

RESOLUTION 2014—001

(A) LPC Resolution Title/Subject

Encouraging the Utah State Legislature to Support Impairment Protection for Existing Water Rights

(B) We, the Members of the Utah League of Cities and Towns find that:

1. In 2011, the Utah Supreme Court in *Jensen v. Jones* held that the State Engineer lacked statutory authority to consider non-adjudicated forfeiture when determining a change application.
2. Since 2011, the Utah State Legislature and many interested parties, including ULCT, have attempted to address long-standing concerns about the state engineer's statutory authority to adjudicate, the change application procedure, equal and predictable treatment for applicants, state requirements on development timelines compared to state water approval timelines, and the concept of impairment.
3. The Legislature considered but declined to adopt legislation in 2012, 2013, and 2014 on this issue.
4. During the summer of 2014, the General Managers of the Central Utah Water Conservancy District, Jordan Valley Water Conservancy District, Washington County Water Conservancy District, and Weber Basin Water Conservancy District; representatives from the Farm Bureau and the Utah League of Cities and Towns, and the State Engineer met regularly to find consensus on some of these issues.
5. The result of the group's work includes defining quantity impairment, codifying an optional consultation process with the State Engineer's office prior to the filing of a change application, clarifying the roles of the State Engineer and of potentially affected parties in the protest process, and

(C) Now, therefore, we the members of the Utah League of Cities and Towns recommend that:

1. Utah Code §73-3-3 be amended to focus on the change applicant's responsibilities. Specifically, Utah Code §73-3-3 shall define quantity impairment, provide an optional non-binding pre-application consultation between the applicant, and the State Engineer, and clarify that the applicant has the burden of producing evidence sufficient to support a reasonable belief that the change will not cause a specifically identified water right to experience quantity impairment.
2. Quantity impairment would be defined as any impairment of an existing water right resulting from a change application that would deprive another person entitled to the use of water of that person's beneficial use. That deprivation could come in several ways, including diminishing the

quantity of water in the supply source for the person's water right, changing the timing of availability in that supply source, or enlarging the quantity of water depleted by the proposed nature of use when compared to the current use.

3. Utah Code §73-3-8 be amended to focus on the administrative decision process. Specifically, Utah Code §73-3-8 shall clarify the State Engineer's decision process and empower the State Engineer to approve a change application for part of a water right or when an applicant mitigates the impairment of another person's water right. Additionally, under circumstances like those that led to the *Jensen v. Jones* decision, there would be a rebuttable presumption of quantity impairment unless a codified exception exists.

4. Per the proposed changes to Utah Code §73-3-8, the State Engineer would only apply the presumption if a protestant raises a timely protest that identifies the existing right that could be impaired. The State Engineer could provide notice to a representative body of potential protestants but every potential protestant need not be notified. Ultimately, a protestant whose water right may face quantity impairment must file a protest or lose the opportunity to later bring a quantity impairment claim in the administrative process. The changes would not impact a potential protestant's ability to adjudicate a forfeiture claim.

_ ULCT staff, on behalf of the water subgroup_____

City(s), Town(s), and/or Affiliate Group submitting this resolution

_ ULCT staff_____

Person preparing form