**Friday, March 20, 2015**

**[2015 Utah Legislature Review](http://utahwaterrights.blogspot.com/2015/03/2015-utah-legislature-review.html)**

The 2015 General Session of the Utah Legislature began on January 26th and ended at midnight on March 12th. The last day for the Governor to sign or veto bills is April 1st, and the effective date for most of the newly enacted bills will be May 12th, unless otherwise noted below. Included below is a summary of the water related bills that passed and the water related bills that did not pass.

**BILLS THAT PASSED**

**House Bill 25: Application Revisions**
Representative V. Lowry Snow
A coalition of large districts and organizations, along with the State Engineer, successfully supported HB 25, amending the process and scope of review for change applications (commonly known as the "Jensen Fix" relating to the Supreme Court decision in [*Jensen v. Jones*](http://utahwaterrights.blogspot.com/2011/06/jensen-v-jones.html)). HB 25 garnered little debate or controversy and will allow the State Engineer to consider nonuse when acting on [change applications](http://utahwaterrights.blogspot.com/2009/06/what-is-change-application.html). This has been described as part of the "gatekeeper function" of the State Engineer.

The bill provides the State Engineer a 90-day window, after a change application is filed, to give the applicant notice of any concerns the State Engineer may have regarding nonuse and the resulting impact (defined in terms of "quantity impairment") that the proposed change may have on one or more specifically identified water rights. If the State Engineer gives such notice, or if a timely protest is filed alleging quantity impairment because of the unexcused nonuse of water, then the applicant has the burden of proving that the water right subject to the change has been beneficially used and quantity impairment will not occur. If the applicant cannot overcome this presumption and prove that all of the water right has been beneficially used, the State Engineer may reject the application or reduce the amount approved to the extent that such quantity impairment is likely to occur. The bill also reorganizes the application to appropriate and change application statutes (Utah Code sections 73-3-8 and 73-3-3) and makes some minor technical changes to the wording.

The impact of this legislation on the change application process is likely not yet widely understood. Most, if not all, protested change applications will become "mini beneficial use adjudications." Protestants, with the inclusion of a sentence or two in their protests, will require the applicant to "prove it or lose it." While the water right will not be forfeited, the change may be rejected or the amount changed may be reduced and the water right tainted with a nonuse label if either rejection or reduction occur.

 If you are not beneficially using all of the water allowed under your water right, you should strongly consider either putting 100% of your water right to beneficial use or [filing for nonuse status](http://utahwaterrights.blogspot.com/2009/06/what-is-nonuse-application.html), or both. If you are buying a water right and filing a change application you need to make the purchase subject to an approved change or face the possibility of not ending up with the water you thought you had purchased.

**House Bill 43: Water Rights - Change Application Amendments**
Representative Kay L. McIff
This bill changes the procedures for shareholders of a mutual water company requesting the filing of a change application. It requires that the company respond to the change within 120 days after receiving the change application request from the shareholder. Failure to respond will be interpreted as consent. It requires mediation if the company refuses to file the change application or if the shareholder and mutual water company cannot agree to conditions of the change application. It also allows the shareholder to advance the change application to the State Engineer for administrative review regardless of the mutual water company decision. If the mutual water company declines the change application request, the company is required to state the reasons why.

**House Bill 58: Change Application Modification**
Representative Keith Grover
This bill is in response to the 2011 Utah Supreme Court ruling in the [*Salt Lake City v. Big Ditch*](http://utahwaterrights.blogspot.com/2011/06/salt-lake-city-v-big-ditch-irrigation.html) case that concluded that Big Ditch, while not the owner of certain water rights, could file a change application on those water rights because it was a "person entitled to the use of water," as that phrase is used in the "Change Application" statute, pursuant to a contract it has with Salt Lake City. Attempts to pass a bill that addressed both this issue and the issue raised in the *Jensen v. Jones* case (see H.B. 25 above) failed in the last three sessions. This bill clarifies and redefines who is entitled to file a change application, i.e.: (1) a holder on an approved but unperfected application to appropriate water; (2) the record owner of a perfected water right; (3) a person who has written authorization from a person described in (1) or (2) above to file the application of that person's behalf; and (4) a shareholder in a water company who files in accordance with the existing "Shareholder Change Application" statute.

**Senate Bill 15: Water Law - Forfeiture Exemptions**
Senator Margaret Dayton
This bill amends Utah Code section 73-1-4 regarding nonuse and forfeiture. The bill adds some clarifying language that the section does not apply to "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"

**Senate Bill 40: Water Law - Application Withdrawal**
Senator Margaret Dayton
This bill amends Utah Code section 73-3-6 to allow for the withdrawal of water right applications. Although the Division of Water Rights has historically allowed for applications to be withdrawn, this bill will provide specific statutory authorization and explanation for withdrawals. The bill provides that an applicant or an applicant's successor-in-interest may withdraw an unperfected application (even if already approved) by filing a written withdrawal request with the Division. Upon receipt of the withdrawal request, the Division must promptly update its records to show that the application has been withdrawn and is of no further force or effect. An applicant who withdraws an application is not entitled to a refund of the application [filing fees](http://utahwaterrights.blogspot.com/2009/04/new-fee-schedule-for-utah-division-of.html).

**SB225: Irrigation Service Water Rights Amendments**
Senator Kevin T. Van Tassell
This bill makes a minor change to Section 73-3-3. The bill states that a change application on a United States Indian Irrigation Service water right that is serving the needs of a township or municipality shall be signed by (1) the local public water supplier that is contractually responsible for the operation and maintenance of the public water supply system and (2) the record owner of the water right.

**SB281: Water Infrastructure Funding**
Senator J. Stuart Adams
The second substitute of SB281 passed on the last day of the legislative session. The bill establishes Title 73, Chapter 10g of the Utah Code, which creates the Water Infrastructure Restricted Account within the general fund. The Account is to be managed by the Division of Water Resources and the Board of Water Resources, and the money in the Account is to be used for the development of Utah's undeveloped share of the Bear River and the Colorado River, and for the repair, replacement, or improvement of federal water projects in Utah when federal funds are not available. The Board and the Division are to make administrative rules regarding the procedures, criteria, and qualifications for loans to be made from the Account for underfunded federal projects. Money used for the development of water from the Bear River and the Colorado River is subject to the repayment provisions of the Bear River Development Act (Title 73, Chapter 26) and the Lake Powell Pipeline Act (Title 73, Chapter 28), respectively. For the upcoming fiscal year, the legislature appropriated $5 million from the general fund into the Account.

**BILLS THAT DID NOT PASS**

**House Bill 47: Protection of Water Rights**
Representative Kay L. McIff

**House Bill 108: Public Water Access Act**
Representative Dixon M. Pitcher

**House Bill 161: Utah Revised Nonprofit Corporation Act**
Representative Kay L. McIff

**Senate Bill 126: Water Amendments**
Senator Margaret Dayton

**Senate Bill 142: Water Rights - Change Applications**
Senator Jerry W. Stevenson