showing of reasonable cause for delay; and
- (b) provided state-of-the-art design criteria has not

changed in the intervening period.

Enacted by Chapter 319, 1990 General Session

73-5a-301. Inspections to insure compliance with plans -- Duties and costs of owners -- Weekly reports.

(1) During construction, enlargement, repair, alteration, or removal of any dam:

(a) the state engineer, his staff, or an independent consultant shall make periodic inspections of the work for the purpose of ascertaining compliance with the approved plans and specifications; and

(b) the owner of the dam shall:

(i) conduct tests that the state engineer determines are necessary;

(ii) provide adequate supervision of the work by an engineer licensed by the state who has experience in dam design and construction; and

(iii) disclose information sufficient to enable the state engineer to determine that the work is being done in conformance with the approved plans and specifications.

(2) Costs of any work or tests required by the state engineer shall be paid by the owner of the dam.

(3) The engineer who is supervising the work pursuant to Subsection (1)(b)(ii) is required to submit a report weekly to the state engineer. Each report shall show the work accomplished during the previous week and summarize the results of any material testing.

Enacted by Chapter 319, 1990 General Session

73-5a-302. Failure to conform to plans.

(1) If at any time during construction, enlargement, repair, alteration, or removal of any dam the state engineer finds that the work is not being done in accordance with the approved plans and specifications, he shall:

(a) notify the owner of the failure to comply;

(b) order the owner to effect compliance with the plans and specifications; or

(c) approve the modification to the approved plans and specifications.

(2) The state engineer may order that no further work

be done until compliance has been effected and approved by him.

(3) A failure to comply with the approved plans and specifications shall render the approval subject to revocation by the state engineer. If compliance is not effected in a reasonable time, the state engineer may order the incomplete structure removed in order to eliminate any safety hazard to life or property.

Enacted by Chapter 319, 1990 General Session

73-5a-303. Circumstances under which the plan must be modified or the approval revoked.

(1) If at any time during construction, enlargement, repair, alteration, or removal of a dam the state engineer finds that the conditions encountered differ appreciably from those assumed in the plan, he may require the plans to be modified.

(2) If conditions are revealed which will not permit the construction of a safe dam, the state engineer shall revoke the approval.

Enacted by Chapter 319, 1990 General Session

73-5a-304. Final inspection.

(1) Following construction and prior to impounding any water, the state engineer shall undertake a final inspection of the project.

(2) A written final approval of the project shall be issued if:

(a) the state engineer determines that:

(i) the project was constructed in accordance with plans approved by the state engineer under Sections 73-5a-203 and 73-5a-303; and

(ii) during construction, inspections and tests were conducted as required by Section 73-5a-301; and

(b) the emergency action plan and standard operating plan meet the requirements set forth in rules adopted by the state engineer.

(3)(a) The state engineer may require the owner to:

(i) submit a formal operating plan for the initial filling

of the reservoir; or

(ii) follow certain procedures during the initial filling of the reservoir.

(b) Failure to submit the operating plan or follow the specified procedures shall result in revocation of the final approval.

Enacted by Chapter 319, 1990 General Session

73-5a-401. Records and reports.

The state engineer may make rules requiring the owner of any dam to:

(1) maintain records pertaining to the construction, operation, or maintenance of the dam; or

(2) submit:

(a) reports to the state engineer regarding maintenance, operation, or instrumentation readings; or

(b) any other data considered necessary by the state engineer.

Enacted by Chapter 319, 1990 General Session

73-5a-402. Standard operating plans required.

The owner of each dam shall prepare a standard operating plan for the dam. In the case of a dam in operation prior to May 1, 1991, the standard operating plan shall be submitted to the state engineer for his approval by May 1, 1994. In the case of any dam beginning operations on or after May 1, 1991, the standard operating plan shall be submitted to the state engineer for his approval prior to the final inspection.

Enacted by Chapter 319, 1990 General Session

73-5a-403. State engineer to specify contents of standard operating plans.

By May 1, 1991, the state engineer shall adopt rules specifying the contents of standard operating plans.

Enacted by Chapter 319, 1990 General Session

73-5a-501. State engineer to inspect dams.

(1) The state engineer shall inspect each dam that in the

state engineer's opinion:

- (a) poses a threat to human life; or
- (b) could cause significant property damage if the dam

failed.

(2) An inspection required by Subsection (1) shall occur:

(a) at increments commensurate with the relative risk to life and property; and

(b) not less than once every five years.

(3) The state engineer may inspect a dam that is not exempt from regulation by this chapter.

Amended by Chapter 177, 2009 General Session

73-5a-502. Legislative findings -- Immunity from suit -- State engineer to set minimum standards for existing high hazard dams -- Exceptions -- Investigations and plans for compliance with minimum standards.

(1) The Legislature finds that:

(a) it is in the interest of the people of the state to improve the safety of existing dams;

(b) mutual irrigation companies and water users associations cannot afford to bring dams into conformance with the state's current minimum safety standards without financial assistance from the state;

(c) due to limited financial, physical, and human resources, it is necessary to establish priorities for the upgrade of dams; and

(d) the state and its officers and employees are immune from suit for any injury or damage resulting from the exercise or performance or the failure to exercise or perform any function pursuant to this chapter.

(2) The state engineer shall establish minimum standards for existing high hazard dams by rule. The standards for existing high hazard dams may differ from the design criteria established for new construction.

(3) No seismic standards shall be established for existing high hazard dams within the flood control use

classification.

(4)(a) In implementing this section, the state engineer will develop a priority list of high hazard dams. The list will be determined by calculating the relative anticipated breach flows in the event of a dam failure. The dams will be ranked from the largest breach flow to the smallest for all high hazard dams.

(b) The state engineer shall investigate annually 25 dams on the priority list in order of their ranking to determine in what areas they are deficient or do not meet minimum standards.

(c) Once a determination is made, the owner will be notified that the owner will be required to undertake investigations to determine requirements necessary to bring the dam into compliance with minimum standards.

(d) Once the owner has been informed of the deficiencies of the dam, the owner will be given 90 days to respond, in writing, as to what steps the owner is taking to investigate the deficiencies and the time required to complete the investigations.

(e) The state engineer will review the proposal, and if it appears reasonable, will approve it.

(5) The state engineer may not require any mutual irrigation company or water users association to upgrade a dam in conformance with minimum standards, unless a grant to pay for 80% of the costs is made available from the Board of Water Resources.

Amended by Chapter 264, 1996 General Session

73-5a-503. Owners required to perform maintenance -- Orders to protect life and property.

(1) Following an inspection, the state engineer shall specify what maintenance is necessary to keep the dam and appurtenant structures in satisfactory condition, and the owner of the dam shall be responsible for that maintenance.

(2) Depending upon the severity of problems noted during an inspection, the state engineer may issue orders for:

- (a) engineering studies;
- (b) repairs;

- (c) storage limitations;
- (d) removal of the dam;
- (e) breaching of the dam; or
- (f) any other remedy the state engineer determines is appropriate to protect life and property.

Enacted by Chapter 319, 1990 General Session

73-5a-601. Emergency action plans required.

(1) The owner of any dam which, in the state engineer's opinion, may pose a threat to life or cause significant damage to property if it fails shall prepare a plan of action to be implemented when an emergency involving the dam occurs.

(2) In the case of a dam in operation prior to May 1, 1991, the emergency action plan shall be submitted to the state engineer for his approval by May 1, 1994.

(3) In the case of a dam beginning operations on or after May 1, 1991, the emergency action plan shall be submitted to the state engineer prior to the date of the final inspection.

Enacted by Chapter 319, 1990 General Session

73-5a-602. State engineer to specify contents of emergency action plans.

By May 1, 1991, the state engineer shall adopt rules specifying the contents of an emergency action plan.

Enacted by Chapter 319, 1990 General Session

73-5a-603. Emergency power of state engineer.

(1) The state engineer may intervene during dam emergencies if the owner of the dam cannot be found or is unwilling to take appropriate action. Intervention may occur only when, in the judgment of the state engineer, the condition of any dam is so dangerous to the safety of life or property as to not permit time for issuance and enforcement of any order.

(2) Emergency actions may include:

(a) alerting appropriate public safety entities of the problem;

- (b) draining the reservoir;
 - (c) hiring personnel or leasing equipment to undertake emergency operations; or
 - (d) taking other steps considered necessary to safeguard life and property.
- (3) Any expenses incurred in undertaking emergency operations shall be reimbursed by the owner of the dam.

Enacted by Chapter 319, 1990 General Session

73-5a-701. Notice of violation -- Order for corrective action.

(1) If the state engineer determines that any person is violating any requirement of this chapter or the rules adopted under this chapter, the state engineer shall serve written notice upon the alleged violator which:

- (a) specifies the violation; and
- (b) alleges the facts constituting the violation.

(2) After serving notice as required in Subsection (1), the state engineer may issue an order for necessary corrective action and file an action in the appropriate district court.

Enacted by Chapter 319, 1990 General Session

73-5a-702. Civil penalties -- Costs -- Civil liability.

(1) Any person who violates this chapter or any lawful notice or order issued pursuant to this chapter shall be assessed a penalty not to exceed \$5,000 per violation in a civil proceeding.

(2) In the case of a continuing violation, each day that the violation continues constitutes a separate and distinct offense.

(3) Any person who violates this chapter shall be liable for any expenses incurred by the state engineer in abating any violation of this chapter.

(4) A penalty assessment under this chapter does not relieve the person assessed from civil liability for claims arising out of any act which was also a violation.

Enacted by Chapter 319, 1990 General Session

CHAPTER 6

WITHDRAWAL OF UNAPPROPRIATED WATERS

73-6-1. Suspension of right to appropriate -- By proclamation of governor.

For the purpose of preserving the surplus and unappropriated waters of any stream or other source of water supply for use by irrigation districts and organized agricultural water users, or for any use whatsoever, when in the judgment of the governor and the state engineer the welfare of the state demands it, the governor by proclamation may, upon the recommendation of the state engineer, suspend the right of the public to appropriate such surplus or unappropriated waters.

No Change Since 1953

73-6-2. Restoration by proclamation -- Priority of applications.

(1) Waters withdrawn from appropriation under this chapter may be restored by proclamation of the governor upon the recommendation of the state engineer.

(2) Such proclamation shall not become effective until notice thereof has been published:

(a) at least once a week for three successive weeks in a newspaper of general circulation within the boundaries of the river system or water source within which the waters so to be restored are situated; and

(b) in accordance with Section 45-1-101 for three weeks.

(3) Applications for appropriations shall not be filed during the time such waters are withdrawn from appropriation; provided, that after the first publication of notice aforesaid applications may be deposited with the state engineer and at the time such proclamation becomes effective the engineer shall hold public hearings, giving all applicants notice, to determine which applications so filed during the period of publication of such notice are most conducive to the public good, and shall file such

applications in order of priority according to such determination.

Amended by Chapter 388, 2009 General Session

CHAPTER 22

UTAH GEOTHERMAL RESOURCE CONSERVATION ACT

73-22-1. Short title.

This chapter shall be known and may be cited as the "Utah Geothermal Resource Conservation Act."

Enacted by Chapter 188, 1981 General Session

73-22-2. Legislative findings.

It is declared to be in the public interest to foster, encourage, and promote the discovery, development, production, utilization, and disposal of geothermal resources in the State of Utah in such manner as will prevent waste, protect correlative rights, and safeguard the natural environment and the public welfare; to authorize, encourage, and provide for the development and operation of geothermal resource properties in such manner that the maximum ultimate economic recovery of geothermal resources may be obtained through, among other things, agreements for cooperative development, production, injection, and pressure maintenance operations.

Enacted by Chapter 188, 1981 General Session

73-22-3. Definitions.

As used in this chapter:

(1) "Correlative rights" mean the rights of each geothermal owner in a geothermal area to produce without waste his just and equitable share of the geothermal resource underlying the geothermal area.

(2) "Division" means the Division of Water Rights, Department of Natural Resources.

(3) "Geothermal area" means the general land area which is underlain or reasonably appears to be underlain by geothermal resources.

(4) "Geothermal fluid" means water and steam at temperatures greater than 120 degrees centigrade naturally present in a geothermal system.

(5) "Geothermal resource" means: (a) the natural heat

of the earth at temperatures greater than 120 degrees centigrade; and (b) the energy, in whatever form, including pressure, present in, resulting from, created by, or which may be extracted from that natural heat, directly or through a material medium. Geothermal resource does not include geothermal fluids.

(6) "Geothermal system" means any strata, pool, reservoir, or other geologic formation containing geothermal resources.

(7) "Material medium" means geothermal fluids, or water and other substances artificially introduced into a geothermal system to serve as a heat transfer medium.

(8) "Operator" means any person drilling, maintaining, operating, producing, or in control of any well.

(9) "Owner" means a person who has the right to drill into, produce, and make use of the geothermal resource.

(10) "Person" means any individual, business entity (corporate or otherwise), or political subdivision of this or any other state.

(11) "Waste" means any inefficient, excessive, or improper production, use, or dissipation of geothermal resources. Wasteful practices include, but are not limited to: (a) transporting or storage methods that cause or tend to cause unnecessary surface loss of geothermal resources; or (b) locating, spacing, constructing, equipping, operating, producing, or venting of any well in a manner that results or tends to result in unnecessary surface loss or in reducing the ultimate economic recovery of geothermal resources.

(12) "Well" means any well drilled, converted, or reactivated for the discovery, testing, production, or subsurface injection of geothermal resources.

Enacted by Chapter 188, 1981 General Session

73-22-4. Ownership of geothermal resource -- Lands subject to chapter.

(1) Ownership of a geothermal resource derives from an interest in land and not from an appropriative right to

geothermal fluids.

(2) This chapter shall apply to all lands in the State of Utah, including federal and Indian lands to the extent allowed by law. When these lands are committed to a unit agreement involving lands subject to federal or Indian jurisdiction, the division may, with respect to the unit agreement, deem this chapter complied with if the unit operations are regulated by the United States and the division finds that conservation of geothermal resources and prevention of waste are accomplished under the unit agreement.

Enacted by Chapter 188, 1981 General Session

73-22-5. Jurisdiction of division -- Hearings -- Subpoena power -- Restraining violations -- Actions for damages against violators unaffected.

(1) The division has jurisdiction and authority over all persons and property, public and private, necessary to enforce the provisions of this chapter and may enact, issue, and enforce necessary rules and orders to carry out the requirements of this chapter.

(2)(a) Any affected person may apply for a hearing before the division, or the division may initiate proceedings upon any question relating to the administration of this chapter by following the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(b) The Division of Water Rights shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

(3) The division shall have the power to summon witnesses, to administer oaths, and to require the production of records, books, and documents for examination at any hearing or investigation conducted by it.

(4)(a) If any person fails or refuses to comply with a subpoena issued by the division, or if any witness fails or refuses to testify about any matter regarding which the witness may be interrogated, the division may petition any district court in the state

to issue an order compelling the person to:

(i) comply with the subpoena and attend before the division;

(ii) produce any records, books, and documents covered by the subpoena; or

(iii) to give testimony.

(b) The court may punish failure to comply with the order as contempt.

(5)(a) Whenever it appears that any person is violating or threatening to violate any provision of this chapter, or any rule or order made under this chapter, the division may file suit in the name of the state to restrain that person from continuing the violation or from carrying out the threat of violation.

(b) Venue for the action is in the district court in the county where any defendant resides or in the county where the violation is alleged to have occurred.

(6)(a) Nothing in this chapter, no suit by or against the division, and no violation charged or asserted against any person under this chapter, or any rule or order issued under it, shall impair, abridge, or delay any cause of action for damages that any person may have or assert against any person violating this chapter, or any rule or order issued under it.

(b) Any person so damaged by the violation may sue for and recover whatever damages that the person is otherwise entitled to receive.

Amended by Chapter 382, 2008 General Session

73-22-6. Information required concerning resource development -- Confidentiality -- Regulation of wells -- Surety bonds -- Inspection.

(1) The division shall have authority to require:

(a) Identification of the location and ownership of all wells and producing geothermal leases.

(b) Filing with the division of a notice of intent to drill, redrill, deepen, permanently alter the casing of, or abandon any well. Approval of the notice of intent must be obtained from the

division prior to commencement of operations.

(c) Keeping of well logs and filing true and correct copies with the division. These records are public records when filed with the division, unless the owner or operator requests, in writing, that the records be held confidential. The period of confidentiality shall be established by the division, not to exceed five years from the date of production or injection for other than testing purposes or five years from the date of abandonment, whichever occurs first, as determined by the division. Well records held confidential by the division are open to inspection by those persons authorized in writing by the owner or operator. Confidential status shall not restrict inspection by state officers charged with regulating well operations or by authorized officials of the Utah State Tax Commission for purposes of tax assessment.

(d) The spacing, drilling, casing, testing, operating, producing, and abandonment of wells so as to prevent: (i) geothermal resources, water, gases, or other fluids from escaping into strata other than the strata in which they are found (unless in accordance with a subsurface injection program approved by the division); (ii) pollution of surface and groundwater; (iii) premature cooling of any geothermal system by water encroachment or otherwise which tends to reduce the ultimate economic recovery of the geothermal resources; (iv) blowouts, cave-ins, and seepage; and (v) unreasonable disturbance or injury to neighboring properties, prior water rights, human life, health, and the environment.

(e) The operator to file cash or individual surety bonds with the division for each new well drilled and each abandoned well redrilled. The amount of surety required shall be determined by the division. In lieu of bonds for separate wells, the operator may file a blanket cash or individual surety bond in an amount set by the division to cover all the operator's drilling, redrilling, deepening, maintenance, or abandonment activities for wells in the state. Bonds filed with the division shall be executed by the operator, as principal, conditioned on compliance with division regulations in drilling, redrilling, deepening, maintaining, or

abandoning any well or wells covered by the bond and shall secure the state against all losses, charges, and expenses incurred by it to obtain such compliance by the principal named in the bond.

(f) The geothermal owner or operator to measure geothermal production according to standards set by the division and maintain complete and accurate production records. The records, or certified copies of them, shall be preserved on file by the owner or operator for a period of five years and shall be available for examination by the division at all reasonable times.

(g) Filing with the division any other reasonable reports which it prescribes regarding geothermal operations within the state.

(2) Any bond filed with the division in conformance with this chapter may, with the consent of the division, be terminated and canceled and the surety be relieved of all obligations under it when the well or wells covered by the bond have been properly abandoned or another valid bond has been substituted for it.

(3) The division may enter onto private or public land at any time to inspect any well or geothermal resource development project to determine if the well or project is being constructed, operated, or maintained according to any applicable permits or to determine if the construction, operation, or maintenance of the well or project may involve an unreasonable risk to life, health, property, the environment or subsurface, surface, or atmospheric resources.

Enacted by Chapter 188, 1981 General Session

73-22-7. Cooperative or unit operation of geothermal area -- Order -- Plan of operation -- Approval of owners -- Amendment.

(1) The agency or any affected person may commence an adjudicative proceeding to consider the need for cooperative or unit operation of a geothermal area.

(2) The division shall order the cooperative or unit operation of part or all of a geothermal area if the division finds that:

(a) a developable resource exists; and

(b) that this operation is reasonably necessary to prevent waste, to protect correlative rights, or to prevent the drilling of unnecessary wells and will not reduce the ultimate economic recovery of geothermal resources.

(3) The division's order for cooperative or unit operations shall be upon terms and conditions that are just and reasonable and satisfy the requirements of Subsection (2).

(4) An order by the division for unit operations shall prescribe a plan, including:

(a) a description of the geothermal area to be unit operated, termed the unit area;

(b) a statement of the nature of the operations contemplated, the time they will commence, and the manner and circumstances under which unit operations shall terminate;

(c) an allocation to the separately-owned tracts in the unit area of the geothermal resources produced and of the costs incurred in unit operations. The allocations shall be in accord with the agreement, if any, of the affected parties. If there is no agreement, the division shall determine the allocations from evidence introduced at a hearing before the division. Production shall be allocated in proportion to the relative value that each tract bears to the value of all tracts in the unit area. The acreage of each tract in proportion to the total unit acreage shall be the measure of relative value, unless the division finds after public hearing that another method is likely to result in a more equitable allocation and protection of correlative rights. Resource temperature, pressure, fluid quality, geological conditions, distance to place of use, and productivity are among the factors that may be considered in evaluating other methods. The method for allocating production in unit operations shall be revised, if, after a hearing, the division finds that the revised method is likely to result in a more equitable allocation and protection of correlative rights. Any affected person may file a request for agency action to consider adoption of a revised allocation method, but the request may not be made until three years after the initial order by the division or at less than

two-year intervals after that. Upon receipt of a request for consideration of a revised allocation method, the division shall hold a hearing;

(d) a provision for adjustment among the owners of the unit area (not including royalty owners) of their respective investment in wells, tanks, pumps, machinery, materials, equipment, and other things and services of value attributable to the unit operations. The amount to be charged unit operations for each item shall be determined by the owners of the unit area (not including royalty owners). If the owners of the unit area are unable to agree upon the amount of the charges or to agree upon the correctness of the charges, any affected party may file a request for agency action. Upon receipt of the request, the division shall hold a hearing to determine them. The net amount charged against the owner of a separately-owned tract shall be considered an expense of unit operation chargeable against that tract. The adjustments provided for in this subsection may be treated separately and handled by agreements separate from the unitization agreement;

(e) a provision providing how the costs of unit operations, including capital investments, shall be determined and charged to the separately-owned tracts and how these costs shall be paid, including a provision providing when, how, and by whom the unit production allocated to an owner who does not pay the share of the cost of unit operation charged to that owner, or the interest of that owner, may be sold and the proceeds applied to the payment of the costs. The operator of the unit shall have a first and prior lien for costs incurred pursuant to the plan of unitization upon each owner's geothermal rights and his share of unitized production to secure the payment of the owner's proportionate part of the cost of developing and operating the unit area. This lien may be established and enforced in the same manner as provided by Sections 38-1-8 through 38-1-26. For these purposes any nonconsenting owner is considered to have contracted with the unit operator for his proportionate part of the cost of developing and operating the unit area. A transfer or conversion of any owner's interest or any portion of it, however accomplished, after the

effective date of the order creating the unit, does not relieve the transferred interest of the operator's lien on the interest for the cost and expense of unit operations;

(f) a provision, if necessary, for carrying or otherwise financing any person who elects to be carried or otherwise financed, allowing a reasonable interest charge for this service payable out of that person's share of the production;

(g) a provision for the supervision and conduct of the unit operations, in respect to which each person shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of that person;

(h) any additional provisions that are necessary to carry on the unit operations.

(5)(a) No order of the division providing for unit operations is effective unless and until the division finds that the plan for unit operations prescribed by the division has been approved in writing by:

(i) those persons, who under the division's order, will be required to pay 66% of the costs of the unit operation; and

(ii) the owners of 66% of the production or proceeds of the unit operation that are free of costs, such as royalties, overriding royalties, and production payments.

(b) If the persons owning the required percentage of interest in the unit area do not approve the plan within six months from the date on which the order is made, the order is ineffective and shall be revoked by the division unless for good cause shown the division extends this time.

(6)(a) An order providing for unit operations may be amended by an order of the division in the same manner and subject to the same conditions as an original order for unit operations.

(b) If this amendment affects only the rights and interests of the owners, the approval of the amendment by the owners of royalty, overriding royalty, production payments, and other interests that are free of costs is required.

(c) Production allocation may be amended only by

following the procedures of Subsection (4)(c).

(7)(a) All operations, including the commencement, drilling, or operation of a well upon any portion of the unit area are considered for all purposes to be the conduct of those operations upon each separately-owned tract in the unit by the several owners of tracts in the unit.

(b) The portions of the unit production allocated to a separately-owned tract in a unit area are, when produced, considered for all purposes to have been actually produced from that tract by a well drilled on it. Good faith operations conducted pursuant to an order of the division providing for unit operations constitutes a complete defense to any suit alleging breach of lease or of contractual obligations covering lands in the unit area to the extent that compliance with these obligations cannot be had because of the order of the division.

(8) The portion of the unit production allocated to any tract, and the proceeds from the sale of this production, are the property and income of the several persons to whom, or to whose credit, they are allocated or payable under the order providing for unit operations.

(9)(a) Except to the extent that the parties affected so agree, and as provided in Subsection (4)(e), no order providing for unit operations may be construed to result in a transfer of all or any part of the title of any person to the geothermal resource rights in any tract in the unit area.

(b) All property, whether real or personal, that is acquired in the conduct of unit operations, is acquired for the account of the owners within the unit area and is the property of those owners in the proportion that the expenses of unit operations are charged.

Amended by Chapter 72, 1988 General Session

73-22-8. Geothermal fluids as water resource -- Application for appropriation required -- Priorities.

(1) Geothermal fluids are deemed to be a special kind of underground water resource, related to and potentially affecting

other water resources of the state. The utilization or distribution for their thermal content and subsurface injection or disposal of same shall constitute a beneficial use of the water resources of the state.

(2)(a) Geothermal owners shall, prior to the commencement of, or increase in, production from a well or group of wells to be operated in concert, file an application with the division to appropriate such geothermal fluids as will be extracted from the well or group of wells. Publication of applications shall be made as provided in Section 73-3-6, and protests may be filed as provided in Section 73-3-7. The division shall approve an application if it finds that the applicant is a geothermal owner and that the proposed extraction of geothermal fluids will not impair existing rights to the waters of the state.

(b) The division may grant the quantity of an application on a provisional basis, to be finalized upon stabilization of well production. Flow testing of a discovery well shall not require an application to appropriate geothermal fluids.

(3) The date of an application to appropriate geothermal fluids, when approved by the division, shall be the priority date as between the geothermal owner and the owners of rights to water other than geothermal fluids. No priorities shall be created among geothermal owners by the approval of an application to appropriate geothermal fluids.

Enacted by Chapter 188, 1981 General Session

73-22-9. Rights to geothermal resources.

Rights to geothermal resources and to geothermal fluids to be extracted in the course of production of geothermal resources acquired under Section 73-22-8 shall be based on the principle of correlative rights.

Enacted by Chapter 188, 1981 General Session

73-22-10. Judicial review of division actions -- Falsification or omission of filings as misdemeanor -- Limitation of actions.

(1)(a) Any person aggrieved by any order issued under this chapter may obtain judicial review.

(b) Venue for judicial review of informal adjudicative

proceedings is in the district court of Salt Lake County, or in the district court of the county in which the complaining person resides.

(2) An action or appeal involving any provision of this chapter, or a rule or order issued under it shall be determined as expeditiously as possible.

(3) Any person who, for the purpose of evading this chapter or any order of the division issued under it, makes or causes to be made any false entry in any report, record, account, or memorandum required by this chapter, or by any order issued under it, or omits or causes to be omitted from the report, record, account, or memorandum, full, true, and correct entries as required by this chapter, or by an order, or removes from this state or destroys, mutilates, alters, or falsifies the record, account, or memorandum, is guilty of a class A misdemeanor.

(4) No suit, action, or other proceeding based upon a violation of this chapter or any order of the division issued under it may be begun or maintained unless the action is begun within two years from the date of the alleged violation.

Amended by Chapter 161, 1987 General Session

EXCERPT FROM THE CRIMINAL CODE

CHAPTER 10 – PART 2

OFFENSES AGAINST PUBLIC HEALTH, SAFETY, WELFARE AND MORALS

WATERS

76-10-201. Interference with water flow.

Every person who knowingly or intentionally interferes with or alters the flow of water in any stream, ditch, or lateral while under the control or management of any water commissioner is guilty of a crime punishable under Section **73-2-27**.

Amended by Chapter 215, 2005 General Session

76-10-202. Taking water out of turn or excess amount - Damaging facilities.

(1) No person may, in violation of any right of any other person knowingly or intentionally:

(a) turn or use the water, or any part thereof, of any canal, ditch, pipeline, or reservoir, except at a time when the use of the water has been duly distributed to the person;

(b) use any greater quantity of the water than has been duly distributed to him;

(c) in any way change the flow of water when lawfully distributed for irrigation or other useful purposes, except when duly authorized to make the change; or

(d) break or injure any dam, canal, pipeline, watergate, ditch, or other means of diverting or conveying water for irrigation or other useful purposes.

(2) Subsection (1) applies to violations of any right to the use of water, including:

(a) a water right; or

(b) authorization of a person's use of water by:

- (i) a water company, as defined in Subsection **73-3-3.5(1)(b)**; or
- (ii) an entity having a valid water right under Utah law.
- (3) Any person who violates this section is guilty of a crime punishable under Section **73-2-27**.

Amended by Chapter 215, 2005 General Session

76-10-203. Obstruction of watergates.

Every person who rafts or floats logs, timber, or wood down any river or stream and allows the logs, timber, or wood to accumulate at or obstruct the watergates owned by any person or irrigation company taking or diverting the water of the river or stream for irrigation or manufacturing purposes is guilty of a crime punishable under Section **73-2-27**.

Amended by Chapter 215, 2005 General Session

76-10-204. Damaging bridge, dam, canal or other water-related structure.

(1) A person is guilty of a third degree felony who intentionally, knowingly, or recklessly commits an offense under Subsection (2) that does not amount to a violation of Subsection **76-6-106(2)(b)(ii)**.

(2) Offenses referred to in Subsection (1) are when a person:

(a) cuts, breaks, damages, or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure erected to create hydraulic power, to drain or reclaim any swamp and overflowed or marsh land, to conduct water for mining, manufacturing, reclamation, or agricultural purposes, or for the supply of the inhabitants of any city or town;

(b) makes or causes to be made any aperture in any dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure with intent to injure or destroy it; or

(c) draws up, cuts, or injures any piles fixed in the ground and used for securing any lake or river bank or walls or any dock, quay, jetty, or lock.

Amended by Chapter 166, 2002 General Session

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