

A G E N D A

EXECUTIVE WATER TASK FORCE

August 16, 2011, 1:30 PM
Room 2000, Natural Resources Complex

- I. Welcome and Introductions - Mike Styler
- II. Recent Supreme Court Rulings – Kent Jones
- III. Big Ditch – Steve Clyde
- IV. Other Items or Issues - All

**JORDAN VALLEY WATER CONSERVANCY DISTRICT
PROPOSAL**

WATER USE TASK FORCE ~~(Simple)~~

PROPOSED AMENDMENTS TO SECTION 73-3-3

LONG TITLE

This bill amends provisions related to the Water and Irrigation Appropriation. This bill:

- Permanent or temporary changes in point of diversion, place of use, or purpose of use of water in the State of Utah;

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-3-3, as last amended by Laws of Utah 2008,

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

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) The appropriator or record title holder of a water right owner of record or a person authorized by the owner of record of a water right, or a shareholder of a mutual benefit corporation with the written consent of the water company in accordance with section 73-3-3.5. Any person entitled to the use of water, which includes a shareholder pursuant to section 73-3-3.5 may make permanent or temporary changes in the:

(i) point of diversion;

{00088686-1},{00085219-2}

- (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.

(c) In a change application proceeding, the state engineer to prevent impairment of other water rights or the enlargement of the water right that is the subject of the change application:

(i) may review the actual-use of water under the water right proposed to be changed and may limit approval of the application to that quantity of water determined to have been reasonably applied to beneficial use; and

(ii) shall consider water to have been reasonably applied to beneficial use where a lack of actual-use is exempted or protected as provided in section 73-1-4, or otherwise excused by law.

(3) The appropriator or record title holder of a water right owner of record or a person authorized by the owner of record of a water right, or a shareholder of a mutual benefit corporation with the written consent of the water company in accordance with section 73-3-3.5, 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) No change of use of water may be made unless A person entitled to use water may not make a change unless the state engineer approves the change application.

(b) The appropriator or record title holder of a water right owner of record or a person authorized by the owner of record of a water right, or a shareholder of a mutual benefit corporation with the written consent of the water company in accordance with section 73-3-

3.5 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

Download Code Section Zipped WordPerfect 73_03_000300.ZIP 6,393 Bytes

**UTAH ATTORNEY GENERAL
PROPOSAL**

Utah Attorneys General **Option A.**

Green text: Proposed language regarding the "Big Ditch" issue.

Orange text: Proposed language regarding change applications.

Utah Code

Title 73, Water and Irrigation

Chapter 3, Appropriation

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

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~~ The owner of record of a water right, one authorized by the owner of record of a water right, or a shareholder of a mutual benefit corporation with the written consent of the water company in accordance with section 73-3-3.5, may make permanent or temporary changes in the **water right's**:

(i) point of diversion;

(ii) place of use; or

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

for the amount of water beneficially used under the water right from a hydrologic system in the last seven years where the new use will not impair vested rights.

(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~~ The owner of record of a water right, one authorized by the owner of record of a water right, or a shareholder of a mutual benefit corporation with the written consent of the water company in accordance with section 73-3-3.5, 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~~ The owner of record of a water right, one authorized by the owner of record of a water right, or a shareholder of a mutual benefit corporation with the written consent of the water company in accordance with section 73-3-3.5, may not make a change unless the state engineer approves the change application.

(b) ~~A person entitled to use water~~ The owner of record of a water right, one authorized by the owner of record of a water right, or a shareholder of a mutual benefit corporation with the written consent of the water company in accordance with section 73-3-3.5, 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.

**ADDITIONAL OPTION OF
UTAH ATTORNEY GENERAL
PROPOSAL**

Utah Attorneys General **Option B.**

(Proposed Alterations to August 2009 Draft)

Red text: Original, August 2009 alterations

Blue text: AG's proposed additional language

WATER USE TASK FORCE ~~(Simple)~~

PROPOSED AMENDMENTS TO SECTION 73-3-3

LONG TITLE

This bill amends provisions related to the Water and Irrigation Appropriation. This bill:

- Permanent or temporary changes in point of diversion, place of use, or purpose of use of water in the State of Utah;

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-3-3, as last amended by Laws of Utah 2008,

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

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

(2) (a) The appropriator or record title holder of a water right or a shareholder of a mutual

benefit corporation with the written consent of the water company in accordance with section 73-3-3.5, 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.

(c) In a change application proceeding, the state engineer to prevent impairment of other water rights or the enlargement of the water right that is the subject of the change application:

(i) may review the actual use of water under the water right proposed to be changed and may limit approval of the application to that quantity of water determined to have been reasonably applied to beneficial use; and

(ii) shall consider water to have been reasonably applied to beneficial use where a lack of actual use is exempted or protected as provided in section 73-1-4, or otherwise excused by law; and

(iii) the consideration by the state engineer of beneficial use shall be limited solely to the change application process and shall not be deemed an adjudication of the status of the underlying water right.

(3) The appropriator or record title holder of a water right, or a shareholder of a mutual benefit corporation with the written consent of the water company in accordance with section 73-3-3.5, 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) No change of use of water may be made unless A person entitled to use water may not make a change unless the state engineer approves the change application.

(b) The appropriator or record title holder of a water right or a shareholder of a mutual benefit corporation with the written consent of the water company in accordance with section 73-3-3.5 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, including information showing beneficial use of the water during the past seven (7) years;
- (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.

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(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

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**THREE VARIATIONS OF
STEVE CLYDE'S
AUGUST 19, PROPOSAL**

WATER USE TASK FORCE ~~(Simple)~~

PROPOSED AMENDMENTS TO SECTION 73-3-3

LONG TITLE

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Monies Appropriated in this Bill:

None

Other Special Clauses:

None

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AMENDS:

73-3-3, as last amended by Laws of Utah 2008,

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(i) point of diversion;

(ii) place of use; or

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(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.

(c) In a change application proceeding, the state engineer to prevent impairment of other water rights or the enlargement of the water right that is the subject of the change application:

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(ii) shall consider water to have been reasonably applied to beneficial use where a lack of actual use is exempted or protected as provided in section 73-1-4, or otherwise excused by law; and

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

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(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.

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Amended by Chapter 311, 2008 General Session

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WATER USE TASK FORCE
PROPOSED AMENDMENTS TO SECTION 73-3-3

Deleted: (Simple)¶

LONG TITLE

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Monies Appropriated in this Bill:

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Other Special Clauses:

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Deleted: Any person entitled to the use of water

Deleted: , which includes a shareholder pursuant to section 73-3-3.5

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{00091703-1},

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Deleted: {00085219-2}

August 19, 2009 DRAFT

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| {00091703-1}

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Utah Code

Title 73

Water and Irrigation

Chapter 3

Appropriation

Section 3

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for the amount of water beneficially used under the water right from a hydrologic system in the last seven years where the new use will not impair vested rights.

(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~~ **The owner of record of a water right, one authorized by the owner of record of a water right, or a shareholder of a mutual benefit corporation with the written consent of the water company in accordance with section 73-3-3.5,** 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~~ **The owner of record of a water right, one authorized by the owner of record of a water right, or a shareholder of a mutual benefit corporation with the written consent of the water company in accordance with section 73-3-3.5,** may not make a change unless the state engineer approves the change application.

(b) ~~A person entitled to use water~~ **The owner of record of a water right, one authorized by the owner of record of a water right, or a shareholder of a mutual benefit corporation with the written consent of the water company in accordance with section 73-3-3.5,** 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.