

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" means the same as that term is defined in Section 73-3-3.5.
- (d) "Water company" means the same as that term is 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) Except as provided in Subsection (2)(b) or (e), when an appropriator or the appropriator's successor in interest abandons or ceases to beneficially use all or a portion of a water right for a period of at least seven years, the water right or the unused portion of that water right is subject to forfeiture in accordance with Subsection (2)(c).
 - (b)
 - (i) An appropriator or the appropriator's successor in interest may file an application for nonuse with the state engineer.
 - (ii) A nonuse application may be filed on all or a portion of the water right, including water rights held by a water company.
 - (iii) 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.
 - (iv)
 - (A) The approval of a nonuse application excuses the requirement of beneficial use of water from the date of filing.
 - (B) The time during which an approved nonuse application is in effect does not count toward the seven-year period described in Subsection (2)(a).
 - (v) The filing or approval of a nonuse application or a series of nonuse applications under Subsection (3) does not:
 - (A) constitute beneficial use of a water right;
 - (B) protect a water right that is already subject to forfeiture under this section; or
 - (C) bar a water right owner from:
 - (I) using the water under the water right as permitted under the water right; or
 - (II) claiming the benefit of Subsection (2)(e) or any other forfeiture defense provided by law.
- (c)
 - (i) Except as provided in Subsection (2)(c)(ii), 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:

- (A) within 15 years from the end of the latest period of nonuse of at least seven years; or
 - (B) within the combined time of 15 years from the end of the most recent period of nonuse of at least seven years and the time the water right was subject to one or more nonuse applications.
- (ii)
- (A) The state engineer, in a proposed determination of rights filed with the court and prepared in accordance with Section 73-4-11, may not assert that a water right was forfeited unless the most recent period of nonuse of seven years ends or occurs:
 - (I) during the 15 years immediately preceding the day on which the state engineer files the proposed determination of rights with the court; or
 - (II) during the combined time immediately preceding the day on which the state engineer files the proposed determination of rights consisting of 15 years and the time the water right was subject to one or more approved nonuse applications.
 - (B) After the day on which a proposed determination of rights is filed with the court a person may not assert that a water right subject to that determination was forfeited before the issuance of the proposed determination, unless the state engineer asserts forfeiture in the proposed determination, or a person, in accordance with Section 73-4-11, makes an objection to the proposed determination that asserts forfeiture.
- (iii) A water right, found to be valid in a decree entered in an action for general determination of rights under Chapter 4, Determination of Water Rights, is subject to a claim of forfeiture based on a seven-year period of nonuse that begins after the day on which the state engineer filed the related proposed determination of rights with the court, unless the decree provides otherwise.
- (iv) 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 beneficially 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) Except as provided in Subsection (2)(e), this section applies whether the unused or abandoned water or a portion of the water is:
- (i) permitted to run to waste; or
 - (ii) beneficially used by others without right with the knowledge of the water right holder.
- (e) This section does not apply to:
- (i) the beneficial 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 following 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 beneficial 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 beneficial 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 beneficial use of the supplemental water right; or
 - (ix) a period of nonuse of a water right during the time the water right is 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:
 - (A) the persons within the public water supplier's reasonably anticipated service area based on reasonably anticipated population growth; or
 - (B) other water use demand.
 - (ii) For purposes of Subsection (2)(f)(i), a community water system's reasonably anticipated 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) 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 beneficially 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.
 - (c) 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.
 - (d) 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.
 - (e) 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) physical causes or changes that render use beyond the reasonable control of the water right owner so long as the water right owner acts with reasonable diligence to resume or restore the use;
 - (iii) the initiation of water conservation or efficiency practices, or the operation of a groundwater recharge recovery program approved by the state engineer;
 - (iv) operation of legal proceedings;
 - (v) 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;
 - (vi) situations where, in the opinion of the state engineer, the nonuse would assist in implementing an existing, approved water management plan; or
 - (vii) 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 132, 2017 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 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 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.

Amended by Chapter 132, 2017 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.

- (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 of Section 73-1-6 against:
- (a) an owner of the canal or ditch unless the person has:
 - (i) attempted in good faith to enter into a written contract pursuant to Subsection (4)(a); and
 - (ii) failed to enter into a written contract; and
 - (b) a 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 unless the person has:
 - (i) attempted in good faith to enter into a written contract pursuant to Subsection (4)(b); and
 - (ii) failed to enter into a written contract.
- (6) Unless otherwise agreed to in the written contract referenced in Subsection (4)(a), a person using an existing canal or ditch under this section:
- (a) does not acquire any voting rights in the entity owning the canal or ditch not already possessed by a person;
 - (b) does not acquire any rights to direct the operation of the canal or ditch;
 - (c) may not add water to the canal or ditch that impairs the water quality in the canal or ditch, or increases the cost of any treatment, to a degree that adversely impacts the intended use of the water already in the canal or ditch;
 - (d) may not add water to the canal or ditch that exceeds the capacity of the canal or ditch, including free board capacity;
 - (e) may not modify any water rights without state engineer approval;

- (f) shall pay an equitable proportion of construction or upgrade costs, including any related debt service, incurred by the owner of the canal or ditch within five years before the day on which the person begins use of the existing canal or ditch;
 - (g) is liable for an equitable proportion of any liability arising out of the operation or maintenance of the canal or ditch unless the event giving rise to the liability was caused solely by the person or by the owner of the canal or ditch;
 - (h) is solely liable for any liability arising out of the operation or maintenance of the canal or ditch if the event giving rise to the liability was caused solely by the person; and
 - (i) is not liable for any liability arising out of the operation or maintenance of the canal or ditch if the event giving rise to the liability was caused solely by the owner of the canal or ditch.
- (7) This section is not applicable to any type of water conveyance infrastructure other than a canal or ditch described in this section.
- (8) Nothing in this section will eliminate a criminal penalty resulting from conduct prohibited by Section 73-1-15.

Amended by Chapter 136, 2011 General Session

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)
 - (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

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)
 - (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

73-1-15.5 Relocation of easements for a water conveyance facility -- Alteration of a water conveyance facility.

- (1) As used in this section:
- (a) "Facility owner" means an individual, entity, mutual water company, or unincorporated organization:
 - (i) operating a water conveyance facility;
 - (ii) owning any interest in a water conveyance facility; or
 - (iii) having a property interest in real property based on the presence of the water conveyance facility located and operating on the real property.
 - (b)
 - (i) "Water conveyance facility" means a ditch, canal, flume, pipeline, or other watercourse used to convey water used for irrigation or storm water drainage and any related easement for the ditch, canal, flume, pipeline, or other watercourse.
 - (ii) "Water conveyance facility" does not mean a ditch, canal, flume, pipeline, or other watercourse used to convey water used for culinary or industrial water, or any federal water project facility.
- (2) Unless prohibited by the terms of a written grant of easement or an agreement for which consideration was given, a property owner may make reasonable changes in the location and method of delivery of a water conveyance facility located on the property owner's real property after:
- (a) having a licensed engineer:
 - (i) redesign the water conveyance facility, which may include relocating the water conveyance facility to a new location on the property owner's real property or on the real property of another person who consents to the relocation; and
 - (ii) certify that the engineered redesign of the water conveyance facility and method of delivery meets the requirements of Subsection (4);
 - (b) providing the plans designed by the licensed engineer under Subsection (2)(a)(i) to the facility owner;

- (c) allowing the facility owner a reasonable time to review the plans designed by the licensed engineer under Subsection (2)(a)(i), provide comments to the plans, and subject to Subsection (3), require changes and approve the planned redesign before commencing the modifications;
 - (d) allowing the facility owner to inspect the modified water conveyance facility during construction of the modification and require reasonable changes if construction of the modification is not occurring according to an approved redesign plan as required by Subsection (3)(b); and
 - (e) providing the facility owner with the ability to reasonably access, operate, maintain, and replace the modified water conveyance facility.
- (3) A facility owner:
- (a) may require a change to the plans designed by the licensed engineer under Subsection (2)(a) (i) only if the change is:
 - (i) directly related to a reasonably anticipated negative impact, resulting from the relocation of the water conveyance facility or a change in the method of water delivery; and
 - (ii) the least costly means of addressing the anticipated negative impact described in Subsection (3)(a)(i) after taking into account the provisions of Subsection (4); and
 - (b) shall approve the plans designed by the licensed engineer under Subsection (2)(a)(i) if:
 - (i) the plans reasonably address any anticipated negative impacts resulting from the relocation of the water conveyance facility or a change in the method of water delivery;
 - (ii) the property owner has proposed reasonable terms or conditions to satisfy the provisions of Subsection (4); and
 - (iii) the property owner satisfies the provisions of Subsection (2).
- (4) A property owner may not relocate a water conveyance facility or change the method of delivery of a water conveyance facility in accordance with Subsection (2) if the modification:
- (a) significantly decreases the utility of the water conveyance facility for its current use;
 - (b) increases the burden on the facility owner's use of the water conveyance facility in a way not compensated for by the property owner; or
 - (c) frustrates the purpose of the water conveyance facility.
- (5)
- (a) A property owner or a facility owner may request the Office of the Property Rights Ombudsman to mediate any dispute over the application of this section.
 - (b) A property owner and a facility owner may jointly request the Office of the Property Rights Ombudsman to arbitrate any dispute over the application of this section.
- (6) A property owner relocating a water conveyance facility under this section is responsible for:
- (a) the reasonable, actual costs incurred in modifying the water conveyance facility, including:
 - (i) planning and construction costs;
 - (ii) the actual engineering and inspection costs during construction;
 - (iii) costs reasonably and necessarily incurred by the facility owner related to the modification of the water conveyance facility; and
 - (iv) legal costs incurred by the facility owner in reviewing and approving plans and proposing modifications, limited to the lesser amount of actual attorney fees incurred or \$5,000; and
 - (b) the costs of preparing instruments associated with any new easement for the modified water conveyance facility, as described in Subsection (8).
- (7) In an action where a claim is made that a provision of this section has been violated, a court may, in addition to any other relief granted, award costs and reasonable attorney fees:
- (a) to the facility owner if the court finds that the property owner failed to comply with the plan approved in accordance with Subsection (3); or

- (b) to the property owner if the court finds that the facility owner made unreasonable demands in reviewing the property owner's proposed plans or in requiring changes to the proposed or approved plans.
- (8)
- (a) If a water conveyance facility is relocated under this section, the facility owner shall record an instrument extinguishing the existing easement in exchange for the grant of a new easement for the relocated water conveyance facility by the property owner burdened by the modified water conveyance facility.
 - (b) The instruments extinguishing the previous easement and granting the new easement shall be:
 - (i) in a form mutually acceptable to the facility owner and the property owner; and
 - (ii) recorded in the county in which the modified water conveyance facility is located.
 - (c) The property owner shall pay all recording fees for the instruments described in Subsections (8)(a) and (b).

Enacted by Chapter 349, 2018 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