

# Milestone 5

## Approvals: Playing by the Rules

Once the parties have agreed on their market transaction and completed all of the preceding four milestones, approvals are often needed to realize a completed market transaction. Regulatory approvals are needed to ensure that the legal standards (described under Logistics above) are upheld and that a public process is provided to solicit comments and feedback on the proposed transfer.

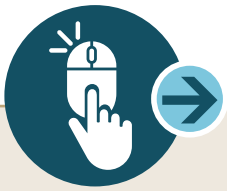
### Water Right Approvals

Most water transactions in Utah will require a Change Application to be filed with and approved by the State Engineer. Such approvals may also have distribution impacts.

- **Change Application**

Utah Code Ann. 73-3-3 defines several types of Change Applications that vary based on the timeline (term) of the proposed transfer and the proposed end use. For any type of Change Application, a water user can and should request a consultation meeting with the State Engineer's Office to describe a proposed change and solicit feedback from the regulatory office who will be reviewing the application. These consultation meetings have proven to be a critical piece of successfully obtaining regulatory approval of complex or unique water right Change Applications.





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- **Temporary Change:** A proposed temporary change to an existing water right that will last one year or less. Temporary Change Applications are typically processed by the State Engineer Office within 3 to 6 months and may not require public notice if there are not anticipated impacts to other water users.
- **Fixed Time Change:** A proposed temporary change to an existing water right that will last for more than one year but less than 10 years. Fixed time Change Applications do require public notice and typically require 3 to 12 months to process.
- **Permanent Change:** A proposed permanent change to an existing water right. Permanent Change Applications require public notice and are often scrutinized to a greater degree compared to temporary Change Applications. Approval of a permanent Change Application can often require 6 to 12 months.
- **Instream Flow:** Defined under Utah Code Ann. 73-3-30, a change of water rights to instream flow purposes is a relatively new option in Utah. As new legislation, there is uncertainty regarding typical approval timelines.

Utah Code Ann. 73-3-8 details the criteria an Applicant must meet to have a Change Application approved. The Applicant retains the burden to prove their Change Application through the entire process. All Change Applications allow for a period of 20 days for interested persons to protest the Change Application. If a Change Application is protested it will likely be held for hearing. Change Applications can also be approved with conditions, so applicants should be aware that subjecting their water right to a Change Application may result in conditions being placed on their water rights.



- **Distribution Impacts**

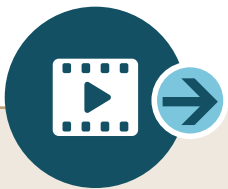
In addition to a water right Change Application, a water user should also take care to consider the administration surrounding how water is distributed between water right owners. Changes to water rights often result in changes to distribution. An applicant should communicate with the local Regional Engineer about current and proposed distribution to ensure that a Change Application is processed efficiently and to understand what distribution issues must be addressed to complete the water transaction.

## Water Bank Approval

The Project Team has worked with the Utah Board of Water Resources to create final approved Water Bank Application forms and to create an administrative process to approve water banks.

The template forms help water users respond to the necessary application elements as defined in statute, and are available on the project website: [water.utah.gov/water-marketing](http://water.utah.gov/water-marketing)

There is a significant lead time required to develop the basic structure and elements of a water bank. For the Project Team, water bank development required over 12 months of consistent effort. Once the basic structure of a water bank is established, the approval process requires a minimum of 3 months to complete and consists of 2 meetings with the Board of Water Resources and a 30-day public comment period. It is important to note that a water bank approval must be followed by one or more water right Change Applications to be able to implement the water bank.



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## Other Types of Approvals

Several other regulatory approvals should be considered and may be applicable. Common approvals include:

- **Irrigation Company**

Some water users may hold shares in an irrigation company and require company approval to file a Change Application on their shares. Obtaining approval to use company shares will vary by company and likely be made according to binding company Articles and Bylaws.

- **Federal Government**

Some actions require Federal government approvals to be able to use water rights and contract supplies in new ways.

- **Warren Act Contract:** In order to use the water supply available from a Federal reservoir storage facility for new purposes, a water user must obtain specific Federal authorization to do so under the Warren Act. The Warren Act is a set of laws passed in 1911 that define how Federal facilities constructed under the Reclamation Act are managed.

- **National Environmental Policy Act (NEPA):** Whenever a Federal action is triggered, such as use of Federal funds or issuance of a Federal permit, the project proponent must comply with NEPA. Such compliance could be an approved Categorical Exclusion or Finding of No Significant Impact, or it could require extensive study of environmental impacts and project alternatives through an Environmental Impact Statement (EIS).



**Once you have your approvals you are off to the races!**

The five Water Marketing Milestones provide a guide to the major steps in completing either an individual water transaction or developing a more expansive water marketing program that will involve multiple water trades.

The Project Team

