

Colin W. Jack proposes the following substitute bill:

Water Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Colin W. Jack

Senate Sponsor:

LONG TITLE

Committee Note:

The Legislative Water Development Commission recommended this bill.

Legislative Vote: 9 voting for 0 voting against 5 absent

General Description:

This bill addresses water in the lower basin as defined by the Colorado River Compact.

Highlighted Provisions:

This bill:

- ▶ exempts from provisions related to abandonment or forfeiture for nonuse certain water rights of a water conservancy district that are related to the lower basin;
- ▶ prohibits certain instream flow change applications related to the lower basin; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-1-4 (Effective 05/06/26) (Partially Repealed 12/31/30), as last amended by Laws of Utah 2024, Chapter 233

73-3-30 (Effective 05/06/26), as last amended by Laws of Utah 2023, Chapters 34, 253

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

Section 1. Section **73-1-4** is amended to read:

73-1-4 (Effective 05/06/26) (Partially Repealed 12/31/30). Reversion to the public by abandonment or forfeiture for nonuse within seven years -- Saved water -- Nonuse application.

30 (1) As used in this section:

31 (a) "Lower basin" means the same as that term is defined in Section 73-12a-2.

32 (b) "Public entity" means:

33 (i) the United States;

34 (ii) an agency of the United States;

35 (iii) the state;

36 (iv) a state agency;

37 (v) a political subdivision of the state; or

38 (vi) an agency of a political subdivision of the state.

39 [~~(b)~~] (c) "Public water supplier" means an entity that:

40 (i) supplies water, directly or indirectly, to the public for municipal, domestic, or
41 industrial use; and

42 (ii) is:

43 (A) a public entity;

44 (B) a water corporation, as defined in Section 54-2-1, that is regulated by the
45 Public Service Commission;

46 (C) a community water system:

47 (I) that:

48 (Aa) supplies water to at least 100 service connections used by year-round
49 residents; or

50 (Bb) regularly serves at least 200 year-round residents; and

51 (II) whose voting members:

52 (Aa) own a share in the community water system;

53 (Bb) receive water from the community water system in proportion to the
54 member's share in the community water system; and

55 (Cc) pay the rate set by the community water system based on the water the
56 member receives; or

57 (D) a water users association:

58 (I) in which one or more public entities own at least 70% of the outstanding
59 shares; and

60 (II) that is a local sponsor of a water project constructed by the United States
61 Bureau of Reclamation.

62 [~~(c)~~] (d) "Saved water" means the same as that term is defined in Section 73-3-3.

63 [~~(d)~~] (e) "Shareholder" means the same as that term is defined in Section 73-3-3.5.

64 [(e)] (f) "Water company" means the same as that term is defined in Section 73-3-3.5.

65 (g) "Water conservancy district" means the same as that term is defined in Section
 66 73-10-32.

67 [(f)] (h) "Water supply entity" means an entity that supplies water as a utility service or
 68 for irrigation purposes and is also:

69 (i) a municipality, water conservancy district, metropolitan water district, irrigation
 70 district, or other public agency;

71 (ii) a water company regulated by the Public Service Commission; or

72 (iii) any other owner of a community water system.

73 (2)(a) Except as provided in Subsection (2)(b) or (e), when an appropriator or the
 74 appropriator's successor in interest abandons or ceases to beneficially use all or a
 75 portion of a water right for a period of at least seven years, the water right or the
 76 unused portion of that water right is subject to forfeiture in accordance with
 77 Subsection (2)(c).

78 (b)(i) An appropriator or the appropriator's successor in interest may file an
 79 application for nonuse with the state engineer.

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

82 (iii) After giving written notice to the water company, a shareholder may file a
 83 nonuse application with the state engineer on the water represented by the stock.

84 (iv)(A) The approval of a nonuse application excuses the requirement of
 85 beneficial use of water from the date of filing.

86 (B) The time during which an approved nonuse application is in effect does not
 87 count toward the seven-year period described in Subsection (2)(a).

88 (v) The filing or approval of a nonuse application or a series of nonuse applications
 89 under Subsection (3) does not:

90 (A) constitute beneficial use of a water right;

91 (B) protect a water right that is already subject to forfeiture under this section; or

92 (C) bar a water right owner from:

93 (I) using the water under the water right as permitted under the water right; or

94 (II) claiming the benefit of Subsection (2)(e) or any other forfeiture defense
 95 provided by law.

96 (c)(i) Except as provided in Subsection (2)(c)(ii), a water right or a portion of the
 97 water right may not be forfeited unless a judicial action to declare the right

- 98 forfeited is commenced:
- 99 (A) within 15 years from the end of the latest period of nonuse of at least seven
100 years; or
- 101 (B) within the combined time of 15 years from the end of the most recent period
102 of nonuse of at least seven years and the time the water right was subject to one
103 or more nonuse applications.
- 104 (ii)(A) The state engineer, in a proposed determination of rights filed with the
105 court and prepared in accordance with Section 73-4-11, may not assert that a
106 water right was forfeited unless the most recent period of nonuse of seven
107 years ends or occurs:
- 108 (I) during the 15 years immediately preceding the day on which the state
109 engineer files the proposed determination of rights with the court; or
- 110 (II) during the combined time immediately preceding the day on which the
111 state engineer files the proposed determination of rights consisting of 15
112 years and the time the water right was subject to one or more approved
113 nonuse applications.
- 114 (B) After the day on which a proposed determination of rights is filed with the
115 court a person may not assert that a water right subject to that determination
116 was forfeited before the issuance of the proposed determination, unless the
117 state engineer asserts forfeiture in the proposed determination, or a person, in
118 accordance with Section 73-4-11, makes an objection to the proposed
119 determination that asserts forfeiture.
- 120 (iii) A water right, found to be valid in a decree entered in an action for general
121 determination of rights under Chapter 4, Determination of Water Rights, is subject
122 to a claim of forfeiture based on a seven-year period of nonuse that begins after
123 the day on which the state engineer filed the related proposed determination of
124 rights with the court, unless the decree provides otherwise.
- 125 (iv) If in a judicial action a court declares a water right forfeited, on the date on which
126 the water right is forfeited:
- 127 (A) the right to beneficially use the water reverts to the public; and
- 128 (B) the water made available by the forfeiture:
- 129 (I) first, satisfies other water rights in the hydrologic system in order of priority
130 date; and
- 131 (II) second, may be appropriated as provided in this title.

- 132 (d) Except as provided in Subsection (2)(e), this section applies whether the unused or
133 abandoned water or a portion of the water is:
- 134 (i) permitted to run to waste; or
 - 135 (ii) beneficially used by others without right with the knowledge of the water right
136 holder.
- 137 (e) This section does not apply to:
- 138 (i) the beneficial use of water according to a written, terminable lease or other
139 agreement with the appropriator or the appropriator's successor in interest;
 - 140 (ii) a water right if [its] the water right's place of use is contracted under an approved
141 state agreement or federal conservation following program;
 - 142 (iii) those periods of time when a surface water or groundwater source fails to yield
143 sufficient water to satisfy the water right;
 - 144 (iv) a water right when water is unavailable because of the water right's priority date;
 - 145 (v) a water right to store water in a surface reservoir, or an aquifer in accordance with
146 Chapter 3b, Groundwater Recharge and Recovery Act, if the water is stored for
147 present or future beneficial use;
 - 148 (vi) a water right if a water user has beneficially used substantially all of the water
149 right within a seven-year period, provided that this exemption does not apply to
150 the adjudication of a water right in a general determination of water rights under
151 Chapter 4, Determination of Water Rights;
 - 152 (vii) except as provided by Subsection (2)(g), a water right:
 - 153 (A)(I) owned by a public water supplier;
 - 154 (II) represented by a public water supplier's ownership interest in a water
155 company; or
 - 156 (III) to which a public water supplier owns the right of beneficial use; and
 - 157 (B) conserved or held for the reasonable future water requirement of the public,
158 which is determined according to Subsection (2)(f);
 - 159 (viii) a supplemental water right during a period of time when another water right
160 available to the appropriator or the appropriator's successor in interest provides
161 sufficient water so as to not require beneficial use of the supplemental water right;
 - 162 (ix) a period of nonuse of a water right during the time the water right is subject to an
163 approved change application where the applicant is diligently pursuing
164 certification;
 - 165 (x) a water right to store water in a surface reservoir if:

- 166 (A) storage is limited by a safety, regulatory, or engineering restraint that the
 167 appropriator or the appropriator's successor in interest cannot reasonably
 168 correct; and
- 169 (B) not longer than seven years have elapsed since the limitation described in
 170 Subsection (2)(e)(x)(A) is imposed;
- 171 (xi) a water right subject to an approved change application for use within a water
 172 bank that has been authorized but not dissolved under Chapter 31, Water Banking
 173 Act, during the period of time the state engineer authorizes the water right to be
 174 used within the water bank; [øf]
- 175 (xii) subject to Subsection (2)(h), that portion of a water right that is quantified as
 176 saved water in a final order from the state engineer approving a change
 177 application, but not to exceed the amount subsequently verified by the state
 178 engineer in a certificate issued under Section 73-3-17[-] ; or
- 179 (xiii) a water right or a portion of a water right that a water conservancy district:
- 180 (A)(I) uses or diverts within the lower basin;
- 181 (II) has an approval or a certificate from the state engineer to use or divert
 182 within the lower basin; or
- 183 (III) plans to use or divert within the lower basin, as demonstrated by an
 184 affidavit signed by the water conservancy district's general manager; and
- 185 (B)(I) owns, including as a beneficial owner of a water right conveyed to the
 186 state, acting through the Board of Water Resources or Division of Water
 187 Resources, in connection with a loan agreement;
- 188 (II) leases; or
- 189 (III) is contractually entitled to use.
- 190 (f)(i) The reasonable future water requirement of the public is the amount of water
 191 needed in the next 40 years by:
- 192 (A) the persons within the public water supplier's reasonably anticipated service
 193 area based on reasonably anticipated population growth; or
- 194 (B) other water use demand.
- 195 (ii) For purposes of Subsection (2)(f)(i), a community water system's reasonably
 196 anticipated service area:
- 197 (A) is the area served by the community water system's distribution facilities; and
- 198 (B) expands as the community water system expands the distribution facilities in
 199 accordance with Title 19, Chapter 4, Safe Drinking Water Act.

- 200 (iii) The state engineer shall by rule made in accordance with Subsection 73-2-1(4)
201 establish standards for a written plan that may be presented as evidence in
202 conformance with this Subsection (2)(f), except that before a rule establishing
203 standards for a written plan under this Subsection (2)(f) takes effect, in addition to
204 complying with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
205 state engineer shall present the rule to:
- 206 (A) if the Legislature is not in session, the Natural Resources, Agriculture, and
207 Environment Interim Committee; or
- 208 (B) if the Legislature is in session, the House of Representatives and Senate
209 Natural Resources, Agriculture, and Environment standing committees.
- 210 (g) For a water right acquired by a public water supplier on or after May 5, 2008,
211 Subsection (2)(e)(vii) applies if:
- 212 (i) the public water supplier submits a change application under Section 73-3-3; and
213 (ii) the state engineer approves the change application.
- 214 (h) Saved water does not retain the protection of Subsection (2)(e)(xii) and any period of
215 nonuse for saved water begins to run the day on which:
- 216 (i) the underlying water right that serves as the basis for the saved water is declared
217 by court decree to have been lost due to forfeiture under this section; or
218 (ii) the title of a right to saved water segregated under Section 73-3-27 is conveyed
219 independent of the underlying water right.
- 220 (3)(a) The state engineer shall furnish a nonuse application form requiring the following
221 information:
- 222 (i) the name and address of the applicant;
223 (ii) a description of the water right or a portion of the water right, including the point
224 of diversion, place of use, and priority;
225 (iii) the quantity of water;
226 (iv) the period of use;
227 (v) the extension of time applied for;
228 (vi) a statement of the reason for the nonuse of the water; and
229 (vii) any other information that the state engineer requires.
- 230 (b)(i) Upon receipt of the application, the state engineer shall publish a notice of the
231 application once a week for two successive weeks:
- 232 (A) in a newspaper of general circulation in the county in which the source of the
233 water supply is located and where the water is to be beneficially used; and

- 234 (B) as required in Section 45-1-101.
- 235 (ii) The notice shall:
- 236 (A) state that an application has been made; and
- 237 (B) specify where the interested party may obtain additional information relating
- 238 to the application.
- 239 (c) An interested person may file a written protest with the state engineer against the
- 240 granting of the application:
- 241 (i) within 20 days after the notice is published, if the adjudicative proceeding is
- 242 informal; and
- 243 (ii) within 30 days after the notice is published, if the adjudicative proceeding is
- 244 formal.
- 245 (d) In a proceeding to determine whether the nonuse application should be approved or
- 246 rejected, the state engineer shall follow Title 63G, Chapter 4, Administrative
- 247 Procedures Act.
- 248 (e) After further investigation, the state engineer may approve or reject the application.
- 249 (4)(a) The state engineer shall grant a nonuse application on all or a portion of a water
- 250 right for a period of time not exceeding seven years if the applicant shows a
- 251 reasonable cause for nonuse.
- 252 (b) A reasonable cause for nonuse includes:
- 253 (i) a demonstrable financial hardship or economic depression;
- 254 (ii) a physical cause or change that renders use beyond the reasonable control of the
- 255 water right owner so long as the water right owner acts with reasonable diligence
- 256 to resume or restore the use;
- 257 (iii) the initiation of water conservation or an efficiency practice, or the operation of a
- 258 groundwater recharge recovery program approved by the state engineer;
- 259 (iv) operation of a legal proceeding;
- 260 (v) the holding of a water right or stock in a mutual water company without use by a
- 261 water supply entity to meet the reasonable future requirements of the public;
- 262 (vi) situations where, in the opinion of the state engineer, the nonuse would assist in
- 263 implementing an existing, approved water management plan; or
- 264 (vii) the loss of capacity caused by deterioration of the water supply or delivery
- 265 equipment if the applicant submits, with the application, a specific plan to resume
- 266 full use of the water right by replacing, restoring, or improving the equipment.
- 267 (5)(a) Sixty days before the expiration of a nonuse application, the state engineer shall

268 notify the applicant by mail or by a form of electronic communication through which
 269 receipt is verifiable, of the date when the nonuse application will expire.

270 (b) An applicant may file a subsequent nonuse application in accordance with this
 271 section.

272 Section 2. Section **73-3-30** is amended to read:

273 **73-3-30 (Effective 05/06/26). Change application for an instream flow -- Change**
 274 **application for delivery to a reservoir.**

275 (1) As used in this section:

276 (a) "Colorado River System" means the same as that term is defined in Sections 73-12a-2
 277 and 73-13-10.

278 (b) "Division" means:

279 (i) the Division of Wildlife Resources created in Section 23A-2-201[;] ;

280 (ii) the Division of State Parks created in Section 79-4-201[;] ; or

281 (iii) the Division of Forestry, Fire, and State Lands created in Section 65A-1-4.

282 (c) "Person entitled to the use of water" means the same as that term is defined in
 283 Section 73-3-3.

284 (d) "Sovereign lands" means the same as that term is defined in Section 65A-1-1.

285 (e) "Wildlife" means a species of [animals, including mammals, birds, fish, reptiles,
 286 amphibians, mollusks, and crustaceans, that are] animal, including a mammal, bird,
 287 fish, reptile, amphibian, mollusk, or crustacean, that is protected or regulated by a
 288 statute, law, regulation, ordinance, or administrative rule.

289 (2)(a) Pursuant to Section 73-3-3, a division may file a permanent change application, a
 290 fixed time change application, or a temporary change application, or a person entitled
 291 to the use of water may file a fixed time change application or a temporary change
 292 application, to provide water within the state for:

293 (i) an instream flow within a specified section of a natural or altered stream; or

294 (ii) use on sovereign lands.

295 (b) The state engineer may not approve a change application filed under this Subsection

296 (2) unless the proposed instream flow or use on sovereign lands will contribute to:

297 (i) the propagation or maintenance of wildlife;

298 (ii) the management of a state [parks] park; or

299 (iii) the reasonable preservation or enhancement of the natural aquatic environment.

300 (c) A division may file a change application on:

301 (i) a perfected water right:

- 302 (A) presently owned by the division;
- 303 (B) purchased by the division for the purpose of providing water for an instream
304 flow or use on sovereign lands, through funding provided for that purpose by
305 legislative appropriation; or
- 306 (C) secured by lease, agreement, gift, exchange, or contribution; or
- 307 (ii) an appurtenant water right acquired with the acquisition of real property by the
308 division.
- 309 (d) A division may:
- 310 (i) purchase a water right for the purposes described in Subsection (2)(a) only with
311 funds specifically appropriated by the Legislature for water rights purchases; or
- 312 (ii) accept a donated water right without legislative approval.
- 313 (e) A division may not acquire water rights by eminent domain for an instream flow, use
314 on sovereign lands, or for any other purpose.
- 315 (3)(a) A person entitled to the use of water shall obtain a division director's approval of
316 the proposed change before filing a fixed time change application or a temporary
317 change application with the state engineer.
- 318 (b) By approving a proposed fixed time change application or temporary change
319 application, a division director attests that the water that is the subject of the
320 application can be used consistent with the statutory mandates of the director's
321 division.
- 322 (4)(a) Pursuant to Section 73-3-3, a person entitled to the use of water may file a fixed
323 time change application or a temporary change application for a project to deliver
324 water to a reservoir located partially or entirely within the Colorado River System in
325 the state in accordance with:
- 326 (i) Colorado River Drought Contingency Plan Authorization Act, Public Law 116-14;
- 327 (ii) a water conservation program funded by the Bureau of Reclamation; or
- 328 (iii) a water conservation program authorized by the state.
- 329 (b) Before filing a change application under this Subsection (4), a person entitled to the
330 use of water shall obtain the approval from the executive director of the Colorado
331 River Authority of Utah, appointed under Section 63M-14-401.
- 332 (c) By approving a proposed fixed time change application or temporary change
333 application, the executive director of the Colorado River Authority of Utah attests
334 that the water that is the subject of the application can be used consistent with this
335 section.

- 336 (5) In addition to the requirements of Section 73-3-3, an application authorized by this
337 section shall include:
- 338 (a) a legal description of:
- 339 (i) the segment of the natural or altered stream that will be the place of use for an
340 instream flow;
- 341 (ii) the location where the water will be used on sovereign lands; or
- 342 (iii) the reservoir located partially or entirely within the Colorado River System in the
343 state that the water will be delivered to; and
- 344 (b) appropriate studies, reports, or other information required by the state engineer
345 demonstrating:
- 346 (i) the projected [~~benefits~~] benefit to the public resulting from the change; and
347 (ii) the necessity for the proposed instream flow or use on sovereign lands.
- 348 (6) A person may not appropriate unappropriated water under Section 73-3-2 for the
349 purpose of providing an instream flow or use on sovereign lands.
- 350 (7) Water used in accordance with this section is considered to be beneficially used, as
351 required by Section 73-3-1.
- 352 (8) A physical structure or physical diversion from the stream is not required to implement
353 a change under this section.
- 354 (9) An approved change application described in this section does not create a right of
355 access across private property or allow any infringement of a private property right.
- 356 (10) Notwithstanding the other provisions of this section, if the diversion point under a
357 proposed permanent, fixed time, or temporary change application is located within the
358 lower basin, as defined in Section 73-12a-2:
- 359 (a) a person entitled to the use of water, other than a division, may not file the change
360 application under this section; and
- 361 (b) a division may not file the change application under Subsection (4).

362 **Section 3. Effective Date.**

363 This bill takes effect on May 6, 2026.