

PUBLIC WATER SUPPLIER AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill authorizes a public water supplier to file a change application in certain circumstances.

Highlighted Provisions:

This bill:

- ▶ defines the term "public water supplier;"
- ▶ adds a public water supplier to the list of entities eligible to file a change application for the purpose of providing water for an instream flow; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-3-30, as last amended by Laws of Utah 2013, Chapter 379

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

Section 1. Section 73-3-30 is amended to read:

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

33 use, or purpose of use for a fixed period of time longer than one year but not longer than 10
34 years.

35 (d) "Public water supplier" means the same as that term is defined in Subsection
36 73-1-4(1)(b).

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

- 41 (i) the propagation of fish;
- 42 (ii) public recreation; or
- 43 (iii) the reasonable preservation or enhancement of the natural stream environment.

44 (b) A division or public water supplier may file a change application on:

45 (i) a [perfected] water right:

46 (A) presently owned by the division or public water supplier;

47 (B) purchased by the division or public water supplier for the purpose of providing
48 water for an instream flow[~~], through funding provided for that purpose by legislative~~
49 ~~appropriation]; or~~

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

51 (ii) an appurtenant water right acquired with the acquisition of real property by the
52 division or public water supplier.

53 (c) A division may:

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

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

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

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

63 (i) the Bonneville cutthroat;

64 (ii) the Colorado River cutthroat; or

65 (iii) the Yellowstone cutthroat.

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

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

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

72 (iii) at a special meeting convened under Section 16-6a-702.

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

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

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

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

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

85 (iii) the fishing group has:

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

91 (B) until a programmatic Candidate Conservation Agreement with Assurances
92 described in Subsection (3)(e)(iii)(A) becomes valid and enforceable, entered into a contract
93 with the water right holder agreeing to defend and indemnify the water right holder for liability
94 under Section 1538(a) of the Endangered Species Act, 16 U.S.C. Secs. 1531 through 1544, for

95 an action taken by the water right holder under the terms of the water right holder's agreement
96 with the fishing group for a fixed time change application.

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

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

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

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

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

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

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

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

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

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

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

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

- 126 (A) the legal description of the points on the stream channel between which the
127 instream flow is provided;
- 128 (B) detailed measurements of the flow of water in second-feet changed;
- 129 (C) the period of use; and
- 130 (D) any additional information required by the state engineer; or
- 131 (ii) apply for a further extension of time as provided for in Section 73-3-12.
- 132 (c) (i) Upon acceptance of the verified statement required under Subsection (5)(b)(i),
133 the state engineer shall issue a certificate of change for instream flow use in accordance with
134 Section 73-3-17.
- 135 (ii) The certificate expires at the same time the fixed time change application expires.
- 136 (6) No person may appropriate unappropriated water under Section 73-3-2 for the
137 purpose of providing an instream flow.
- 138 (7) Water used in accordance with this section is considered to be beneficially used, as
139 required by Section 73-3-1.
- 140 (8) A physical structure or physical diversion from the stream is not required to
141 implement a change for instream flow use.
- 142 (9) This section does not allow enlargement of the water right that the applicant seeks
143 to change.
- 144 (10) A change application authorized by this section may not impair a vested water
145 right, including a water right used to generate hydroelectric power.
- 146 (11) The state engineer or the water commissioner shall distribute water under an
147 approved or a certificated instream flow change application according to the change
148 application's priority date relative to the other water rights located within the stream section
149 specified in the change application for instream flow.
- 150 (12) An approved fixed time change application does not create a right of access across
151 private property or allow any infringement of a private property right.

