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State of Utah

DEPARTMENT OF NATURAL RESOURCES

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Division of Water Rights

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October 11, 2018

Subject: San Pitch River Channel Improvements

San Pitch Drainage Water Users:

The current condition of the San Pitch river channel, generally west of Ephraim and Manti has not been maintained for quite some years. Effective control for distribution of water along the river has been hindered by eroded banks, siltation and a number of other issues. This has allowed water to spread out, do damage to property, and create standing water on lands without water rights. Other problems including siltation and stagnation from standing water, evaporation causing increased salinity, all are due to water not moving through the system. These conditions interfere with effective crop production and improved grazing land and are not considered beneficial use of a water right. Effective control of water along the San Pitch Channel, particularly the lower drainage areas and needs to be corrected.

Gunnison Irrigation Company has approached the Division of Water Rights and has already initiated a project to re-establish the river course, dredge the channel and re-establish embankments. The goal is to create a more effective control for distribution of water along the river. This letter is intended to inform you of this project being undertaken and encourage your cooperation with all those involved.

The Division hopes that when the project is done, appropriate Points of Diversion (POD) can be re-established along with the requisite control gates and measuring devices, as required by statute. When this work is accomplished, all diversions will be controlled and measured by the Water Commissioner.

Water Commissioner Access for control and monitoring will also be addressed in this project by installation of fence gates along the river corridor. Water rights statutes do not allow for diversions of water that is not compliant with a point of diversion (POD). It is also illegal to pond, and retain and store water without a water right to do so.

During the review of this project, a number of issues came to light. These Aspects are discussed herewith:

For more effective distribution of water, there may be some Points of Diversion (POD) location changes necessary to adequately service lands with water rights. In order to change a POD, the water right holder of record must submit a change application. This change application may only be processed if submitted by the titleholder of the water right. Thus a title update is required before a change application can be submitted.

Many of the water rights remain in the names provided in the Cox Decree, there are new owners of land parcels that have not updated their water rights into their name. Despite receiving this mailing, this does not imply the water rights you currently enjoy are actually



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in your name. If you believe you have water rights, you should review your current water right's title status to determine if water title is in concert with the land parcels owned. If not, water title should be updated.

This can be accomplished a title company and by completing a Division of Water Rights form: Report of Conveyance (ROC), and submitting appropriate supporting documents. Submitting the ROC will updated water title, which should also match land titles. These forms are available on our website.

During this endeavor you should take the time to update your water rights title, understand the conditions and limits of your water rights: the location of your PODs, control and measuring devices, place of use, time of use, quantity limits for diversion and limits on AF quantity along with other important aspects governing of the conditions of your water right.

The division urges your upmost cooperation in allowing the work to continue in that all may benefit in an organized distribution of water in the San Pitch System. Effective control of the San Pitch River Channel and Drainage area will insure all water rights will be honored and appropriate to the limits of the water right.

Most importantly, this unusually dry season has provided an opportunity to get this work accomplished, preferably before winter. Once the work is completed, the system will be better prepared for appropriate water distribution and management of springtime runoff.

There are a number of Utah State Statutes provided in the enclosure that address water laws pertinent to this project. I would encourage your review of the enclosure for an understanding of related laws.

The Division endorses this project and urges your cooperation so that all my benefit in effective distribution of water on the San Pitch River System.

As always, Division staff are available to answer any questions and assist in technical aspects of Water Rights. Please contact the Regional office in Richfield for Water rights questions and title updates at (435) 896- 2557. I can be reached for Distribution related matters at (801) 538-7430.

Sincerely,

Mike Silva

Mike Silva
Distribution Engineer

cc: Southern Region- Richfield Office
Enclosure

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

Effective 5/9/2017**73-5-7 Inspection of ditches and diverting works by engineer.**

(1)(a) The state engineer shall have authority to examine and inspect any ditch or other diverting works, and at the time of such inspection, the state engineer may order the owners thereof to make any addition or alteration that the state engineer considers necessary for the security of such works, the safety of persons, or the protection of property.

- (b) If any person, firm, co-partnership, association, or corporation refuses or neglects to comply with the requirements of the state engineer as described in Subsection (1)(a), the state engineer may bring action in the name of the state in the district court to enforce the order.

(2)(a) The state engineer shall, to the extent reasonably practicable, by July 1, 2019, inventory and maintain a list of all open, human-made water conveyance systems that carry 5 cubic feet per second or more in the state, including the following information on each conveyance system:

- (i) alignment;
- (ii) contact information of the owner;
- (iii) maximum flow capacity in cubic feet per second;
- (iv) whether the conveyance system is used for flood or storm water management; and
- (v) notice of the adoption of a management plan for the conveyance system as reported to the Division of Water Resources under Section 73-10-33.

- (b) In counties of the first or second class, the state engineer shall include in the inventory described in Subsection (2)(a) any enclosed segments of each open, human-made water conveyance system.

(3) The owner of an open, human-made water conveyance system that carries 5 cubic feet per second or more shall inform the state engineer if the information described in Subsection (2) changes.

(4) The state engineer:

- (a) may contract with a local conservation district created in Title 17D, Chapter 3, Conservation District Act, to fulfill the duties described in Subsection (2); and
- (b) may contract a local conservation district created in Title 17D, Chapter 3, Conservation District Act,

to provide technical support for a canal owner who is adopting a management plan, as described in Section 73-10-33.

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

(1) When a person with no existing shareholder or contractual rights in the canal or ditch described in this Subsection (1) 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, the person may use or enlarge the canal or ditch already constructed if:

(a) the canal or ditch can be:

(i) used without displacing current users or exceeding free board capacity; or

(ii) enlarged to convey the required quantity of water necessary to deliver all water authorized for delivery to authorized users of the canal or ditch, provide adequate free board capacity, and carry the additional quantity of water requested by the person;

(b) the person compensates:

(i) the owner of the canal or ditch to be used or enlarged for the damage caused by the use or enlargement; and

(ii) each landowner whose land is encumbered by an easement related to the canal or ditch if the carrying of additional water will expand the scope of the easement;

(c) the person pays an equitable proportion of the maintenance and operation of the canal or ditch jointly used or enlarged; and

(d) the person complies with Subsections (2) through (4).

(2) An enlargement made in accordance with Subsection (1) shall be made between October 1 and March 1, unless another time is agreed to with:

(a) the owner of the canal or ditch; and

(b) each landowner whose land is encumbered by an easement related to the canal or ditch if the carrying of additional water will expand the scope of the easement.

(3) The additional water turned in to the canal or ditch shall bear its proportion of loss by evaporation and seepage.

(4) Before use or enlargement is allowed in accordance with this section, the person seeking to use or enlarge the canal or ditch shall negotiate in good faith to enter into a written contract governing the relationship, including terms of use and payment, between the person and the following:

(a) the canal or ditch owner; and

(b) each landowner whose land is encumbered by an easement related to the canal or ditch if the carrying of additional water will expand the scope of the easement.

(5) A person seeking to use or enlarge a canal or ditch in accordance with this section may not rely on the right-of-way provisions

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

73-1-6 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

73-1-8 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
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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
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Effective 5/8/2018**73-1-15 Obstructing canals or other watercourses -- Penalties.**

- (1)
 - (a) 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:
 - (i) receiving written permission for the change and providing gates sufficient for the passage of the owner or owners of such canal or watercourse; or
 - (ii) complying with the requirements of Section 73-1-15.5.
 - (b) That the vested rights in the established canals and watercourse shall be protected against all encroachments.
 - (c) 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 349, 2018 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

Effective 5/13/2014

73-5-3 Control by engineer of division and distribution under judgments.

- (1) The state engineer or the state engineer's designee shall carry into effect a judgment of a court in relation to the division, distribution, or use of water under the provisions of this title.
- (2) The state engineer shall:
 - (a) divide water among several appropriators entitled to the water in accordance with the right of each appropriator;
 - (b) regulate and control the use of the water by closing or partially closing a head gate, cap, valve, or other controlling work of a ditch, canal, pipe, flume, well or tunnel, or other means of diversion to prevent the waste of water or its use in excess of the quantity to which an appropriator is lawfully entitled; and
 - (c) regulate a controlling work of reservoirs in accordance with the provisions of this title.
- (3)
 - (a) If the state engineer regulates a head gate, cap, valve, or other controlling work of a ditch, canal, pipe, flume, well or tunnel, or other means of diversion, or the controlling work of a reservoir, the state engineer may attach to the controlling work a written notice, properly dated and signed, setting forth that the controlling work has been properly regulated and is wholly under the state engineer's control.
 - (b) The notice provided under Subsection (3)(a) shall be a legal notice, as to the facts contained in the notice, to all parties interested in the division and distribution of the water of the ditch, canal, pipe, flume, well or tunnel, or other means of diversion, or reservoir.
- (4)
 - (a) If the state engineer is required to enter upon private property to carry out the provisions of this title and is refused by the owner or possessor of the property the right of entry, the state engineer may petition the district court for an order granting a right of entry.
 - (b) After notice and hearing the court may grant the state engineer a right of entry, on security given by the state engineer to pay the owner of the property for all damage caused by the entry.

Amended by Chapter 369, 2014 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

73-3-20 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 that person's appropriated water in a reservoir for a beneficial purpose shall be permitted to withdraw the water at the times and in the quantities as the person's necessities may require if the withdrawal does not interfere with the rights of others.

(2)

(a) The state engineer may require an owner of an approved exchange application to provide:

- (i) information about the diverting works constructed;
- (ii) information about the extent to which the development under the exchange has occurred; or
- (iii) other information the state engineer considers necessary to:
 - (A) ensure that the exchange is taking place;
 - (B) establish that the owner still has a legal interest in the underlying water right used as the basis for the exchange; or
 - (C) determine the quantity of water being exchanged.

(b) The owner of an exchange application shall provide the information requested by the state engineer within 60 days after the day on which the owner received the notification from the state engineer.

(3) The state engineer may lapse an approved exchange application described in Subsection (1) if:

- (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 requested by the state engineer under Subsection (2).

(4)

(a) Notwithstanding Section 73-3-18, the state engineer may reinstate an exchange application that was lapsed by the state engineer under Subsection (3), if:

- (i) the applicant files with the state engineer a written request to reinstate the exchange application;
- (ii) the exchange application is for a small amount of water, as defined in Section 73-3-5.6;
- (iii) the applicant demonstrates that, before the exchange application lapsed, the applicant or the applicant's predecessor in interest, in accordance with the exchange application:
 - (A) constructed and occupied a residence; and
 - (B) beneficially used the water at the residence; and
- (iv) the applicant demonstrates that none of the conditions described in Subsection (3) for lapsing an approved exchange application still exist.

(b) The priority of an exchange application reinstated under this section shall be the day on which the applicant files a request to reinstate an exchange application that was lapsed by the state engineer.

Amended by Chapter 429, 2013 General Session

57-13a-101 Definitions.

As used in this chapter:

- (1) "Water conveyance" means a canal, ditch, pipeline, or other means of conveying water.
- (2) "Water user" means a water user or the water user's predecessor whose water being conveyed is represented by a water right recognized under state law or by shares in a mutual irrigation company.

Enacted by Chapter 175, 1997 General Session

57-13a-102 Prescriptive easement for water conveyance.

(1) A prescriptive easement may be established if a water user has maintained a water conveyance for a period of 20 years during which the use has been:

- (a) continuous;
- (b) open and notorious; and
- (c) adverse.

(2) If Subsections (1)(a) and (b) are established, there is a rebuttable presumption that the use has been adverse.

Enacted by Chapter 175, 1997 General Session

57-13a-103 Notice of easement.

The holder of an easement established as provided by Section 57-13a-102 may file a notice describing the easement in the office of the county recorder of each county in which the easement or a portion of the easement is located.

Enacted by Chapter 318, 2007 General Session

57-13a-104 Abandonment of prescriptive easement for water conveyance.

(1) A holder of a prescriptive easement for a water conveyance established under Section 57-13a-102 may, in accordance with this section, abandon all or part of the easement.

(2) A holder of a prescriptive easement for a water conveyance established under Section 57-13a-102 who seeks to abandon the easement or part of the easement shall:

- (a) in each county where the easement or part of the easement is located:
 - (i) file in the office of the county recorder a notice of intent to abandon the prescriptive easement that describes the easement or part of the easement to be abandoned; and
 - (ii) publish the notice of intent to abandon the prescriptive easement once a week for two consecutive weeks in:
 - (A) a local newspaper of general circulation that is published in the area generally served by the water conveyance that utilizes the easement; or
 - (B) if a newspaper described in Subsection (2)(a)(ii)(A) does not exist, in a newspaper of general circulation in the county;
- (b) post copies of the notice of intent to abandon the prescriptive easement in three public places located within the area generally served by the water conveyance that utilizes the easement;
- (c) mail a copy of the notice of intent to abandon the prescriptive easement to each municipal and county government where the easement or part of the easement is located;
- (d) in accordance with Section 45-1-101, publish a copy of the notice of intent to abandon the prescriptive easement on the public legal notice website described in Subsection 45-1-101(2)(b); and
- (e) after meeting the requirements of Subsections (2)(a), (b), (c), and (d) and at least 45 days after the last day on which the holder of the easement publishes the notice of intent to abandon the prescriptive easement in accordance with Subsection (2)(a)(ii), file in the office of the county recorder for each county where the easement or part of the easement is located a notice of abandonment that contains the same description required by Subsection (2)(a)(i).

(3)

- (a) Upon completion of the requirements described in Subsection (2) by the holder of a prescriptive easement for a water conveyance established under Section 57-13a-102:
 - (i) all interest to the easement or part of the easement abandoned by the holder of the easement is extinguished; and
 - (ii) subject to each legal right that exists as described in Subsection (3)(b), the owner of a servient estate whose land was encumbered by the easement or part of the easement abandoned may reclaim the land area occupied by the former easement or part of the easement and resume full utilization of the land without liability to the former holder of the easement.
- (b) Abandonment of a prescriptive easement under this section does not affect a legal right to have water delivered or discharged through the water conveyance and easement established by a person other than the holder of the easement who abandons an easement as provided in this section.

Enacted by Chapter 267, 2013 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

73-1-3 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

73-1-10 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)

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

(ii) The state engineer shall consider a water rights addendum that is recorded and forwarded to the state engineer by a county recorder, in accordance with Section 57-3-109, as a submitted report of water right conveyance under Subsection (3).

(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 363, 2013 General Session

73-1-11 Appurtenant water rights pass to grantee of land -- Exceptions -- Conveyance of a portion of irrigated land -- Right to the use of water evidenced by shares of stock -- Appurtenant water rights -- Evidence -- Where appurtenant -- Partial conveyances of water and land.

(1)

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

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

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

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

- (b) If a county recorder records a document that conveys a water right appurtenant to land as described in Subsection (1)(a) and relies on the document to maintain a tract index described in Section 17-21-6, the state engineer shall rely on the document as an effective conveyance of a water right appurtenant to land.
- (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)
- (a) The right to the use of water evidenced by shares of stock in a corporation is not a water right appurtenant to land.
- (b) On or after May 14, 2013, unless provided otherwise in a corporation's articles of incorporation or bylaws, the right to the use of water evidenced by shares of stock in a corporation shall transfer only as provided in Subsection 73-1-10(2).
- (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 363, 2013 General Session
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Effective 5/13/2014**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) Subject to the requirements of this section, a person may take steps reasonably necessary to alleviate

- or mitigate a threat before a written permit is issued if an emergency situation arises which involves:
- (i) immediate or actual flooding; or
 - (ii) threatens the health or well-being of a person.
- (c)
- (i) If a threat described in Subsection (2)(b) 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 a threat described in Subsection (2)(b) 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 action.
- (d) A written application outlining the action taken or the action proposed to be taken to alleviate or mitigate a threat described in Subsection (2)(b) 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, the state engineer may impose additional requirements, including mitigation measures.
- (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 of construction;
 - (d) the purposes of the application; and
 - (e) any additional information that the state engineer considers necessary, including plans and specifications for the construction of works.
- (4)(a) The state engineer shall, without undue delay, conduct investigations that may be reasonably necessary to determine whether the relocation or alteration will:
- (i) impair vested water rights;
 - (ii) unreasonably or unnecessarily affect a 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 state engineer shall approve the application unless the relocation or alteration will:
- (i) impair vested water rights;
 - (ii) unreasonably or unnecessarily adversely affect a 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, a 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 a natural stream channel, or alters the bed or bank of a natural stream channel without first obtaining the written approval of the state engineer is guilty of a crime punishable under Section 73-2-27.
- (7) The state engineer may issue an order for the repair and restoration of the bed and banks of a natural stream channel altered contrary to, or without, a permit issued for that purpose.